

1 [Reenacting a Disadvantaged Business Enterprise Program.]

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3 **Emergency ordinance reenacting a Disadvantaged Business Enterprise Program set**  
4 **forth in Chapter 14A of the San Francisco Administrative Code; suspending Chapter**  
5 **12D.A; providing for data collection to ensure nondiscrimination in City contracting;**  
6 **and adopting a declaration of emergency.**

7 Note: Additions are single-underline italics Times New Roman;  
8 deletions are ~~strikethrough italics Times New Roman~~.  
9 Board amendment additions are double underlined.  
Board amendment deletions are ~~strikethrough normal~~.

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

11 Section 1. Declaration of Emergency under Section 2.107 of the San Francisco  
12 Charter.

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

- 20 1. The City and County of San Francisco and its departments are engaged on an  
21 ongoing basis in a large number of public services and projects that are vital to the health,  
22 safety and welfare of San Francisco and its citizens, such as the construction and repair of  
23 energy, water, and transportation equipment and facilities, and the provision of social,  
24 medical, public safety and other services to San Franciscans. Many of these services and  
25 projects are required or authorized by law.

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

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

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

19           5.       The Court subsequently denied the City's requests for an automatic or  
20 discretionary stay of the injunction. On August 23, 2004, the Court issued an order that  
21 clarified the scope of the injunction. As clarified, the injunction prohibits the City from  
22 enforcing identified sections of the 12D.A ordinance in conjunction with any contract for which  
23 "bids or proposals are advertised or solicited on or after July 26, 2004."

24           6.       The City is appealing the Superior Court's injunction. At the same time that the  
25 City is pursuing relief through the courts, on May 2, 2006, the Board of Supervisors passed

1 the Local Business Enterprise and Non-Discrimination in Contracting Ordinance ("Permanent  
2 Ordinance") as a permanent replacement for the Minority/Women/Local Business Utilization  
3 Ordinance. The Permanent Ordinance, which is awaiting the Mayor's signature, will enact the  
4 interim Disadvantaged Business Enterprise Program as a permanent ordinance applicable to  
5 City contracts issued between July 26, 2004 and September 1, 2006 and will establish a new,  
6 race and gender neutral, Local Business Enterprise and Non-Discrimination in Contracting  
7 Program for City contracts issued on or after September 1, 2006. The programs would not  
8 apply if the City is successful in its appeal and the Court lifts the injunction and upholds the  
9 Minority/Women/Local Business Utilization Ordinance.

10 The Permanent Ordinance will not become effective until thirty days after the Mayor  
11 signs it, by which time the most recently reenacted emergency ordinance will have expired.  
12 Failure to reenact the emergency ordinance to cover this gap will cause confusion and could  
13 disrupt vital contracting processes. Accordingly, the Board finds and declares that a  
14 continuing emergency exists that requires this ordinance to become effective immediately.  
15 This emergency ordinance will ensure that the City and its departments are able to comply  
16 with time limits established by law for entering into contracts and performing various public  
17 works and functions, and will safeguard public health, safety and property.

18 Section 2. The following sections of emergency ordinance number 208-04, which  
19 was enacted on August 11, 2004, are hereby reenacted as provided under Section 2.107 of  
20 the San Francisco Charter: Section 1 (amending the San Francisco Administrative Code by  
21 adding Chapter 14A to establish a Disadvantaged Business Enterprise Program and suspend  
22 Chapter 12D.A), and Section 4 (providing for data collection to ensure nondiscrimination in  
23 City contracting).

24 This ordinance shall become effective and operative immediately upon passage, and  
25 shall expire upon the earlier of (1) the effective date of the Local Business Enterprise and

1 Non-Discrimination in Contracting Ordinance, or (2) the 61st day following passage unless  
2 reenacted as provided by Section 2.107 of the San Francisco Charter.

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

5 By: \_\_\_\_\_  
6 CATHARINE S. BARNES  
7 Deputy City Attorney

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