

1 [Administrative Code – Transferring Benefit Corporation Discount Program From Human  
2 Rights Commission to City Administrator]

3 **Ordinance amending the Administrative Code by transferring the implementation of the**  
4 **California Benefit Corporation Discount program from the Human Rights Commission**  
5 **to the Contract Monitoring Division of the City Administrator.**

6 NOTE: Additions are *single-underline italics Times New Roman*;  
7 deletions are ~~*strike-through italics Times New Roman*~~.  
8 Board amendment additions are double-underlined;  
9 Board amendment deletions are ~~strike through normal~~.

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

11 Section 1. The Administrative Code is hereby amended by amending Sections 14C.2  
12 through 14C.3, to read as follows:

13 **SEC. 14C.1. SHORT TITLE.**

14 This Chapter shall be entitled "the California Benefit Corporation ('Benefit Corporation')  
15 Discount Ordinance."

16 **SEC. 14C.2. DEFINITIONS.**

17 (a)—"Benefit Corporation" means a California Benefit Corporation that is incorporated  
18 in California under California Corporations Code §§ 14600-14631, as amended, or any  
19 successor legislation, and is in good standing with the State of California.

20 (b)—"Benefit Corporation Discount" means the downward adjustment in price or  
21 upward adjustment in rating of a proposal or bid, whichever applies, that is made under  
22 Section 14C.3(c).

23 (c)—"Contract" means any agreement that falls within the scope of Administrative  
24 Code Chapter 6 or Chapter 21.

25

1           (d)—"Contractor" means any person or entity who contracts directly with the City.

2           (e)—"Contract Awarding Authority" means any City officer, department head,  
3 commission, or board authorized to enter into Contracts on behalf of the City.

4           (f)——"~~HRC~~" ~~means the Human Rights Commission.~~ "CMD" means the Contract Monitoring  
5 Division of the Office of the City Administrator to which the City Administrator has delegated  
6 responsibility to implement this Chapter, and shall also mean and include any department or division  
7 of the Office of the City Administrator that the City Administrator may in the future designate as  
8 successor to the Contract Monitoring Division to assume the duties of the Contract Monitoring  
9 Division set forth in this Chapter.

10           "Director" means the Director of the Contract Monitoring Division or his or her designee.

11           (g)—"Nonprofit" means a nonprofit corporation that is incorporated in California under  
12 California Corporations Code § 5000 et seq. as amended, or any successor legislation  
13 organized primarily or exclusively for charitable purposes and qualifies for the exemptions  
14 provided under California Revenue and Taxation Code Section 23701 and Internal Revenue  
15 Code Section 501(c)(3).

16           (h)—"Regional Business" means a business that has a principal place of business  
17 located in the geographic limits of the counties of Alameda, Contra Costa, Marin, Napa, San  
18 Mateo, Santa Clara, Solano, Sonoma and Sacramento.

19           (i)—"S.F. Business" means a business that has a principal place of business located  
20 in the geographic limits of San Francisco and is registered with the Office of the Treasurer &  
21 Tax Collector's Business Registration records, excluding a certified 14B LBE.

22           (j)—"14B LBE" means a Micro-LBE, a Small-LBE, nonprofit enterprise, PUC-LBE,  
23 SBA-LBE as defined in San Francisco Administrative Code Chapter 14B, including Joint  
24 Ventures for Professional Services and Architect/Engineering with one or more 14B LBE  
25 prime contractor participant.

1           ~~(k)~~—"14B LBE Discount" means a downward adjustment in price or upward  
2 adjustment in rating of a bid or proposal, whichever applies, that is made under San Francisco  
3 Administrative Code Chapter 14B.

4           **SEC. 14C.3. BENEFIT CORPORATION DISCOUNTS.**

5           (a)    **Eligibility.** To be eligible for the Benefit Corporation Discount, the corporation  
6 must:

- 7                   (1)    not be a subsidiary of a non Benefit Corporation; and  
8                   (2)    have been incorporated as a Benefit Corporation in California for at least  
9 six (6) months preceding the application of the Benefit Corporation Discount.

10           (b)   **California Secretary of State Verification.** The HRC CMD shall verify current  
11 Benefit Corporation status with the California Secretary of State and apply the Benefit  
12 Corporation Discount. As part of the verification process, HRC CMD may require a Benefit  
13 Corporation to submit additional documentation with the bid or proposal to verify status.

14           (c)   **Third Party Verification.** HRC CMD may not apply the Benefit Corporation  
15 Discount until the Benefit Corporation has received third party verification. HRC CMD shall  
16 adopt rules and regulations consistent with this ~~Ordinance~~Chapter for determining if a Benefit  
17 Corporation has complied with third party verification.

18           (d)   **Discount.** Notwithstanding any other provision of the Administrative Code,  
19 HRC CMD shall apply a Benefit Corporation Discount as provided in this ~~Ordinance~~Chapter to  
20 bids or proposals submitted by a Benefit Corporation for purpose of determining the apparent  
21 highest ranked proposal or the apparent low bid, unless application of the Benefit Corporation  
22 Discount would adversely impact the ranking for negotiation or award process of a bid or  
23 proposal submitted by the following:

- 24                   (1)    14B LBE, or  
25                   (2)    Nonprofit bidder or proposer, or

- 1 (3) S.F. Business unless the Benefit Corporation is also a S.F. Business; or  
2 (4) Regional Business unless the Benefit Corporation is also a Regional  
3 Business.

4 (e) **Contract Awarding Authority.** The Contract Awarding Authority is required to  
5 cooperate with the HRCMD in applying the Benefit Corporation Discount.

6 (f) **Contracts Subject to Discount.** The Benefit Corporation Discount shall apply  
7 to all Contracts the estimated cost of which exceeds the Threshold Amount in Chapter 6 or  
8 the Minimum Competitive Amount in Chapter 21, but is less than \$10,000,000.

9 (g) **Amount of Discount.** HRCMD shall apply a Benefit Corporation Discount as  
10 follows:

11 (1) For bids and proposals from Benefit Corporations that are ineligible for  
12 Administrative Code Chapter 14B LBE Discounts, HRCMD shall apply a Discount in the  
13 amount of four percent (4%), such that bids or proposals shall be reduced or increased, as  
14 appropriate, by an amount equal to four percent (4%) at each stage of the proposal selection  
15 process for purposes of determining the apparent highest ranked proposal or the apparent low  
16 bid. Benefit Corporations that receive a 14B LBE Discount may not also receive a Benefit  
17 Corporation Discount.

18 (2) The Benefit Corporation Discount shall not apply to bids or proposals  
19 submitted by Joint Ventures unless all Joint Venture Members for Professional Services and  
20 Architect/Engineering would individually qualify for the Benefit Corporation Discount.

21 (h) **Review by HRCMD and Controller.** For the first two years this  
22 ~~Ordinance~~ Chapter is in effect, the Director of the HRCMD, in coordination with the Controller,  
23 shall conduct a biannual evaluation of the impact of the Benefit Corporation Discount in City  
24 contracting. Thereafter, the HRCMD Director and the Controller shall conduct an annual  
25 evaluation. This report shall analyze Benefit Corporation participation levels by reviewing the

1 number of City contracts awarded to Benefit Corporation bidders or proposers, including the  
2 size, type, and dollar amount of the contract. This report may provide recommendations to the  
3 Board of Supervisors for amendments to this OrdinanceChapter.

4 (i) **Exceptions.** This OrdinanceChapter shall not apply where the Contract Awarding  
5 Authority finds that the requirements of this OrdinanceChapter would violate or conflict with the  
6 terms or conditions of a grant, subvention or agreement with a public agency or other grant  
7 awarding entity or the instructions of an authorized representative of any such agency with  
8 respect to any such grant, subvention or agreement, provided that the Contract Awarding  
9 Authority shall make a good faith attempt to change the terms or conditions of any such grant,  
10 subvention or agreement to authorize application of this OrdinanceChapter.

11 (j) **Severability.** If any section, clause, phrase, or portion of this OrdinanceChapter  
12 is for any reason held invalid or unconstitutional by any court or Federal or State agency of  
13 competent jurisdiction, such portion shall be deemed a separate, distinct and independent  
14 provision and such holding shall not affect the validity of the remaining portions thereof. To  
15 this end, the provisions of this OrdinanceChapter shall be deemed severable.

16 (k) **General Welfare Clause.** In undertaking the enforcement of this Chapter, the City is  
17 assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on  
18 its officers and employees, an obligation for breach of which it is liable in money damages to any  
19 person who claims that such breach proximately caused injury.

20 Section 2. Effective Date. This ordinance shall become effective 30 days from the  
21 date of passage.

22 Section 3. In enacting this ordinance, the Board intends to amend only those words,  
23 phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts,  
24 diagrams, or any other constituent parts of the Administrative Code that are explicitly shown in  
25

1 this ordinance as additions, deletions, Board amendment additions, and Board amendment  
2 deletions in accordance with the "Note" that appears under the official title of the ordinance.

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

6 By: \_\_\_\_\_  
7 Yadira Taylor  
8 Deputy City Attorney  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25