

1 [Administrative Code - Expansion of First Source Hiring Program]

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3 **Ordinance amending the Administrative Code to add First Source Hiring requirements**
4 **for developers applying for permits for commercial or residential projects to disclose**
5 **to the City anticipated entry and apprentice level positions for development projects,**
6 **anticipated local hires, and anticipated wages; and to agree to hiring and retention**
7 **goals for apprentice level positions.**

8

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

12

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

14

15 Section 1. The Administrative Code is hereby amended by revising Sections 83.2,
16 83.3, 83.4, 83.6, 83.11, and 83.18 to read as follows:

17

SEC. 83.2. FINDINGS.

18

(a) In August 1996, a new Federal law, the Personal Responsibility and Work
19 Opportunity Act, also known as "welfare reform," fundamentally changed the nature of public
20 assistance programs in this country, shifting the focus from the receipt of benefits to
21 procurement of employment within specified time limits. Approximately 17,350 of San
22 Francisco's children and 7,330 of its adults (3.4 percent of the population) who currently
23 receive Temporary Assistance to Needy Families (TANF), the program formerly known as Aid
24 to Families with Dependent Children (AFDC), will be limited to five cumulative years of aid
25 during their lifetime. This means that within five years, the adult members of these families,

1 unless specifically exempted, must be employed at an economically self-sufficient level.
2 Under the new Federal law, after two years on aid, most recipients must work in order to
3 maintain eligibility for (TANF). As families reach their time limits, there will be no federal or
4 State funding help to support them. Therefore, the creation and retention of adequate
5 employment opportunities within the City is essential to prevent these families from falling into
6 complete destitution.

7 (b) The Federal law will penalize states that fail to meet their assigned quotas for
8 moving individuals from welfare to work by imposing monetary sanctions that will be passed
9 on to the counties.

10 (c) Many people on welfare and other economically disadvantaged individuals do
11 not have immediate access to employment opportunities that will bring economic self-
12 sufficiency. Often, long-term recipients of public benefits are confronted with multiple barriers
13 to full employment, including lack of education, job-readiness skills and work experience.

14 (d) In San Francisco, there are 9,000 single unemployed adults in the County Adult
15 Assistance Program (CAAP) who are also in need of programs to move toward self-
16 sufficiency. Many CAAP clients have chosen an employment track and are pursuing self-
17 sufficiency through work. Unlike TANF, CAAP is funded solely by County dollars and is not
18 subsidized by the State or Federal government. While the economy shows signs of
19 improvement, unemployment rates in San Francisco remain at 5.8 percent.

20 (e) Since 2000, over 100,000 jobs have been lost, almost three times the job loss
21 rate of the early 1990's.

22 (f) The welfare time limits imposed upon families place tremendous pressure on the
23 City to find jobs, provide appropriate training opportunities, and assist economically
24 disadvantaged individuals to find and retain adequate employment. The availability of
25 sufficient employment opportunities is essential to the economic and social well-being of the

1 City. This process of workforce development must be a component of the City's economic
2 development planning.

3 (g) New development and construction of commercial projects tend to increase
4 property values which in turn can displace low-income residents and put a greater burden on
5 the City to assist economically disadvantaged individuals. Identifying jobs on these projects that
6 pay wages that permit economic self-sufficiency, and in particular those that pay a Prevailing Wage,
7 will allow the City to prioritize and allocate its training resources to foster permanent employment
8 opportunities for qualified economically disadvantaged individuals that permit those individuals to
9 achieve economic self-sufficiency.

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

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

24 (j) The concept of "First Source Hiring" under this Chapter contains two essential
25 components: (1) the identification of entry and apprentice level positions that pay wages that

1 permit economic self- sufficiency, including in particular those positions that pay a Prevailing Wage,
2 in order to properly allocate and prioritize training resources to prepare economically
3 disadvantaged workers, and in particular those that are local residents, for those positions, and (2)
4 the availability of the first opportunity for graduates of those training programs to be
5 considered for employment. The City must work with the business community, the service
6 providers, organized labor and schools in identifying workforce needs, developing job
7 readiness standards, supporting training that creates a new pool of qualified workers, and
8 providing a mechanism by which the business community can draw upon this pool; thereby
9 facilitating and strengthening the relationship between the City, educational institutions,
10 community-based job training, development and ~~place-mended~~ placement programs, and the
11 private sector. While the City commits to providing the support services necessary to ensure
12 the successful transition to economic self-sufficiency, the business community must be willing
13 to offer these employment opportunities to qualified economically disadvantaged individuals.

14 One of the best opportunities for economically disadvantaged workers to gain economic self-
15 sufficiency is through enrollment in an apprenticeship program approved by the California Department
16 of Industrial Relations. The City will seek to promote apprenticeship opportunities in both private and
17 public construction programs by providing economically disadvantaged workers with the services
18 needed to prepare to enter such programs. The construction trade unions must be willing to assist
19 these workers, when qualified under the state-approved apprenticeship standards, to become enrolled
20 in the construction trade union apprenticeship training programs.

21 (k) Participation in the City's First Source Hiring Program can be economically
22 advantageous to employers. The Program provides a ready supply of qualified workers to
23 employers with hiring needs. There are a variety of City, federal and State tax credits
24 available for hiring qualified economically disadvantaged individuals. Within State-designated
25 "Enterprise Zone" areas of San Francisco, the state offers a hiring tax credit for employers

1 who hire job seekers from targeted groups. Employers can claim up to \$31,605.00 in tax
2 credits over a 5 year period when they hire qualified employees. The State of California also
3 allows a hiring tax credit against wages paid qualified economically disadvantaged individuals,
4 and a sales tax credit for equipment purchased for use in designated Enterprise Zones.

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

9 (m) The City is committed, in partnership with the Private Industry Council, to
10 facilitating employer access to tax credit and other financial incentive information regarding
11 the hiring of qualified economically disadvantaged individuals who meet City, State or federal
12 program criteria.

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

17 (o) The WIA also requires the implementation of a One-Stop delivery system that
18 provides services to both job seekers and employers. It requires that the workforce
19 development services in each locality be delivered through a single "One-Stop" delivery
20 system. The WIA gives states and localities flexibility in deciding how to implement the One-
21 Stop system with the condition that a "full service center" be formed in each locality, which
22 provides full access to all services. The WIB, in partnership with the Mayor, agreed to have
23 one full service center located on Mission Street, two affiliate centers located in the southeast
24 sector and in the Civic Center area, and a multitude of access points. This structure makes up
25 the foundation of the One-Stop system in San Francisco. The City chose a consortium of

1 agencies to be responsible for the operation of these centers, including the San Francisco
2 Human Services Agency (HSA), City College of San Francisco, the National Council on
3 Aging, and the State of California Employment Development Department.

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

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

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

14 (s) Also in 2004, HSA implemented a new data system that tracks the activities of
15 the referral system. Information gathered includes the number of employers notified of first
16 source requirements, the number that comply with first source requirements, the number of
17 jobs posted, and the number of job seekers referred and placed in jobs.

18 (t) The proposed Market and Octavia Area Plan - consisting of general plan,
19 planning code, and zoning map amendments - is a means for implementing an innovative set
20 of land use controls, urban design guidelines, and public space and transportation system
21 improvements to create a dense, vibrant and transit-oriented neighborhood. The plan rezones
22 the commercial uses in the Plan Area; consequently more jobs will occur in the lower wage
23 industries such as retail, food service, and personal services. Such industries offer
24 employment opportunities to first time and entry level workers especially served by the City's
25 First Source Hiring program and as such special efforts will be made to enlist lower income

1 residents and job seekers in these new employment opportunities. Expanding the provisions
2 of the First Source Hiring Ordinance to the Market and Octavia Area Plan will serve as a pilot
3 project for other areas of the City and is in the best interest of the residents residing in this
4 designated area.

5 **SEC. 83.3. PURPOSE.**

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

11 This Chapter ~~additionally~~ requires similar first source hiring obligations to be included
12 in permits authorizing construction of certain commercial development and residential projects
13 and requires that developers applying for those permits meet with the City before submitting a permit
14 to disclose the estimated number of entry and apprentice level positions to be used on a project, the
15 anticipated wages for those positions and, if known, the estimated number of local residents to be hired.
16 The purpose of this disclosure is to allow the City sufficient time and information to identify those
17 positions that will afford the best opportunity for economic self-sufficiency for economically
18 disadvantaged individuals, and to prioritize, allocate, and if necessary, redirect its training resources
19 to programs to maximize those opportunities.

20 Because of the wide variety of contracts, property contracts, other work performed in
21 the City by the City contractor, and permits issued by; the City, there is no single first source
22 hiring requirement that can be applied and enforced in all such situations. Therefore, specific
23 first source hiring requirements must be tailored to individual contracts, property contracts,
24 work performed in the City by City contractors, and permits for commercial activities and
25 residential projects. An administrative body shall be established by the City to assist in the

1 tailoring of these requirements, and shall be known as the "First Source Hiring Administration
2 (FSHA)" for the purpose of implementing and overseeing the first source hiring requirements
3 under this Chapter.

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

9 Nothing in this Chapter is intended to, nor shall it be interpreted or applied so to
10 create delay to contractors or developers under permits subject to the requirements of first
11 source hiring.

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

18 **SEC. 83.4. DEFINITIONS.**

19 *When used in this Chapter, the following terms have the following meanings:*

20 "Apprentice level position" shall mean a position that requires a worker who is indentured in
21 a construction completion of an apprenticeship program approved by the State of California's
22 Department of Industrial Relations. "Apprentice level position" shall include temporary and
23 permanent jobs that are construction jobs related to the development of a commercial activity or
24 residential project.

1 ~~(a)~~ "Approved plan" shall mean a first source hiring implementation and monitoring
2 plan developed by a City department and approved by the FSHA.

3 ~~(b)~~ "Biotechnology business" shall mean conducting biotechnology research and
4 experimental development, and operating laboratories for biotechnology research and
5 experimental development, using recombinant DNA, cell fusion, and bioprocessing
6 techniques, as well as the application thereof to the development of diagnostic products
7 and/or devices to improve human health, animal health, and agriculture.

8 ~~(c)~~ "City" shall mean the City and County of San Francisco.

9 ~~(d)~~ "Commercial activity" shall include but not be limited to, for purposes of this
10 Chapter only, retail sales and services, restaurant, hotel, education, hospital, and office uses,
11 biotechnology business, and any other non-profit or for-profit commercial uses.

12 ~~(e)~~ "Contract" shall mean an agreement for public works or improvements to be
13 performed, or for goods or services to be purchased, or grants to be provided, at the expense
14 of the City, or to be paid out of moneys deposited in the Treasury of the City, or out of trust
15 moneys under the control of, or collected by, the City involving an expenditure in excess of
16 \$350,000 for construction contracts, in excess of \$50,000 for goods, or in excess of \$50,000
17 for services. Contract shall also mean loans or grants in excess of \$50,000 which are
18 awarded by the Mayor's Office of Housing, the Mayor's Office of Community Development,
19 the Mayor's Office of Children, Youth and their Families, or by any other City department for
20 work covered under this Chapter.

21 The requirements of this Chapter shall apply to: (1) entry level positions for work
22 performed by a contractor in the City; (2) entry level positions for work performed on the
23 contract in counties contiguous to the City; ~~and~~ (3) entry level positions for work performed on
24 the contract on property owned by the City; *and (4) positions for work performed on Development*
25 *Projects as defined by this Chapter.*

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

3 For purposes of this Chapter, "contract" shall not include contracts for urgent
4 litigation expenses as determined by the City Attorney, emergency contracts under San
5 Francisco Administrative Code Section 6.30, or Section 21.25, tolling agreements,
6 cooperative purchasing agreements with other governmental entities or contracts with other
7 governmental entities.

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

11 ~~(g)~~ "Developer" shall mean the property owner, agents of the property owner,
12 including but not limited to management companies, person or persons, firm, partnership,
13 corporation, or combination thereof, having the right under the San Francisco Planning Code
14 and/or the San Francisco Building Code to make an application for approval of a commercial
15 activity or residential project.

16 ~~(h)~~ "Development project" shall mean commercial activity(ies) or a residential project
17 that require a permit that is subject to the requirements of this Chapter, including applicable
18 permits related to biotechnology business.

19 ~~(i)~~ "Economically disadvantaged individual" shall mean an individual who is either:
20 (1) eligible for services under the Workforce Investment Act of 1988 (WIA) (29 U.S.C.A. 2801
21 et seq.), as determined by the San Francisco Private Industry Council, or any successor
22 agency; or (2) designated "economically disadvantaged" by the First Source Hiring
23 Administration, as an individual who is at risk of relying upon, or returning to, public
24 assistance., including unemployment benefits. Examples of "economically disadvantaged
25 individuals," for purposes of this subsection, may include, but not be limited to, the following

1 individuals: individuals existing the criminal justice system; individuals participating in or
2 completing substance abuse treatment; individuals who receive financial aid for the purpose
3 of obtaining an education or other vocational training program; survivors of domestic violence
4 seeking employment; people with disabilities seeking employment; and veterans seeking
5 employment.

6 ~~(j)~~—"Employer" shall mean a contractor, sub-contractor, developer, agents of the
7 developer, tenants or other occupants, or person(s), firm, partnership, corporation, or
8 combination thereof engaged in work performed under a contract, lease, loan, grant, or
9 permit, or engaged in work performed in the City, subject to the requirements of this Chapter.

10 ~~(k)~~—"Entry level position" shall mean a position that requires any of the following: (1)
11 no education above a high school diploma or certified equivalency; (2) less than two years of
12 training or specific preparation; (3) a college and/or post graduate degree; or (4) a license or a
13 permit. "Entry level position" shall include temporary and permanent jobs, and construction
14 jobs related to the development of a commercial activity or residential project.

15 ~~(l)~~—"First source hiring agreement" shall mean the written agreement entered into by
16 the employer with the City which details the particular first source hiring requirements with
17 which an employer must comply, as further defined in Sections 83.9 and 83.11 of this
18 Chapter.

19 ~~(m)~~—"FSHA" shall mean the First Source Hiring Administration.

20 "Local resident" shall mean an individual who is domiciled, as defined by Section 349(b) of the
21 California Election Code, within the City at least seven (7) days prior to commencing work on a
22 project.

23 ~~(n)~~ "Permit" shall mean, during Phase I, as defined in this Section 83.4~~(n)~~ below,
24 either or both of the following: (1) any building permit application for a commercial activity over
25 50,000 square feet in floor area and involving new construction, an addition, or alteration

1 which results in the expansion of entry or apprentice level positions for a commercial activity;
2 (2) any application which requires discretionary action by the City's Planning Commission
3 relating to a commercial activity over 50,000 square feet including, but not limited to, a
4 conditional use, project authorization under San Francisco Planning Code Section 309, and
5 office development under San Francisco Planning Code Section 320, et seq. During Phase II,
6 as defined in this Section 83.4~~(e)~~below, any or all of the following: (1) any building permit
7 application for a commercial activity over 25,000 square feet in floor area and involving new
8 construction, an addition, or alteration which results in the expansion of entry and apprentice
9 level positions for a commercial activity; (2) any application which requires discretionary action
10 by the City's Planning Commission relating to a commercial activity over 25,000 square feet
11 including, but not limited to conditional use, project authorization under San Francisco
12 Planning Code Section 309, and office development under San Francisco Planning Code
13 Section 320, et seq., or (3) any building permit application for a residential project as defined
14 herein.

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

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

23 ~~(f)~~—"Phase II" refers to the second stage of implementation of this Chapter which
24 became operative on April 1, 2001, 24 months after the FSHA adopted a resolution stating
25 that Phase I had been implemented. In addition to the contracts, property contracts, grants or

1 loans referred to in the definition of Phase I, above, Section 83.4(n), above, Phase II shall apply to
2 contracts for goods in excess of \$50,000, contracts for services in excess of \$50,000, permits
3 issued for commercial activity exceeding 25,000 square feet, grants and loans in excess of
4 \$50,000 issued by other City departments, and permits issued for residential projects as
5 defined herein. In addition, Phase II shall apply to any and all work performed in the City by
6 City contractors.

7 "Prevailing Wage" shall mean the highest general prevailing rate of wage plus "per diem
8 wages" and wages paid for overtime and holiday work paid in private employment in the City and
9 County where the work is performed of San Francisco for the various crafts and kinds of labor
10 employed in the performance of any public work or improvement under Chapter 6 of this Code as fixed
11 by Board of Supervisors pursuant to Administrative Code section 6.22(E)(3). "Per diem wages" are
12 defined pursuant to Labor Code section 1773.1, as amended from time to time.

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

22 ~~(r)~~—"Publicize" shall mean to advertise or post, and shall include participation in job
23 fairs, or other forums in which employment information is available.

24 ~~(s)~~—"Qualified" with reference to an economically disadvantaged individual shall
25 mean an individual who meets the minimum bona fide occupational qualifications provided by

1 the prospective employer to the San Francisco Workforce Development System in the job
2 availability notices required by this Chapter.

3 ~~(t)~~-"Residential project" shall mean a residential development involving new
4 construction, an addition, a conversion, or substantial rehabilitation that results in the creation
5 or addition of ten or more residential units.

6 ~~(u)~~-"Retention" shall, when used in this Chapter, be construed to apply to the entry
7 or apprentice level position, not to any particular individual.

8 ~~(v)~~-"San Francisco Workforce Development System (System)" shall mean the
9 system established by the City and County of San Francisco, and managed by the FSHA, for
10 maintaining: (1) a pool of qualified individuals; and (2) the mechanism by which such
11 individuals are certified and referred to prospective employers covered by the first source
12 hiring requirements under this Chapter.

13 ~~(w)~~-"Substantial rehabilitation," when used in this Chapter, shall mean rehabilitation
14 that involves costs in excess of 75 percent of the value of the building after rehabilitation.

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

16 * * * *

17 (c) The FSHA shall phase-in implementation of this Chapter in accordance with
18 Section 83.18, below, and as defined in Sections 83.4~~(r)~~ and ~~(s)~~, above. The FSHA shall first
19 establish a schedule for assisting in the development of, or approving existing first source
20 hiring implementation and monitoring plans by the following City departments: Airport;
21 Department of Building Inspection; Department of Planning; Department of Public Health;
22 Mayor's Office of Children, Youth and Families; Mayor's Office of Community Development;
23 Mayor's Office of Housing; Municipal Railway; Parks and Recreation; Port; Public Works, and
24 Purchasing. The FSHA shall also establish a schedule for the remaining City departments.

25 * * * *

1 **SEC. 83.11. FIRST SOURCE HIRING REQUIREMENTS FOR PERMITS FOR**
2 **COMMERCIAL DEVELOPMENT AND RESIDENTIAL PROJECTS.**

3 (a) Developers applying for a Permit as defined in Section 83.4 shall meet with CityBuild,
4 the City's construction training workforce program, prior to submitting an application for a Permit for
5 a development project, and shall provide the estimated number of employees from each trade to be
6 used on the project, including entry and apprentice level, the anticipated wages for those employees,
7 whether or not the developer will pay Prevailing Wage for those employees, and, if known, the
8 estimated number of local residents to be hired. Developers applying for permits as defined in
9 Section 83.4(+) shall cooperate with the FSHA in establishing first source hiring agreement(s)
10 for the development project. The Planning Commission shall not approve a development
11 project, nor shall any City department issue a permit subject to this Chapter unless the
12 developer or contractor has met with CityBuild to provide the required information and has
13 obtained approval from the FSHA of a first source hiring agreement applicable to the
14 development project or obtained an exemption from the requirements of Chapter 83 pursuant
15 to Section 83.11(d). The FSHA may condition approval of the first source hiring agreement on
16 the City's approval of the development project. In the event the development project approved
17 by the Planning Commission differs substantially from the development project assumed by
18 the FSHA at the time it approved the agreement, the FSHA may approve modifications to the
19 first source hiring agreement if necessary for the agreement to conform to the requirements of
20 this Chapter. Such agreement shall become a condition of the permit, and shall:

21 (1) Set appropriate hiring and retention goals for entry level positions and, for each
22 trade, set appropriate hiring and retention goals for apprentices enrolled in an apprenticeship program
23 approved by the State of California's Department of Industrial Relations, for all employers engaged
24 in construction work on, and commercial activity(ies) to be conducted in, the development
25 project, including residential services. The developer shall agree to require all such employers

1 to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish
2 good faith efforts as to their attempts to do so, as set forth in the agreement. The agreement
3 shall take into consideration the employer's participation in existing job training, referral and/or
4 brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications,
5 participation in such programs may be certified as meeting the requirements of this Chapter.
6 Failure either to achieve the specified goal, or to establish good faith efforts will constitute
7 noncompliance and will subject the employer to the sanctions provided in Section 83.12 of this
8 Chapter.

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

24 (3) Set appropriate requirements for providing notification of available entry and
25 apprentice level positions to the San Francisco Workforce Development System so that the

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

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

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

24 (6) Set the term of the requirements.
25

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

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

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

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

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

17 (c) Compliance by an employer subject to the agreement with a City department's
18 approved plan shall be deemed to be compliance with the requirements of this Chapter. In
19 situations where an employer must comply with the requirements of this Chapter as part of a
20 contract or property contract, and subsequently must apply for permits for the same project
21 that is the subject of the contract or property contract, the employer will be deemed to be in
22 compliance with this Chapter.

23 (d) In any situation where the FSHA concludes based upon application by the
24 employer that compliance with this Chapter would cause economic hardship or the burden of
25 compliance would be disproportionate to the impacts of the employer's commercial

1 activity(ies) in the City, the FSHA shall grant an exception to any or all of the requirements of
2 this Chapter.

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

4 Phase I, as defined in Section 83.4(~~r~~) became operative on October 20, 1998. Phase
5 II, as defined in Section 83.4(~~s~~) of this Chapter became operative on April 1, 2001, 24 (twenty-
6 four) months after the FSHA adopted a resolution stating that Phase I had been implemented.
7 This Chapter is intended to have prospective effect only, and shall not be interpreted to impair
8 any rights under any existing City contract or property contract or permit.

9 Section 3. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor’s veto of the ordinance

13 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the “Note” that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: _____
23 JANA CLARK
24 Deputy City Attorney

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