

FILE NO. 041172

ORDINANCE NO. 247-04

1 [Reenacting a Disadvantaged Business Enterprise Program.]

2
3 **Emergency ordinance amending the San Francisco Administrative Code by adding**
4 **Section 14A.03 to Chapter 14A to reenact a Disadvantaged Business Enterprise**
5 **Program and suspend Chapter 12D.A, make applicable certain emergency contracting**
6 **procedures, and provide for data collection to ensure nondiscrimination in City**
7 **contracting; adopting declaration of emergency.**

8 Note: This entire ordinance is new.

9 Additions are *single-underline italics Times New Roman*;
10 deletions are *strikethrough italics Times New Roman*.
11 Board amendment additions are double underlined.
12 Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. Declaration of Emergency under Section 2.107 of the San Francisco
15 Charter.

16 Section 2.107 of the San Francisco Charter authorizes passage of an emergency
17 ordinance in cases of public emergency affecting life, health, property, or for the uninterrupted
18 operation of any City or County department or office required to comply with time limitations
19 as established by law. The Charter provides that an emergency ordinance may be reenacted
20 upon the same terms and conditions applicable to its initial enactment. The Board of
21 Supervisors hereby finds and declares that an actual emergency exists that requires the
22 passage of this Emergency Ordinance. This emergency declaration is based on the following:

- 23 1. The City and County of San Francisco and its departments are engaged on an
24 ongoing basis in a large number of public services and projects that are vital to the health,
25 safety and welfare of San Francisco and its citizens, such as the construction and repair of

Supervisors Ammiano, Ma, Duffy, Maxwell, Atioto -Pier
BOARD OF SUPERVISORS

1 energy, water, and transportation equipment and facilities, and the provision of social,
2 medical, public safety and other services to San Franciscans. Many of these services and
3 projects are required or authorized by law.

4 2. In order to perform these services and accomplish these projects, the City often
5 enters into contracts with outside entities. The ability to bid, negotiate, award and enforce
6 contracts in a timely manner is often critical to the accomplishment of public projects and
7 services. In order to receive funding and/or secure or maintain legal authorization to proceed,
8 the City may be under an obligation to execute projects or deliver services according to a
9 determined timeline. Failure to meet these requirements may jeopardize receipt of funding or
10 authority to proceed with a needed project or service. Failure to proceed in a timely manner
11 with public projects and services may jeopardize public health and safety, or damage public
12 property.

13 3. On July 26, 2004, in *Coral Construction, Inc. v. City and County of San*
14 *Francisco* (Sup. Ct. No. 421249), the San Francisco Superior Court entered an order
15 enjoining the City from enforcing or attempting to enforce substantial provisions of the City's
16 Minority/Women/Local Business Utilization Ordinance. The injunction became effective
17 immediately.

18 4. Because of uncertainty over the scope and effect of the injunction, and in order
19 to continue contracting for vital public projects and services, the Board of Supervisors adopted
20 an emergency ordinance establishing an interrim Disadvantaged Business Enterprise
21 Program.

22 5. The Court subsequently denied the City's requests for an automatic or
23 discretionary stay of the injunction. On August 23, 2004, the Court issued an order that
24 clarified the scope of the injunction. As clarified, the injunction prohibits the City from
25

1 enforcing identified sections of the 12D.A ordinance in conjunction with any contract for which
2 "bids or proposals are advertised or solicited on or after July 26, 2004."

3 6. The City is appealing the injunction and seeking a stay from the Court of Appeal.
4 At this time, it is uncertain whether or not the injunction will be stayed, or its scope or effect
5 further altered. At the same time that the City is pursuing relief through the courts, the Mayor,
6 the Board of Supervisors, and City departments, along with interested members of the public,
7 are working to develop a permanent replacement for the Minority/Women/Local Business
8 Utilization Ordinance to be used if relief through the courts is not forthcoming. Because public
9 contracting legislation raises complex issues of policy, administration and law, additional time
10 is needed to finalize permanent legislation. Failure to extend the emergency ordinance will
11 cause confusion and could disrupt vital contracting processes. Accordingly, the Board finds
12 and declares that a continuing emergency exists that requires this ordinance to become
13 effective immediately. This emergency ordinance will ensure that the City and its departments
14 are able to comply with time limits established by law for entering into contracts and
15 performing various public works and functions, and will safeguard public health, safety and
16 property.

17 Section 2. The San Francisco Administrative Code is hereby amended by adding
18 Section 14A.03 to Chapter 14A to read as follows:

19 **SEC. 14A.03. REENACTING EMERGENCY ORDINANCE.**

20 The emergency ordinance enacted by the Board of Supervisors on August 10, 2004, which
21 amended the San Francisco Administrative Code by adding Chapter 14A to establish a Disadvantaged
22 Business Enterprise Program and suspend Chapter 12D.A; adopted a declaration of emergency; made
23 applicable certain emergency contracting procedures; and provided for data collection to ensure
24 nondiscrimination in City contracting, is hereby reenacted as provided under Section 2.107 of the San
25 Francisco Charter on the same terms and conditions applicable to its initial enactment.

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

This ordinance shall become effective and operative immediately upon passage, and shall expire on the 61st day following passage unless reenacted as provided by Section 2.107 of the San Francisco Charter.

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

By: Paula Jesson
PAULA JESSON
Deputy City Attorney



City and County of San Francisco

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

Tails Ordinance

File Number: 041172

Date Passed:

Emergency ordinance amending the San Francisco Administrative Code by adding Section 14A.03 to Chapter 14A to reenact a Disadvantaged Business Enterprise Program and suspend Chapter 12D.A, make applicable certain emergency contracting procedures, and provide for data collection to ensure nondiscrimination in City contracting; adopting declaration of emergency.

September 21, 2004 Board of Supervisors — CONTINUED

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval

October 5, 2004 Board of Supervisors — FINALLY PASSED

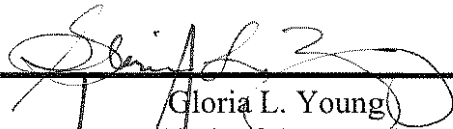

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval

File No. 041172

I hereby certify that the foregoing Ordinance
was FINALLY PASSED on October 5, 2004
by the Board of Supervisors of the City and
County of San Francisco.

October 7, 2004

Date Approved


Gloria L. Young
Clerk of the Board
Mayor Gavin Newsom