

76-06

FILE NO. 060166

ORDINANCE NO.

1 [First Source Hiring Ordinance - Expanding the Chapter to apply to contract modifications;
2 increasing FSHA reporting requirements, liquidated damages, and penalty sections;
3 amending administrative review process, including review by OLSE; amending penalty
4 provision to apply to contractors engaged in non-City work in the City.]

5 Ordinance amending the San Francisco Administrative Code by amending sections
6 83.2, 83.4, 83.6, 83.7, 83.9, 83.10, 83.11, 83.12, and 83.18 of the First Source Hiring
7 Program to: 1) correct erroneous grammar and subsection references; 2) change
8 "Department of Human Services (DHS)" to "Human Services Agency (HSA);" 3) define
9 OLSE; 4) include the OLSE in making the final administrative determination regarding
10 compliance with this Chapter; 5) include contract modifications under the definition of
11 contracts; 6) increase reporting requirements by the FSHA to include data reflecting
12 the length of time qualified individuals remain employed under this Chapter; 7)
13 increase liquidated damages from up to \$2,070.00 to up to \$5,000.00 against
14 contractors for initial violations of this Chapter, add provision of liquidated damages of
15 up to \$10,000.00 against contractors for each violation discovered during second
16 investigation by FSHA and to provide for administrative review; and 8) increase
17 penalties against permittees from up to \$2,070.00 to up to \$5,000.00 who fail to comply
18 with this Chapter and to provide for administrative review, and 9) add penalties of up to
19 \$5,000.00 against contractors engaged in non-City work performed in San Francisco
20 who fail to comply with this Chapter and to provide for administrative review.

21 Note: Additions are single-underline italics Times New Roman;
22 deletions are ~~strikethrough italics Times New Roman~~.
23 Board amendment additions are double underlined.
24 Board amendment deletions are ~~strikethrough-normal~~.

25 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, 83.4, 83.6, 83.7, 83.9, 83.10, 83.11, 83.12 and 83.18 as follows:

3 **SEC. 83.2. FINDINGS.**

4 (a) In August 1996, a new federal law, the Personal Responsibility and Work
5 Opportunity Act, also known as "welfare reform," fundamentally changed the nature of public
6 assistance programs in this country, shifting the focus from the receipt of benefits to
7 procurement of employment within specified time limits. Approximately 17,350 of San
8 Francisco's children and 7,330 of its adults (3.4 percent of the population) who currently
9 receive Temporary Assistance to Needy Families (TANF), the program formerly known as Aid
10 to Families with Dependent Children (AFDC), will be limited to five cumulative years of aid
11 during their lifetime. This means that within five years, the adult members of these families,
12 unless specifically exempted, must be employed at an economically self-sufficient level.
13 Under the new federal law, after two years on aid, most recipients must work in order to
14 maintain eligibility for TANF. As families reach their time limits, there will be no federal or
15 State funding help to support them. Therefore, the creation and retention of adequate
16 employment opportunities within the City is essential to prevent these families from falling into
17 complete destitution.

18 (b) The federal law will penalize states that fail to meet their assigned quotas for
19 moving individuals from welfare to work by imposing monetary sanctions that will be passed
20 on to the counties.

21 (c) Many people on welfare and other economically disadvantaged individuals do
22 not have immediate access to employment opportunities that will bring economic self-
23 sufficiency. Often, long-term recipients of public benefits are confronted with multiple barriers
24 to full employment, including lack of education, job-readiness skills and work experience.
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1 (d) In San Francisco, there are 9,000 single unemployed adults in the County Adult
2 Assistance Program (CAAP) who are also in need of programs to move toward self-
3 sufficiency. Many CAAP clients have chosen an employment track and are pursuing self-
4 sufficiency through work. Unlike TANF, CAAP is funded solely by county dollars and is not
5 subsidized by the State or federal government. While the economy shows signs of
6 improvement, unemployment rates in San Francisco remain at 5.8 percent.

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

9 (f) The welfare time limits imposed upon families place tremendous pressure on the
10 City to find jobs, provide appropriate training opportunities, and assist economically
11 disadvantaged individuals to find and retain adequate employment. The availability of
12 sufficient employment opportunities is essential to the economic and social well-being of the
13 City. This process of workforce development must be a component of the City's economic
14 development planning.

15 (g) New development and construction of commercial projects tend to increase
16 property values which in turn can displace low-income residents and put a greater burden on
17 the City to assist economically disadvantaged individuals.

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

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

8 (j) The concept of "First Source Hiring" under this Chapter contains two essential
9 components: the identification of entry level positions in order to properly allocate training
10 resources, and the availability of the first opportunity for graduates of those training programs
11 to be considered for employment. The City must work with the business community, the
12 service providers, organized labor and schools in identifying workforce needs, developing job
13 readiness standards, supporting training that creates a new pool of qualified workers, and
14 providing a mechanism by which the business community can draw upon this pool; thereby
15 facilitating and strengthening the relationship between the City, educational institutions,
16 community-based job training, development and place-mended programs, and the private
17 sector. While the City commits to providing the support services necessary to ensure the
18 successful transition to economic self-sufficiency, the business community must be willing to
19 offer these employment opportunities to qualified economically disadvantaged individuals.

20 (k) Participation in the City's First Source Hiring Program can be economically
21 advantageous to employers. The Program provides a ready supply of qualified workers to
22 employers with hiring needs. There are a variety of City, federal and State tax credits
23 available for hiring qualified economically disadvantaged individuals. Within State-designated
24 "Enterprise Zone" areas of San Francisco, the state offers a hiring tax credit for employers
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1 who hire job seekers from targeted groups. Employers can claim up to \$31,605 in tax credits
2 over a 5 year period when they hire qualified employees. The State of California also allows a
3 hiring tax credit against wages paid qualified economically disadvantaged individuals, and a
4 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 economically
6 disadvantaged individuals, the federal government offers the Federal Welfare-to-Work Credit
7 that provides up to \$8,500 in tax credits per qualified employee and the Work Opportunity Tax
8 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
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1 up the foundation of the One-Stop system in San Francisco. The City chose a consortium of
2 agencies to be responsible for the operation of these centers, including the San Francisco
3 ~~Department of Human Services~~ Human Services Agency (HSA), City College of San Francisco, the
4 National Council on Aging, and the State of California Employment Development Department.

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

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

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

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

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20 **SEC. 83.4 DEFINITIONS.**

21 (a) "Approved Plan" shall mean a first source hiring implementation and monitoring
22 plan developed by a City department and approved by the FSHA.

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

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

5 (d) "Commercial Activity" shall include but not be limited to, for purposes of this
6 Chapter only, retail sales and services, restaurant, hotel, education, hospital, and office uses,
7 and any other non-profit or for-profit commercial uses.

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

17 In addition, the term "contract" includes agreements that are amended or modified in either of
18 the following manners:

19 (1) an amendment or modification to a contract, as defined above in this subsection (e), that
20 causes the amount of the expenditure, loan or grant to exceed the applicable threshold amount for
21 "contract" stated above in this subsection (e), or

22 (2) an amendment or modification to a contract as defined above in this subsection (e)
23 involving an expenditure, loan or grant in excess of such applicable threshold amount, but to which this
24 Chapter has not been applied.

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

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

7 For purposes of this Chapter, "Contract" shall not include contracts for urgent litigation
8 expenses as determined by the City Attorney, emergency contracts under San Francisco
9 Administrative Code §6.30, or §21.25, tolling agreements, cooperative purchasing
10 agreements with other governmental entities or contracts with other governmental entities.

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

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

19 (h) "Development Project" shall mean commercial activity(ies) or a residential
20 project that require a permit that is subject to the requirements of this Chapter.

21 (i) "Economically disadvantaged individual" shall mean an individual who is either:
22 (1) Eligible for services under the Workforce Investment Act of 1998 (WIA) (29 U.S.C.A. 2801
23 et seq.), as determined by the San Francisco Private Industry Council; or (2) designated
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1 "economically disadvantaged" by the First Source Hiring Administration, as an individual who
2 is at risk of relying upon, or returning to, public assistance.

3 (j) "Employer" shall mean a contractor, subcontractor, developer, agents of the
4 Developer, tenants or other occupants, or person(s), firm, partnership, corporation, or
5 combination thereof engaged in work performed under a contract, lease, loan, grant, or
6 permit, or engaged in work performed in the City, subject to the requirements of this Chapter.

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

11 (l) "First source hiring agreement" shall mean the written agreement entered into by
12 the employer with the City which details the particular first source hiring requirements with
13 which an employer must comply, as further defined in Sections 83.9 and 83.11 of this
14 Chapter.

15 (m) "FSHA" shall mean the First Source Hiring Administration.

16 (n) "OLSE" shall mean the Office of Labor Standards and Enforcement.

17 (~~no~~) "Permit" shall mean, during Phase I, as defined in Section 83.4(~~no~~) below, either
18 or both of the following: (1) any building permit application for a commercial activity over
19 50,000 square feet in floor area and involving new construction, an addition, or alteration
20 which results in the expansion of entry level positions for a commercial activity; (2) any
21 application which requires discretionary action by the City's Planning Commission relating to a
22 commercial activity over 50,000 square feet including, but not limited to, a conditional use,
23 project authorization under San Francisco Planning Code Section 309, and office
24 development under San Francisco Planning Code Section 320, et seq.
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1 During Phase II, as defined Section 83.4(~~eq~~) below, any or all of the following: (1) any
2 building permit application for a commercial activity over 25,000 square feet in floor area and
3 involving new construction, an addition, or alteration which results in the expansion of entry
4 level positions for a commercial activity; (2) any application which requires discretionary action
5 by the City's Planning Commission relating to a commercial activity over 25,000 square feet
6 including, but not limited to conditional use, project authorization under San Francisco
7 Planning Code section 309, and office development under San Francisco Planning Code
8 Section 320, et seq., or (3) any building permit application for a residential project as defined
9 herein.

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

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

17 (~~ep~~) "Phase II" refers to the second stage of implementation of this Chapter which
18 became operative on April 1, 2001, 24 months after the FSHA adopted a resolution stating
19 that Phase I had been implemented. In addition to the contracts, property contracts, grants or
20 loans referred to in section 83.4(~~np~~), above, Phase II shall apply to contracts for goods in
21 excess of \$50,000 contracts for services in excess of \$50,000, permits issued for commercial
22 activity exceeding 25,000 square feet; grants and loans in excess of \$50,000 issued by other
23 City departments, and permits issued for residential projects as defined herein. In addition,
24 Phase II shall apply to any and all work performed in the City by City contractors.
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1 (~~gr~~) "Property contract" shall mean a written agreement, including leases,
2 concessions, franchises and easements, between the City and a private party for the
3 exclusive use of real property, owned or controlled by the City, for a term exceeding 29 days
4 in any calendar year (whether by a singular instrument or by cumulative instruments) for the
5 operation or use of such real property for the operation of a business establishment, that
6 creates available entry level positions. For purposes of this Chapter, "property contract" does
7 not include an agreement for the City to use or occupy real property owned by others, or
8 leases, easements or permits entered into by the Public Utilities Commission for pipeline
9 rights of way property and watershed property.

10 (~~fs~~) "Publicize" shall mean to advertise or post, and shall include participation in job
11 fairs, or other forums in which employment information is available.

12 (~~st~~) "Qualified" with reference to an economically disadvantaged individual shall
13 mean an individual who meets the minimum bona fide occupational qualifications provided by
14 the prospective employer to the San Francisco Workforce Development System in the job
15 availability notices required by this Chapter.

16 (~~tl~~) "Residential project" shall mean a residential development involving new
17 construction, an addition, a conversion, or substantial rehabilitation that results in the creation
18 or addition of ten or more residential units.

19 (~~tv~~) "Retention" shall, when used in this Chapter, be construed to apply to the entry
20 level position, not to any particular individual.

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

3 (~~xx~~) "Substantial rehabilitation," when used in this Chapter, shall mean rehabilitation
4 that involves costs in excess of 75 percent of the value of the building after rehabilitation.
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6 **SEC. 83.6. FIRST SOURCE HIRING ADMINISTRATION.**

7 (a) **Establishment and Composition.** A First Source Hiring Administration ("FSHA")
8 is hereby established for the purpose set forth in Subsection (b) below. The FSHA shall
9 consist of the following: (1) the Mayor or his/her designee from the Mayor's Office of
10 Economic *and Workforce* Development; (2) the Executive Director of the *Department of Human*
11 *Services* *Human Services Agency*, or his/her designee; (3) the Director of the Mayor's Office of
12 Community Development, or his/her designee; (4) the President of the Private Industry
13 Council, or his/her designee; (5) the Chancellor of the City College of San Francisco or his/her
14 designee; (6) other City department representatives appointed by the FSHA as necessary
15 from time to time; and (~~67~~) other San Francisco governmental agency representatives
16 participating in the First Source Hiring Program and invited by the FSHA .

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

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

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

8 (3) Working with employers and unions to identify entry level positions for
9 qualified economically disadvantaged individuals, and to set appropriate recruitment, hiring
10 and retention goals;

11 (4) Determining appropriate monitoring and enforcement mechanisms to
12 achieve the purpose of this Chapter, and consistent with Sections 83.10 and 83.12, below;

13 (5) Developing written regulations to implement first source hiring;

14 (6) Entering into cooperative agreements with other San Francisco
15 governmental agencies, including, but not limited to, the Housing Authority, the
16 Redevelopment Agency, the In-Home Supportive Services Public Authority, and the Parking
17 Authority, consistent with the laws governing such agencies and consistent with the purpose
18 of this Chapter;

19 (7) Conducting independent audits of City departmental implementation,
20 monitoring and enforcement of the requirements of this Chapter;

21 (8) Preparing an annual report on the progress of first source hiring for
22 presentation to the Mayor and the Board of Supervisors, that will include but not be limited to
23 the status of first source implementation by all City departments, the number of contractors by
24 department subject to first source requirements by department, the number and percent of
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1 contractors with signed first source agreements on file, the number and percent of first source
2 employers posting jobs, the number of jobs posted and the wage data associated with those
3 jobs, the number of job seekers referred to employers, the number of job seekers hired by first
4 source employers, ~~and~~ the number and percent of first source employers hiring job seekers,
5 and the length of time that hired individuals remain employed. The FSHA shall review these data to
6 determine whether, in light of the data, the liquidated damages provision that this ordinance requires
7 continues to reflect a fair estimate of the injury that the City suffers when a contractor fails to comply
8 with its first source referral obligations. If the FSHA determines that the liquidated damages provision
9 can be improved it shall submit to the Board of Supervisors proposed amendments to this ordinance
10 reflecting those improvements. The Board of Supervisors shall hold a hearing on the report
11 within 45 days of its submission to the Clerk of the Board of Supervisors.

12 (9) Submitting all approved first source hiring implementation and monitoring
13 plans ("approved plan") to the Workforce Development Advisory Committee for review;

14 (10) Developing effective outreach, education, support services for, and
15 recognition of, employers.

16 (c) The FSHA shall phase-in implementation of this Chapter in accordance with Section
17 83.18, below, and as defined in Sections 83.4 (~~np~~) and (~~oq~~), above. The FSHA shall first
18 establish a schedule for assisting in the development of, or approving existing first source
19 hiring implementation and monitoring plans by the following City departments: Airport;
20 Department of Building Inspection; Department of Planning; Department of Public Health;
21 Mayor's Office of Children, Youth and Families; Mayor's Office of Community Development;
22 Mayor's Office of Housing; Municipal Railway; Parks and Recreation; Port; Public Works, and
23 Purchasing. The FSHA shall also establish a schedule for the remaining City departments.
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1 (d) The FSHA shall exercise its powers and duties in a manner that does not result in
2 delay for contractors or developers subject to this Chapter.

3 (e) The FSHA, or the OLSE, where appropriate, shall make the final administrative
4 determination as to compliance with the requirements of this Chapter.

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

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

10 (b) City departments shall develop an overall first source hiring implementation and
11 monitoring plan ("plan") with the assistance of the FSHA. Once the FSHA approves the plan
12 ("approved plan"), the department is not required to seek approval from the FSHA for specific
13 contracts, property contracts or permits unless otherwise instructed to do so in the approved
14 plan. If a department is required to comply with federal or state hiring program regulations
15 that meet or exceed the requirements of this Chapter, that department shall submit that
16 information as its plan. Compliance with such regulations shall be deemed to be an
17 "approved plan." Compliance by a department with the approved plan shall be deemed to be
18 compliance with the requirements of this Chapter. The FSHA may require regular reports by
19 the department as part of the plan.

20 (c) In situations where both the Departments of Building Inspection and Planning grant
21 approval for a development project or residential project, the City's Department of Planning
22 shall have primary jurisdiction for the conditions imposed on the permit required under this
23 Chapter, and the role of the Department of Building Inspection shall be limited to assisting in
24 enforcement of the first source hiring requirements.

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2 **SEC. 83.9. FIRST SOURCE HIRING REQUIREMENTS FOR CONTRACTS AND**
3 **PROPERTY CONTRACTS, AND OTHER WORK PERFORMED IN THE CITY BY CITY**
4 **CONTRACTORS.**

5 (a) This Chapter applies to all contracts and property contracts, except where the
6 FSHA determines that application of the requirements of this Chapter is not feasible or
7 conflicts with applicable federal or State law. In addition, this Chapter applies to any and all
8 work performed in the City by a City contractor.

9 (b) As an essential term of, and consideration for, any contract or property contract with
10 the City, not exempted by the FSHA, the contractor shall enter into a first source hiring
11 agreement ("agreement") with the City, on or before the effective date of the contract or
12 property contract. Contractors shall also enter into an agreement with the City for any other
13 work that it performs in the City. 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
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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
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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 under a City contract or property contract has taken actions
10 primarily for the purpose of circumventing the requirements of this Chapter, that employer
11 shall be subject to the sanctions set forth in 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 *the* 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
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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.

9 **SEC. 83.10. VIOLATION OF FIRST SOURCE HIRING REQUIREMENTS IN CONTRACTS**
10 **AND PROPERTY CONTRACTS.**

11 ~~(a) Violation of the requirements of this Chapter is subject to an assessment of liquidated~~
12 ~~damages as set forth below. Additionally, contractors, except property contractors, may be subject to~~
13 ~~the debarment and monetary penalties set forth in Sections 6.52, 6.58, and/or 6.60 of the San Francisco~~
14 ~~Administrative Code. Every contract covered by this Chapter shall contain a provision in which the~~
15 Contractor agrees:

16 (1) To be liable to the City for liquidated damages as provided in this section;

17 (2) To be subject to the procedures governing enforcement of breaches of contracts based on
18 violations of contract provisions required by this Chapter as set forth in this section;

19 (3) That the contractor's commitment to comply with this Chapter is a material element of the
20 City's consideration for this contract; that the failure of the contractor to comply with the contract
21 provisions required by this Chapter will cause harm to the City and the public which is significant and
22 substantial but extremely difficult to quantify; that the harm to the City includes not only the financial
23 cost of funding public assistance programs but also the insidious but impossible to quantify harm that
24 this community and its families suffer as a result of unemployment; and that the assessment of
25

1 liquidated damages of up to \$5,000.00 for every notice of a new hire for an entry level position
2 improperly withheld by the contractor from the first source hiring process, as determined by the FSHA
3 during its first investigation of a contractor, does not exceed a fair estimate of the financial and other
4 damages that the City suffers as a result of the contractor's failure to comply with its first source
5 referral contractual obligations.

6 (4) That the continued failure by a contractor to comply with its first source referral
7 contractual obligations will cause further significant and substantial harm to the City and the public,
8 and that a second assessment of liquidated damages of up to \$10,000.00 for each entry level position
9 improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward,
10 does not exceed the financial and other damages that the City suffers as a result of the contractor's
11 continued failure to comply with its first source referral contractual obligations;

12 (5) That in addition to the cost of investigating alleged violations under this section, the
13 computation of liquidated damages for purposes of this section is based on the following data:

14 A. the average length of stay on public assistance in San Francisco's County Adult
15 Assistance Program is approximately 41 months at an average monthly grant of \$348.00 per month,
16 totaling approximately \$14,379.00; and

17 B. in 2004, the retention rate of adults placed in employment programs funded under the
18 Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified
19 individuals under the First Source program face far fewer barriers to employment than their
20 counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the
21 average length of employment for an individual whom the First Source Program refers to an employer
22 and who is hired in an entry level position is at least one year;

23 therefore, liquidated damages that total \$5,000.00 for first violations and \$10,000.00 for
24 subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to

1 quantify the harm caused to the City by the failure of a contractor to comply with its first source
2 referral contractual obligations.

3 (6) That the failure of contractors to comply with this Chapter, except property contractors,
4 may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San
5 Francisco Administrative Code., as well as any other remedies available under the contract or at law;
6 and

7 (7) That in the event the City is the prevailing party in a civil action to recover liquidated
8 damages for breach of a contract provision required by this Chapter, the contractor will be liable for
9 the City's costs and reasonable attorneys fees.

10 (b) If upon administrative review as provided for in Subsection (e) of this Section, the FSHA
11 determines that entry level positions were not made available to the System for referral of qualified
12 economically disadvantaged individuals as specified in the employer's first source hiring agreement,
13 and the employer does not remedy the violations, that employer shall be assessed liquidated damages
14 in the amount of \$2,070 for every new hire for an entry level position improperly withheld from the first
15 source hiring process. The FSHA shall promulgate appropriate guidelines or rules for the enforcement
16 of this Chapter. Such guidelines or rules may establish procedures for ensuring fair, efficient, and
17 cost-effective implementation of this Chapter, including mechanisms to monitor contractor compliance
18 with the contract provisions required by this Chapter, and for determining whether a contractor has
19 failed to comply with its first source referral contractual obligations.

20 (c) The FSHA may investigate possible violations of contract provisions required by this
21 Chapter. Where the FSHA, after providing the contractor with the opportunity to respond to the
22 alleged violation, determines that a contractor failed to make available entry level positions to the
23 FSHA for referral of qualified economically disadvantaged individuals, as required by the applicable
24 first source hiring agreement, the FSHA shall provide written notice to the contractor as follows:

1 (1) the factual basis for the determination;

2 (2) the corrective action that the contractor must take to remedy the violation;

3 (3) the amount of liquidated damages that the FSHA has assessed for the contractor's violation
4 of this Chapter;

5 (4) notice that the contractor has 15 days to either take the required corrective action,
6 including payment of liquidated damages, or to file an appeal consistent with subsection (5), below;

7 (5) that the contractor has the right to appeal the FSHA's final determination to the OLSE,
8 including the assessment of liquidated damages and the amount assessed, but that any such appeal
9 must be filed in writing with the OLSE within 15 days of the date of the issuance of FSHA's
10 determination and that a contractor must file an appeal with the OLSE in order to exhaust
11 administrative remedies;

12 (6) that if the contractor fails to take the required corrective action or file an appeal in writing
13 with the OLSE within 15 days as set forth above, the FSHA's determination shall be the City's final and
14 binding decision which the City may enforce in a court of law, and

15 (7) that the contractor will be required to comply with the decision within 5 business days of the
16 FSHA's decision becoming final, including payment of liquidated damages, if any, together with simple
17 annual interest of 10% from the date that payment should have been made.

18 (d)(1) While liquidated damages in the maximum amount set forth in this section are a
19 reasonable estimate of harm to the City caused by the contractor's non-compliance with contract
20 provisions required by this Chapter, the FSHA may determine that less than the full amount is
21 warranted depending on the circumstances of each case. The FSHA shall consider the following
22 factors in determining the amount of liquidated damages, if any, to impose against a contractor who
23 fails to comply with contract provisions required by this Chapter:

24 (A) the size of the contractor's business;

1 (B) the contractor's good faith efforts to comply with contract provisions required by this

2 Chapter;

3 (C) the gravity of the violation;

4 (D) whether the contractor has a history of violations of contract provisions required by this

5 Chapter;

6 (E) whether the contractor has failed to comply with recordkeeping requirements imposed
7 by contract provisions under this Chapter; and

8 (F) whether the imposition of liquidated damages would undermine the purpose of this
9 Chapter by imposing unreasonable financial burdens on the contractor, thereby imperiling the
10 contractor's ability to continue complying with contract provisions required by this Chapter.

11 (e)(1) Within 15 days of receiving an appeal from the FSHA's final determination, the OLSE
12 shall appoint a hearing officer and shall so advise the FSHA and the contractor, and/or their respective
13 counsel or authorized representative.

14 (2) The hearing officer shall promptly set a date for a hearing. The hearing must commence
15 within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days
16 of such notification, not including the issuance of a decision, unless all parties agree to an extended
17 period. If a contractor appeals the FSHA's initial determination but fails to attend a hearing set under
18 this subsection, the FSHA's initial determination shall become final.

19 (3) The FSHA shall have the burden of producing evidence justifying its imposition of
20 liquidated damages under this Chapter, and of the contractor's violation of contract provisions
21 required by this Chapter, and shall have the burden of proving that a violation occurred. The
22 contractor shall have the right to present evidence on its behalf in response to any alleged violation of
23 contract provisions required by this Chapter.

1 (4) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written
2 decision affirming, modifying, or vacating the FSHA's determination of whether the contractor violated
3 the first source hiring agreement, of what corrective action that the contractor must take to remedy any
4 violation, and of the amount of liquidated damages to be assessed, if any. The hearing officer's
5 decision shall consist of findings and a determination, which shall be the City's final decision.

6 (5) The contractor shall comply with the hearing officer's decision within 5 business days of
7 service of the decision. Service shall be made by first class mail to the contractor's address of record.
8 If the hearing officer imposed liquidated damages, the contractor shall pay the liquidated damages
9 within 5 business days of the receipt of the decision. Payment of liquidated damages after that day
10 shall be subject to simple annual interest of 10% from the day that such damages were due.

11 (6) The contractor may seek review of the hearing officer's decision only by filing in the San
12 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
13 section 1094.5, as may be amended from time to time.

14 (7) When a contractor fails to take corrective action within the time required by the provisions
15 of this section, the City may immediately pursue all available remedies against the contractor for
16 breach of contract, including debarment proceedings where applicable and filing a civil action to
17 recover liquidated damages due under this section.

18 (8) The failure of the FSHA or OLSE to comply with the time requirements of this Section shall
19 not cause the OLSE or the hearing officer to lose jurisdiction over an appeal from the FSHA's
20 determination filed under this Section.

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

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

4 ~~———— (e) The assessment of liquidated damages and the evaluation of any defenses or mitigating
5 factors, shall be made by the FSHA.~~

6 ~~———— (f) The FSHA shall establish procedures that allow an employer to respond to any complaints of
7 noncompliance made by a City department or other interested party, or any determination of
8 noncompliance with this Chapter made by the FSHA, prior to the imposition of any sanctions by the~~

9 ~~City (g) Liquidated damages obtained under this Chapter shall be deposited in the general fund.~~

10
11 **SEC. 83.11. FIRST SOURCE HIRING REQUIREMENTS FOR PERMITS FOR**
12 **COMMERCIAL DEVELOPMENT AND RESIDENTIAL PROJECTS.**

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

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

12 (2) Set first source interviewing, recruitment and hiring requirements for all
13 employers engaged in construction work on, and commercial activity(ies) to be conducted in,
14 the development project, including residential services, which will provide the San Francisco
15 Workforce Development System with the first opportunity to provide qualified economically
16 disadvantaged individuals for consideration for employment for entry level positions.
17 Employers subject to the agreement shall consider all applications of qualified economically
18 disadvantaged individuals referred by the System for employment; provided however, if the
19 employer utilizes nondiscriminatory screening criteria, the employer shall have the sole
20 discretion to interview and/or hire individuals referred or certified by the San Francisco
21 Workforce Development System as being qualified economically disadvantaged individuals.
22 The duration of the first source interviewing requirement shall be determined by the FSHA and
23 shall be set forth in each agreement but shall not exceed 10 days. During that period, the
24 employer subject to the agreement may publicize the positions in accordance with the
25

1 agreement. A need for urgent or temporary hires must be evaluated, and appropriate
2 provisions for such a situation must be made in the agreement.

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

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

19 (5) Establish guidelines for employer good faith efforts to comply with the first
20 source hiring requirements of this Chapter. The FSHA will work with City departments to
21 develop employer good faith effort requirements appropriate to the types of permits handled
22 by each department. Employers shall appoint a liaison for dealing with the development and
23 implementation of the employer's agreement. In the event that the FSHA finds that the
24 employer has taken actions primarily for purpose of circumventing the requirements of this
25

1 Chapter, that employer shall be subject to the sanctions set forth in Section 83.12 of this
2 Chapter.

3 (6) Set the term of the requirements.

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

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

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

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

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

20 (c) Compliance by an employer subject to the agreement with a City department's
21 approved plan shall be deemed to be compliance with the requirements of this Chapter. In
22 situations where an employer must comply with the requirements of this Chapter as part of a
23 contract or property contract, and subsequently must apply for permits for the same project
24
25

1 that is the subject of the contract or property contract, the employer will be deemed to be in
2 compliance with this Chapter.

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

8
9 **SEC. 83.12. VIOLATION OF FIRST SOURCE HIRING REQUIREMENTS IN PERMITS AND
10 IN WORK PERFORMED BY A CITY CONTRACTOR ON NON-CITY PROJECTS IN THE CITY.**

11 (a) ~~(1)~~ The sole financial remedy for violation of the requirements of this Chapter ~~is the~~
12 ~~penalty are the penalties~~ set forth below. Additionally, failure to comply with the conditions
13 imposed on ~~the~~ permit may be subject to the provisions of San Francisco Building Code
14 Section 104.2.

15 (2) Every employer covered by this section shall be subject to the procedures governing
16 enforcement of violations of this Chapter. In addition, the failure of an employer to make entry level
17 positions available to the FSHA for referral of economically disadvantaged individuals, as specified in
18 an employer's first source hiring agreement, shall be subject to a penalty of up to \$5,000.00 for every
19 notice of a new hire improperly withheld from the FSHA for this purpose.

20 (3) In the event that the City is the prevailing party in a civil action to recover a penalty
21 awarded pursuant to this section, the employer will be liable for the City's costs and reasonable
22 attorneys fees.

23 (b) ~~If upon administrative review, as provided for in Subsection (ef) of this Section, the FSHA~~
24 ~~determines that entry level positions were not made available to the System for referral of qualified~~
25

1 *economically disadvantaged individuals as specified in the employer's first source hiring agreement,*
2 *and the employer does not remedy the violations, that employer shall be assessed a penalty in the*
3 *amount of \$2,070 for every new hire for an entry level position improperly withheld from the first*
4 *source hiring process. The FSHA shall promulgate appropriate guidelines or rules for the enforcement*
5 *of this Chapter. Such guidelines or rules may establish procedures for ensuring fair, efficient, and*
6 *cost-effective implementation of this Chapter, including mechanisms to monitor employer compliance*
7 *with this Chapter, and for determining whether an employer has failed to comply with its first source*
8 *referral contractual obligations.*

9 *(c)(1) The FSHA may investigate possible violations of this Chapter. Where the FSHA, after*
10 *providing an employer with the opportunity to respond to the alleged violation, determines that an*
11 *employer failed to make available entry level positions to the FSHA for referral of qualified*
12 *economically disadvantaged individuals, as required by the applicable first source hiring agreement,*
13 *the FSHA shall provide written notice to the employer as follows:*

14 *(A) the factual basis for the determination;*

15 *(B) the corrective action that the employer must take to remedy the violation;*

16 *(C) the amount of a penalty that the FSHA has assessed for the employer's violation of this*
17 *Chapter;*

18 *(D) notice that the employer has 15 days to either take the required corrective action, including*
19 *payment of the penalty, or to file an appeal consistent with subsection (5), below;*

20 *(E) that the employer has the right to appeal the FSHA's final determination to the OLSE,*
21 *including the assessment of a penalty and the amount assessed, but that any such appeal must be filed*
22 *in writing with the OLSE within 15 days of the date of the issuance of FSHA's determination and that*
23 *an employer must file an appeal with the OLSE in order to exhaust administrative remedies; and*

1 (F) that if the employer fails to take the required corrective action or file an appeal in writing
2 with the OLSE within 15 days as set forth above, the FSHA's determination shall be the City's final and
3 binding decision which the City may enforce in a court of law, and

4 (G) that the employer will be required to comply with the decision within 5 business days of the
5 FSHA's decision becoming final, including payment of the penalty, if any, together with simple annual
6 interest of 10% from the date that payment should have been made.

7 (d)(1) While the maximum amount set forth in this section is a reasonable measure of the harm
8 to the City caused by the employer's non-compliance, the FSHA may determine that less than the full
9 amount is warranted depending on the circumstances of each case. The FSHA shall consider the
10 following factors in determining the amount of the penalty, if any, to impose against an employer who
11 fails to comply with this Chapter:

12 (A) the size of the employer's business;

13 (B) the employer's good faith efforts to comply with this Chapter;

14 (C) the gravity of the violation;

15 (D) whether or not the employer has a history of violations under this Chapter;

16 (E) whether or not the employer has failed to comply with recordkeeping requirements
17 under this Chapter; and

18 (F) whether the imposition of a penalty would undermine the purpose of this Chapter by
19 imposing unreasonable financial burdens on the employer, thereby imperiling the employer's ability to
20 continue complying with the obligations of this Chapter.

21 (e)(1) Within 15 days of receiving an appeal from the FSHA's final determination, the OLSE
22 shall appoint a hearing officer and shall so advise the FSHA and the employer, and/or their respective
23 counsel or authorized representative.

1 (2) The hearing officer shall promptly set a date for a hearing. The hearing must commence
2 within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days
3 of such notification, not including the issuance of a decision, unless all parties agree to an extended
4 period. If an employer appeals the FSHA's initial determination but fails to attend a hearing set under
5 this subsection, the FSHA's initial determination shall become final.

6 (3) The FSHA shall have the burden of producing evidence justifying its imposition of a penalty
7 under this Chapter, and of the employer's violation of the requirements of this Chapter, and shall have
8 the burden of proving that a violation occurred. The employer shall have the right to present evidence
9 on its behalf regarding an alleged violation of this Chapter.

10 (4) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written
11 decision affirming, modifying, or vacating the FSHA's determination of whether the employer violated
12 the first source hiring agreement, of what corrective action that the employer must take to remedy any
13 violation, and of the amount of a penalty to be assessed, if any. The hearing officer's decision shall
14 consist of findings and a determination, which shall be the City's final decision.

15 (5) The employer shall comply with the hearing officer's decision within 5 business days of
16 service of the decision. Service shall be made by first class mail to the employer's address of record. If
17 the hearing officer imposed a penalty, the employer shall pay the penalty within 5 business days of the
18 receipt of the decision. Payment of a penalty after that day shall be subject to simple annual interest of
19 10% from the day that such penalty was due.

20 (6) The employer may seek review of the hearing officer's decision only by filing in the San
21 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
22 section 1094.5, as may be amended from time to time.

1 (7) When an employer fails to take corrective action within the time required by the provisions
2 of this section, the City may immediately pursue all available remedies against the employer, including
3 filing a civil action to recover any penalty due under this section.

4 (8) The failure of the FSHA or the OLSE to comply with the time requirements of this section
5 shall not cause the OLSE to lose jurisdiction over an appeal from the FSHA's determination filed under
6 this section.

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

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

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

16 ~~(f) The FSHA shall establish procedures that allow an employer to respond to any complaints of~~
17 ~~noncompliance made by a City department or other interested party, or any determination of~~
18 ~~noncompliance with this Chapter made by the FSHA, prior to the imposition of any sanctions by the~~

19 ~~City.~~ (g) All penalties obtained under this Chapter shall be deposited in the general fund.

20 III

21 III

22 III

23 III

24 III

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

2 Phase I, as defined in 83.4(~~hp~~) became operative on October 20, 1998. Phase II, as
3 defined in Section 83.4(~~oq~~) of this Chapter became operative on April 1, 2001, 24 (twenty-
4 four) months after the FSHA adopted a resolution stating that Phase I had been implemented.
5 This Chapter is intended to have prospective effect only, and shall not be interpreted to impair
6 any rights under any existing City contract or property contract or permit. The provisions of
7 this Chapter shall expire on January 1, 2009.

8
9 APPROVED AS TO FORM:

10
11 **DENNIS J. HERRERA** City Attorney

12
13 By:


14 **JENNIFER WILLIAMS**
15 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: 060166

Date Passed:

Ordinance amending the San Francisco Administrative Code by amending sections 83.2, 83.4, 83.6, 83.7, 83.9, 83.10, 83.11, 83.12, and 83.18 of the First Source Hiring Program to: 1) correct erroneous grammar and subsection references; 2) change "Department of Human Services (DHS)" to "Human Services Agency (HSA);" 3) define OLSE; 4) include the OLSE in making the final administrative determination regarding compliance with this Chapter; 5) include contract modifications under the definition of contracts; 6) increase reporting requirements by the FSHA to include data reflecting the length of time qualified individuals remain employed under this Chapter; 7) increase liquidated damages from up to \$2,070.00 to up to \$5,000.00 against contractors for initial violations of this Chapter, add provision of liquidated damages of up to \$10,000.00 against contractors for each violation discovered during second investigation by FSHA and to provide for administrative review; and 8) increase penalties against permittees and contractors engaged in non-City work performed in San Francisco from up to \$2,070.00 to up to \$5,000.00 who fail to comply with this Chapter and to provide for administrative review.

April 11, 2006 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Mirkarimi, Peskin, Sandoval
Excused: 1 - Alioto-Pier

April 18, 2006 Board of Supervisors — FINALLY PASSED

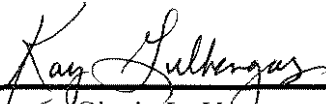
Ayes: 9 - Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell, Mirkarimi, Peskin,
Sandoval
Excused: 2 - Alioto-Pier, McGoldrick

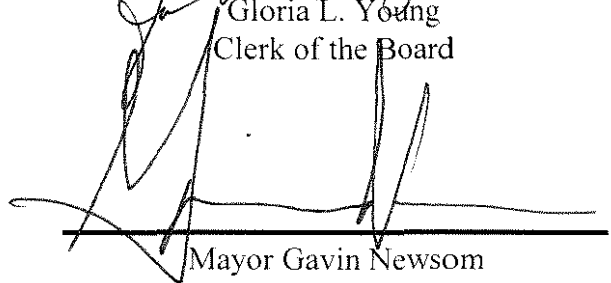
File No. 060166

I hereby certify that the foregoing Ordinance was FINALLY PASSED on April 18, 2006 by the Board of Supervisors of the City and County of San Francisco.

4.20.06

Date Approved


Gloria L. Young
Clerk of the Board


Mayor Gavin Newsom