

[Discrimination Based on Perception, Association or Retaliation]

AMENDING CHAPTER 12A OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 12A.1, 12A.5, AND 12A.8 THEREOF, AMENDING CHAPTER 12B OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 12B.1 AND 12B.2 THEREOF, AMENDING CHAPTER 12C OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 12C.1 AND 12C.3 THEREOF AND AMENDING ARTICLE 33 OF THE SAN FRANCISCO POLICE CODE BY AMENDING SECTIONS 3303, 3304 AND 3305 THEREOF TO PROHIBIT DISCRIMINATION BASED ON FACT OR PERCEPTION, DISCRIMINATION BASED ON ASSOCIATION WITH MEMBERS OF PROTECTED CLASSES OF PERSONS OR RETALIATION FOR OPPOSITION TO DISCRIMINATION.

Note: Additions are underlined; deletions are in ((double parentheses)).

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

Section 1. Chapter 12A of the San Francisco Administrative Code is hereby amended by amending Sections 12A.1, 12A.5 and 12A.8 to read as follows:

SEC. 12A.1. FINDINGS. The population of this City and County is composed of people of various racial, religious and ethnic groups. In this City and County the practice of discrimination on the grounds of actual or perceived race, religion, color, ancestry, age, sex, sexual orientation, gender identity, disability or place of birth and the exploitation of prejudice related thereto adversely affects members of minority groups.

Such discriminatory practices are inimical to the public welfare and good order in that they: (a) impede social and economic progress for the entire citizenry by preventing members of minority groups from achieving full development of their individual potentialities and from contributing fully to the cultural and business life of the community; (b) constantly frustrate,

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1 degrade and embitter members of minority groups, thereby diminishing their initiative and
2 interests in the community; and (c) tend to create intergroup hostilities and antisocial behavior.

3 The products of discrimination accumulate continuously, with the result that the social,
4 economic and educational gaps between those suffering discrimination and the majority of the
5 community constantly widen. As a result, mere prohibition of future and present
6 discrimination, while essential, will not reduce the inequalities and disadvantages which a
7 history of discrimination has produced. Accordingly, affirmative remedial action must be
8 initiated, encouraged and coordinated.

9 Experiences of other urban centers throughout the nation have proved the need for and
10 effectiveness of commissions empowered to study community race relations problems, to
11 work with interested citizens to develop programs to ameliorate tensions and reduce cultural,
12 social and economic disadvantages and to encourage and coordinate implementation of such
13 programs consistent with the needs and rights of members of both the majority and the
14 minority.

15 A substantial number of the aforementioned evils in this City and County are beyond
16 the regulation of applicable State law, and insofar as State law is applicable, voluntary
17 compliance therewith should be fostered by a local human relations commission.

18 **SEC. 12A.5. POWERS AND DUTIES.** In addition to the other powers and duties set
19 forth in this ordinance, the Commission shall have the power and duty to:

20 (a) Study, investigate, mediate and hold public hearings on community-wide
21 problems arising in this City and County which may result in intergroup tensions or
22 discrimination because of actual or perceived race, religion, color, ancestry, age, sex, sexual
23 orientation, gender identity, physical disability or place of birth. In the performance of its duties
24 under this subsection, the Commission, as permitted by law, may require by subpoena ad
25 testificandum setting forth the specific nature of its inquiry, the attendance and testimony

1 under oath of any person directly involved in or concerned with discrimination within the scope
2 of this ordinance whose presence and testimony is reasonably necessary to its inquiry;
3 provided, however, that any such inquiry involving any agency, board, or officer of the City
4 and County shall be governed by the provisions of Subsection (f) hereof. In case of the refusal
5 of any person to attend or testify as required by a subpoena ad testificandum issued by the
6 Commission, the Commission may proceed to petition for a court order pursuant to Section
7 1991 of the California Code of Civil Procedure.

8 (b) Prepare and disseminate educational and informational material relating to
9 prejudice and discrimination and ways and means of eliminating such prejudice and
10 discrimination.

11 (c) Furnish cooperation, information, guidance and technical assistance to other
12 public agencies and private persons, organizations and institutions engaged in activities and
13 programs intended to eliminate prejudice and discrimination.

14 (d) Consult with and maintain contact with other public agencies and with
15 representatives of employers, labor unions, property owners associations, realtor
16 associations, religious denominations and institutions, professional associations, national
17 origin groups, community organizations concerned with interracial, interreligious and
18 intercultural understanding, social welfare organizations and such other private organizations
19 and institutions as the Commission shall deem advisable to further the objectives of this
20 ordinance.

21 (e) Cooperate with and make written recommendations to City and County
22 agencies, boards and officers, as well as the agencies, boards or officers operating under
23 State law within the City and County of San Francisco, towards the development and
24 implementation of programs and practices for the purpose of furthering the objectives of this
25 ordinance. The Commission and the affected agency, board or officer shall submit reports of

1 progress in establishing and implementing such programs and practices as are from time to
2 time requested by the Mayor through the chair of the Commission.

3 (f) Subject to the approval of the Mayor, request of any City and County agency,
4 board or office information, services, facilities and any other assistance for the purpose of
5 furthering the objectives of this ordinance. All such requests shall be promptly complied with
6 by the affected agency, board or officer.

7 (g) Investigate and, with the assent of the parties, mediate all incidents of
8 discrimination within the scope of this ordinance to the extent such functions are not within the
9 exclusive responsibilities of the California Fair Employment Practices Commission or any
10 federal or other State agency, and make specific and detailed recommendations to the
11 interested parties as to the method of eliminating such discrimination. The Commission shall
12 also be authorized to investigate complaints of discrimination brought by citizens involving
13 agencies, boards or officers operating under State law within the City and County of San
14 Francisco, and, where appropriate, to make written recommendations to said agencies or to
15 represent citizens before said agencies.

16 (h) Prepare, encourage and coordinate programs of voluntary affirmative action to
17 reduce or eliminate existing inequalities and disadvantages in the City and County resulting
18 from past discriminatory practices.

19 **SEC. 12A.8. UNFAIR NEIGHBORHOOD PRACTICES.** (a) It shall be an unfair
20 practice for any person, firm, partnership, association or corporation engaged in the business
21 of real estate development, purchase, sale and/or brokerage to commit intentionally any one
22 or more of the following acts in the course of such business:

23 (1) Induce directly or indirectly or attempt to induce directly or indirectly the sale or
24 listing for sale of real property by representing that a change has occurred or will or may occur
25 with respect to the racial, religious or ethnic composition of the block, neighborhood or area in

1 which said property is located.

2 (2) Induce directly or indirectly or attempt to induce directly or indirectly the sale or
3 listing for sale of real property by representing that the residence or anticipated residence of
4 any particular race, religious or ethnic group in the area will or may result in: (i) the lowering of
5 property values; (ii) a change in the racial, religious or ethnic composition of the block,
6 neighborhood or area in which the property is located; (iii) an increase in criminal or antisocial
7 behavior in the area; and (iv) a decline of the quality of the schools serving the area.

8 (3) Make any representation to any prospective purchaser that any block,
9 neighborhood or area has undergone or will or might undergo a change with respect to the
10 religious, racial or ethnic composition of the block, neighborhood or area for the purpose of
11 discouraging the purchase of property in a particular area.

12 (b) Nothing in this ordinance shall be construed to discourage any person,
13 firm, partnership, association or corporation from engaging in legitimate business practices
14 related to the purchase from or sale to persons of any actual or perceived race, religion, color,
15 ancestry, age, sex, sexual orientation, physical disability or place of birth, of real property in
16 any neighborhood of this City and County, nor shall anything in this ordinance be construed
17 as discouraging any person or family of whatever race, religion, color, ancestry, age, sex,
18 sexual orientation, physical disability or place of birth from seeking real property in any
19 neighborhood of this City and County.

20
21 Section 2. Chapter 12B of the San Francisco Administrative Code is hereby amended
22 by amending Section 12B.1, to read as follows:

23 **SEC. 12B.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE**
24 **NONDISCRIMINATION PROVISIONS; DEFINITIONS.** (a) All contracting agencies of the
25 City, or any department thereof, acting for or on behalf of the City and County, shall include in

1 all contracts and property contracts hereinafter executed or amended in any manner or as to
2 any portion thereof, a provision obligating the contractor not to discriminate on the basis of the
3 fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex,
4 sexual orientation, gender identity, domestic partner status, marital status, disability, ((or))
5 Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), association with
6 members of classes protected under this chapter or in retaliation for opposition to any
7 practices forbidden under this chapter against any employee of, any City employee working
8 with, or applicant for employment with such contractor and shall require such contractor to
9 include a similar provision in all subcontracts executed or amended thereunder.

10 (b) No contracting agency of the City, or any department thereof, acting for or on
11 behalf of the City and County, shall execute or amend any contract or property contract with
12 any contractor that discriminates in the provision of bereavement leave, family medical leave,
13 health benefits, membership or membership discounts, moving expenses, pension and
14 retirement benefits or travel benefits as well as any benefits other than bereavement leave,
15 family medical leave, health benefits, membership or membership discounts, moving
16 expenses, pension and retirement benefits or travel benefits between employees with
17 domestic partners and employees with spouses, and/or between the domestic partners and
18 spouses of such employees, where the domestic partnership has been registered with a
19 governmental entity pursuant to State or local law authorizing such registration, subject to the
20 following conditions. In the event that the contractor's actual cost of providing a certain benefit
21 for the domestic partner of an employee exceeds that of providing it for the spouse of an
22 employee, or the contractor's actual cost of providing a certain benefit for the spouse of an
23 employee exceeds that of providing it for the domestic partner of an employee, the contractor
24 shall not be deemed to discriminate in the provision of benefits if the contractor conditions
25 providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the

1 event a contractor is unable to provide a certain benefit, despite taking reasonable measures
2 to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the
3 contractor provides the employee with a cash equivalent.

4 (c) Definitions. As used in this Chapter the following words and phrases shall have
5 the meanings indicated herein:

6 "Age" shall mean the age of any employee or applicant for employment who has
7 attained the age of 40 years and has not attained the age of 65 years. For the purposes of this
8 Chapter, discrimination because of age shall mean dismissal from employment of, or refusal
9 to employ or rehire any person because of his or her age, if such person has attained the age
10 of 40 years and has not attained the age of 65 years, if the person is physically able and
11 mentally competent to perform the services required. Age limitations of apprenticeship
12 programs in which the State or its political subdivisions participate shall not be considered
13 discriminatory within the meaning of this Chapter.

14 "Amend" shall mean to substantively change the terms of a pre-existing contract, and
15 shall not include amendments to decrease the scope of work or the amount to be paid under a
16 contract. Construction change orders shall not be construed as contract amendments for the
17 purposes of this Chapter.

18 "City" shall mean the City and County of San Francisco.

19 "Commission" shall mean the Human Rights Commission of the City and County of
20 San Francisco.

21 "Contract" shall mean an agreement for public works or improvements to be performed,
22 or for goods or services to be purchased or grants to be provided, at the expense of the City
23 and County or to be paid out of moneys deposited in the treasury or out of trust moneys under
24 the control or collected by the City and County, and does not include property contracts,
25 agreements entered into after June 1, 1997 pursuant to settlement of legal proceedings,

1 contracts for urgent litigation expenses, or contracts for a cumulative amount of \$5,000 or less
2 per vendor in each fiscal year.

3 "Contractor" means any person or persons, firm, partnership, corporation, or
4 combination thereof, who enters into a contract or property contract with a department head or
5 officer empowered by law to enter into contracts or property contracts on the part of the City
6 and County.

7 "Director" shall mean the Director of the Human Rights Commission.

8 "Disability" shall mean a physical or mental impairment which substantially limits one or
9 more major life activities, or a record of such an impairment.

10 "Domestic partner" shall mean any person who has a currently registered domestic
11 partnership with a governmental body pursuant to State or local law authorizing such
12 registration.

13 "Gender identity" shall mean a person's various individual attributes as they are
14 understood to be masculine and/or feminine.

15 "Property contract" shall mean a written agreement for the exclusive use or occupancy
16 of real property for a term exceeding 29 days in any calendar year, whether by singular or
17 cumulative instrument, (i) for the operation or use by others of real property owned or
18 controlled by the City for the operation of a business, social, or other establishment or
19 organization, including leases, concessions, franchises and easements, or (ii) for the City's
20 use or occupancy of real property owned by others, including leases, concessions, franchises
21 and easements. For the purposes of this Chapter, "exclusive use" means the right to use or
22 occupy real property to the exclusion of others, other than the rights reserved by the fee
23 owner. "Property contract" shall not include a revocable at-will use or encroachment permit for
24 the use of or encroachment on City property regardless of the ultimate duration of such
25 permit, except that "property contract" shall include such permits granted to a private entity for

1 the use of City property for the purpose of a for-profit activity. "Property contract" shall also not
2 include street excavation, street construction or street use permits, agreements for the use of
3 City right-of-way where a contracting utility has the power of eminent domain, or agreements
4 governing the use of City property which constitutes a public forum for activities that are
5 primarily for the purpose of espousing or advocating causes or ideas and that are generally
6 recognized as protected by the First Amendment to the U.S. Constitution, or which are
7 primarily recreational in nature.

8 "Qualified disabled employee" shall mean a person able to perform the essential
9 functions of a job with reasonable accommodation.

10 "Sex" shall mean the character of being male or female.

11 "Sexual orientation" shall mean the status of being lesbian, gay, bisexual or
12 heterosexual.

13 "Subcontract" shall mean an agreement to (i) provide goods and/or services, including
14 construction labor, materials or equipment, to a contractor, if such goods or services are
15 procured or used in the fulfillment of the contractor's obligations arising from a contract with
16 the City, or (ii) to transfer the right to occupy or use all or a portion of a real property interest
17 subject to a property contract to a subcontractor and pursuant to which the contractor remains
18 obligated under the property contract.

19 "Subcontractor" means any person or persons, firm, partnership, corporation or any
20 combination thereof, who enters into a subcontract with a contractor. Such term shall include
21 any person or entity who enters into an agreement with any subcontractor for the performance
22 of 10 percent or more of any subcontract.

23 (d) The requirements of this Chapter shall apply to (i) any of a contractor's
24 operations within San Francisco; (ii) a contractor's operations on real property outside of San
25 Francisco owned by the City or which the City has a right to occupy if the contractor's

1 presence at that location is connected to a contract or property contract with the City; (iii)
2 where the work is being performed by a contractor for the City within the United States; and
3 (iv) any of a contractor's operations elsewhere within the United States.

4 **SEC. 12B.2. NONDISCRIMINATION PROVISIONS.** Every contract and property
5 contract for or on behalf of the City shall incorporate by reference and require the contractor to
6 comply with the provisions of Section 12B.2. In addition, all contractors must incorporate by
7 reference in all subcontracts and require subcontractors to comply with the requirements set
8 forth in Sections 12B.2(a) and 12B.2(c) through 12B.2(k), and failure to do so shall constitute
9 a material breach of contract.

10 In the performance of a contract the contractor agrees as follows:

11 (a) The contractor or subcontractor will not discriminate against any employee, City
12 and County employee working with such contractor or subcontractor, or applicant for
13 employment with such contractor or subcontractor on the basis of the fact or perception of that
14 person's race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender
15 identity, domestic partner status, marital status, disability, ((or)) AIDS/HIV status, or
16 association with members of classes protected under this chapter or in retaliation for
17 opposition to any practices forbidden under this chapter. Discrimination on the basis of sex
18 includes sexual harassment as defined in Section 16.9-25(b) of this Code. The contractor or
19 subcontractor will take action to ensure that applicants are employed, and that employees are
20 treated equally during employment, without regard to the fact or perception of their race, color,
21 creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity,
22 domestic partner status, marital status, disability or AIDS/HIV status. Such action shall
23 include, but not be limited to, the following: Employment, upgrading, demotion or transfer;
24 recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of
25 compensation; and selection for training, including apprenticeship. Nothing in this Chapter

1 shall require or prohibit the establishment of new classifications of employees in any given
2 craft. The provisions of this Section with respect to age shall not apply to (1) termination of
3 employment because of the terms or conditions of any bona fide retirement or pension plan,
4 (2) operation of the terms or conditions of any bona fide retirement or pension plan which has
5 the effect of a minimum service requirement, and (3) operation of the terms or conditions of
6 any bona fide group or insurance plan. The contractor or subcontractor agrees to post in
7 conspicuous places, available to employees and applicants for employment, notices in such
8 form and content as shall be furnished or approved by the awarding authority setting forth the
9 provisions of this Section.

10 (b) The prime contractor shall state that the prime contractor does not, and will not
11 during the term of the contract discriminate in the provision of bereavement leave, family
12 medical leave, health benefits, membership or membership discounts, moving expenses,
13 pension and retirement benefits or travel benefits as well as any benefits other than
14 bereavement leave, family medical leave, health benefits, membership or membership
15 discounts, moving expenses, pension and retirement benefits or travel benefits between
16 employees with domestic partners and employees with spouses, and/or between the domestic
17 partners and spouses of such employees, where the domestic partnership has been
18 registered with a governmental entity pursuant to State or local law authorizing such
19 registration, subject to the following conditions. In the event that the contractor's actual cost of
20 providing a certain benefit for the domestic partner of an employee exceeds that of providing it
21 for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for
22 the spouse of an employee exceeds that of providing it for the domestic partner of an
23 employee, the contractor shall not be deemed to discriminate in the provision of benefits if the
24 contractor conditions providing such benefit upon the employee agreeing to pay the excess
25 costs. In addition, in the event a contractor is unable to provide a certain benefit, despite

1 taking reasonable measures to do so, the contractor shall not be deemed to discriminate in
2 the provision of benefits if the contractor provides the employee with a cash equivalent. The
3 Director shall be the final arbiter of a contractor's or property contractor's compliance or
4 substantial compliance with this Chapter and the Director's determination shall not be
5 appealable to the Commission. Contractors shall treat as confidential to the maximum extent
6 allowed by law or the requirements of contractor's insurance provider any request by an
7 employee or applicant for employment for domestic partner or spousal benefits or any
8 documentation of eligibility for domestic partner or spousal benefits submitted by an employee
9 or applicant for employment.

10 In adopting this Section 12B.2(b), the intent of the Board of Supervisors is to equalize
11 to the maximum extent legally permitted the total compensation between similarly situated
12 employees with spouses and employees with domestic partners.

13 In particular, consistent with the severability clause set forth in Section 12B.6 below,
14 the Board of Supervisors intends that if a court or agency of competent jurisdiction finds that a
15 State or federal law, rule or regulation invalidates (1) the application of this Section to any
16 business, person, type of compensation or benefit, or location; or (2) any other requirement of
17 this Section, then the court or agency should sever the invalid clause and leave in effect the
18 remainder of this Section.

19 (c) The contractor or subcontractor shall provide reasonable accommodation for
20 qualified disabled applicants for employment and for qualified disabled employees. Said
21 contractor or subcontractor need not provide reasonable accommodation if such would
22 present an undue hardship. An undue hardship may include but not be limited to more than a
23 de minimus cost, violation of the seniority rights of other co-workers as established by a bona
24 fide seniority system, or a health or safety risk to the employee or co-employees. The burden
25 of establishing an undue hardship rests on the employer.

1 (d) The contractor or subcontractor will in all solicitations or advertisements for
2 employees placed by or on his or her behalf, state that qualified applicants will receive
3 consideration for employment without regard to the fact or perception of their race, creed,
4 religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic
5 partner status, marital status, disability or AIDS/HIV status. (e) The contractor or
6 subcontractor will send to each labor union or representative of workers with which he or she
7 has a collective bargaining agreement or other agreement or understanding, a notice, in such
8 form and content as shall be furnished or approved by the awarding authority, advising the
9 said labor union or workers' representative of the contractor's or subcontractor's commitments
10 under this Section, and shall post copies of the notice in conspicuous places available to
11 employees and applicants for employment.

12 (f) The contractor or subcontractor will permit access to its records of employment,
13 employment advertisements, application forms, and other pertinent data and records by the
14 Commission, the City's awarding authority or the Fair Employment and Housing Commission,
15 for the purposes of investigation to ascertain compliance with the nondiscrimination provisions
16 of this Chapter, and upon request shall provide evidence that the contractor has complied or
17 will comply with the nondiscrimination provisions of this Chapter.

18 (g) A contractor or subcontractor shall be deemed to have breached the
19 nondiscrimination provisions of this Chapter upon:

20 (1) A finding by the Director or such other official who may be designated by the
21 Commission, that the contractor or subcontractor has willfully violated such nondiscrimination
22 provisions; or

23 (2) A finding by the California Fair Employment and Housing Commission that a
24 contractor or subcontractor has violated any provision of the California Fair Employment and
25 Housing Act or the nondiscrimination provisions of this Chapter, provided that the California

1 Fair Employment and Housing Commission has issued a final order pursuant to Section
2 12970 of the Government Code, or has obtained a judgment and order enforcing the final
3 order pursuant to Section 12973 of the Government Code; provided further, that for the
4 purposes of these provisions, an order or injunction shall not be considered final during the
5 period within which (1) appeal may be taken, or (2) the same has been stayed by order of
6 court, or (3) further proceedings for vacation, reversal or modification are in progress before a
7 competent administrative or judicial tribunal.

8 (3) Upon such finding by the Director or other official designated by the
9 Commission, or the California Fair Employment and Housing Commission, the awarding
10 authority shall notify the contractor or subcontractor that unless the contractor or
11 subcontractor demonstrates to the satisfaction of the Director or other official designated by
12 the Commission, within such reasonable period as the Commission shall determine, that the
13 violation has been corrected, action will be taken as set forth in Subparagraphs (h) and (i)
14 hereof.

15 (4) The Commission shall, within 10 days of the date of issuance of any finding by
16 the Director or other official designated by the Commission for the enforcement of this
17 Chapter, mail to any person or persons affected by said finding, a copy of said finding,
18 together with written notice of the right to appeal such finding. Notice of appeal must be filed
19 in writing with the Chairperson of the Commission within 20 days of the date of mailing said
20 copy and notice.

21 (5) For purpose of appeal proceedings under this Section, a quorum shall consist of
22 eight members of the Commission. The vote of the majority of the full Commission shall be
23 necessary to affirm, reverse or modify such decisions, order or other action rendered
24 hereunder. Should a member of the Commission be designated under Section 12B.2(g)(1) of
25 this Chapter, that Commissioner may not participate in an appeal under this Section except as

1 a witness.

2 (6) The presiding officer of the Commission shall have the power to administer
3 oaths to witnesses in appeals before the Commission under this Section. In the event that any
4 person shall fail or refuse to appear as a witness in any such proceeding after being
5 requested to do so, and if it shall appear to the Commission that his or her testimony, or
6 books, records, documents or other things under his or her control are material and relevant
7 as evidence in the matter under consideration by the Commission in the proceeding, the
8 presiding officer of the Commission may subpoena such person, requiring his or her presence
9 at the proceeding, and requiring him or her to bring such books, records, documents or other
10 things under his or her control.

11 (7) All appeals to the Commission shall be open to the public. Records and minutes
12 shall be kept of such proceedings and shall be open to public inspection. Upon reaching a
13 decision in any appeal, the Commission shall give written notice thereof to the Director or
14 other official designated by the Commission, and the appellant or appellants. The decision of
15 the Commission shall be final unless within 15 days of the filing and service of written notice
16 thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party
17 to the contract, property contract or subcontract.

18 (8) If any contractor or subcontractor shall fail to appear at an appeal proceeding of
19 the Commission after having been given written notice to appear, such failure to appear shall
20 be grounds for termination of the contract, property contract or subcontract and such
21 contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges
22 thereunder.

23 (9) The Commission shall promulgate rules and regulations for the implementation
24 of the nondiscrimination provisions of this Chapter.

25 (h) The awarding authority may deduct from the amount payable to the contractor or

1 subcontractor by the City under any contract or property contract subject to this Chapter, or
2 may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each
3 calendar day during which such person was discriminated against in violation of the provisions
4 of this Chapter. In addition to any other penalties provided for the violation of the
5 nondiscrimination provisions of this Chapter or for the failure of any contractor or
6 subcontractor to abide by the rules and regulations of the Commission, the contract, property
7 contract or subcontract may be terminated or suspended, in whole or in part, by the awarding
8 authority upon the basis of a finding as set forth in Section 12B.2(g) that the contractor has
9 discriminated contrary to the provisions of this Chapter, and all moneys due or to become due
10 hereunder may be forfeited to, and retained by, the City.

11 (i) A breach of the nondiscrimination provisions in the performance of a contract,
12 property contract or subcontract shall be deemed by the City to be material breach of contract
13 and the basis for determination by the awarding authority that the contractor or subcontractor
14 is an irresponsible bidder as to all future contracts or property contracts for which such
15 contractor or subcontractor may submit bids. Such contractor or subcontractor shall not for a
16 period of up to two years thereafter, or until it shall establish and carry out a program in
17 conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a
18 contractor or subcontractor under any contract or property contract.

19 (j) Nothing contained in this Chapter shall be construed in any manner so as to
20 prevent the City from pursuing any other remedies that may be available at law, equity or
21 under any contract or property contract.

22 (k) The contractor or subcontractor will meet the following standards for
23 compliance:

24 (1) If the contractor or subcontractor has been held to be an irresponsible bidder
25 under Section 12B.2(i) hereof, the contractor or subcontractor shall furnish evidence that it

1 has established and is carrying out a program in conformity with the nondiscrimination
2 provisions of this Chapter.

3 (2) The contractor or subcontractor may be required to file with the Commission a
4 basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report
5 as determined by the Commission. Wilful false statements made in such reports shall be
6 punishable as provided by law. No contractor or subcontractor shall be held in noncompliance
7 for not filing such a report with the Commission unless it has been specifically required to do
8 so in writing by the Commission.

9 (3) Personally, or through its representatives, the contractor or subcontractor shall,
10 through negotiations with the unions with whom it has collective bargaining or other
11 agreements requiring the contractor or subcontractor to obtain or clear its employees through
12 the union, or when the contractor or subcontractor otherwise uses a union as an employment
13 resource, attempt to develop an agreement which will:

14 (A) Define and outline responsibilities for nondiscrimination in hiring, referral,
15 upgrading and training;

16 (B) Otherwise implement a nondiscrimination program in terms of the unions'
17 specific areas of skill and geography, such as an apprenticeship program, to the end that
18 minority workers will be available and given an equal opportunity for employment.

19 (4) The contractor or subcontractor shall notify the awarding authority of opposition
20 to the nondiscrimination provisions of a contract by individuals, firms or organizations during
21 the term of the contract.

22
23 Section 3. Chapter 12C of the San Francisco Administrative Code is hereby amended
24 by amending Sections 12C.1 and 12C.3, to read as follows:

25 **SEC. 12C.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE**

1 **NONDISCRIMINATION PROVISIONS.** (a) All contracting agencies of the City, or any
2 department thereof, acting for or on behalf of the City and County, shall include in all contracts
3 and property contracts a provision obligating the contractor not to discriminate on the basis of
4 the fact or perception of that person's race, color, creed, religion, national origin, ancestry,
5 age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability,
6 ((or)) Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), association
7 with members of classes protected under this chapter or in retaliation for opposition to any
8 practices forbidden under this chapter, against any person seeking accommodations,
9 advantages, facilities, privileges, services, or membership in all business, social, or other
10 establishments or organizations, operated by that contractor, and shall require such contractor
11 to include a similar provision in all subcontracts.

12 (b) The requirements of this Chapter shall apply to (i) any of a contractor's
13 operations within San Francisco; (ii) a contractor's operations on real property outside of San
14 Francisco owned by the City or which the City has a right to occupy if the contractor's
15 presence at that location is connected to a contract or property contract with the City; (iii)
16 where the work is being performed by a contractor for the City within the United States; and
17 (iv) any of a contractor's operations elsewhere within the United States.

18 **SEC. 12C.3. NONDISCRIMINATION PROVISIONS.** Every contract and property
19 contract entered into by any agency of the City shall incorporate by reference and require
20 contractor to comply with the nondiscrimination provisions of Section 12C.3. In addition, all
21 contractors must incorporate by reference in all subcontracts and require subcontractors to
22 comply with the requirements of this Section 12C.3, and failure to do so shall constitute a
23 material breach of contract.

24 In the performance of a contract, the contractor or subcontractor shall agree as follows:

25 (a) The contractor or subcontractor will not discriminate against any person seeking

1 accommodations, advantages, facilities, privileges, services, or membership in the business,
2 social or other establishment or organization operated by the contractor or subcontractor on
3 the basis of the fact or perception of that person's race, color, creed, religion, national origin,
4 ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status,
5 disability, ((or)) AIDS/HIV status((.)), association with members of classes protected under this
6 chapter or in retaliation for opposition to any practices forbidden under this chapter. Services
7 provided by contractor or subcontractor to the public shall be provided regardless of disability
8 of persons otherwise entitled to or qualified for such services.

9 (b) Should the contractor or subcontractor operate as a membership organization,
10 the contractor or subcontractor will permit access to its membership records, rules,
11 regulations and other pertinent data, by the City's awarding authority, or the Commission, for
12 the purpose of investigating to ascertain compliance with the nondiscrimination provisions of
13 this Chapter, and on request provide evidence that the contractor or subcontractor has
14 complied or will comply with the nondiscrimination provisions of this Chapter. The Director
15 shall be the final arbiter of a contractor's or subcontractor's compliance or substantial
16 compliance with this Chapter and the Director's determination shall not be appealable to the
17 Commission.

18 (c) A contractor or subcontractor shall be deemed to have breached the
19 nondiscrimination provisions of this Chapter upon:

20 (1) A finding by the Director or such other official who may be designated by the
21 Commission, that contractor or subcontractor has wilfully violated such nondiscrimination
22 provisions.

23 (2) Upon such finding by the Director or other official designated by the
24 Commission, the awarding authority shall notify the contractor or subcontractor that unless the
25 contractor or subcontractor demonstrates to the satisfaction of the Director or other official

1 designated by the Commission within such reasonable period as the Commission shall
2 determine, that the violation has been corrected, action will be taken as set forth in Section
3 12C.3(d) and/or Section 12C.3(g).

4 (3) The Commission shall, within 10 days of the date of issuance of any findings by
5 the Director or other official designated by the Commission for the enforcement of this
6 Chapter, mail to any person or persons affected by said finding, a copy of said finding,
7 together with written notice of the right to appeal such finding. Notice of appeal must be filed
8 in writing with the Chairperson of the Commission within 20 days of the date of mailing said
9 copy and notice.

10 (4) For purposes of appeal proceedings under this Section, a quorum shall consist
11 of eight members of the Commission. The vote of the majority of the full Commission shall be
12 necessary to affirm, reverse or modify such decisions, order or other action rendered
13 hereunder. Should a member of the Commission be designated under Section 12C.3(c)(1) of
14 this Chapter, that Commissioner may not participate in an appeal under this Section except as
15 a witness.

16 (5) The presiding officer of the Commission shall have the power to administer
17 oaths to witnesses in appeals before the Commission under this Section. In the event that any
18 person shall fail or refuse to appear as a witness in any such proceeding after being
19 requested to do so, and if it shall appear to the Commission that his or her testimony, or
20 books, records, documents or other things under his or her control are material and relevant
21 as evidence in the matter under consideration by the Commission in the proceeding, the
22 presiding officer of the Commission may subpoena such person, requiring his or her presence
23 at the proceeding and requiring him or her to bring such books, records, documents or other
24 things under his or her control.

25 (6) All appeals to the Commission shall be open to the public. Records and minutes

1 shall be kept of such proceedings and shall be open to public inspection. Upon reaching a
2 decision in any appeal, the Commission shall give written notice thereof to the Director or
3 other official designated by the Commission, and the appellant or appellants. The decision of
4 the Commission shall be final unless within 15 days of the filing and service of written notice
5 thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party
6 to the contract, property contract or subcontract.

7 (7) If any contractor or subcontractor shall fail to appear at an appeal proceeding of
8 the Commission after having been given written notice to appear, such failure to appear shall
9 be grounds for termination of the contract, property contract or subcontract and such
10 contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges
11 thereunder.

12 (8) The Commission shall promulgate rules and regulations for the implementation
13 of the nondiscrimination provisions of this Chapter.

14 (d) A breach of the nondiscrimination provisions in the performance of a contract,
15 property contract or subcontract shall be deemed by the City to be a material breach of
16 contract and the basis for determination by the awarding authority that the contractor or
17 subcontractor is an irresponsible contractor or subcontractor as to all future contracts or
18 property contracts for which such contractor or subcontractor may submit bids. Such
19 contractor or subcontractor shall not, for a period of up to two years thereafter, or until it shall
20 establish and carry out a program in conformity with the nondiscrimination provisions of this
21 Chapter, be allowed to act as a contractor or subcontractor under any contract or property
22 contract.

23 (e) Nothing contained in this Chapter shall be construed in any manner so as to
24 prevent the City from pursuing any other remedies that may be available at law, equity or
25 under any contract or property contract.

1 (f) The contractor or subcontractor will meet the following standards for
2 compliance:

3 (1) If the contractor or subcontractor has been held to be irresponsible under
4 Section 12C.3(d) hereof, the contractor or subcontractor shall furnish evidence that it has
5 established and is carrying out a program in conformity with the nondiscrimination provisions
6 of this Chapter.

7 (2) The contractor or subcontractor may be required to file with the Commission a
8 basic compliance report. Wilful false statements made in such reports shall be punishable as
9 provided by law. No contractor or subcontractor shall be held in noncompliance for not filing
10 such a report with the Commission unless it has been specifically required to do so in writing
11 by the Commission.

12 (g) The awarding authority may deduct from the amount payable to the contractor or
13 subcontractor by the City under any contract or property contract subject to this Chapter, or
14 may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each
15 calendar day during which such person was discriminated against in violation of the provisions
16 of this Chapter. In addition to any other penalties provided for the violation of the
17 nondiscrimination provisions of this Chapter or for the failure of any contractor or
18 subcontractor to abide by the rules and regulations of the Commission, the contract, property
19 contract or subcontract may be terminated or suspended, in whole or in part, by the awarding
20 authority upon the basis of a finding as set forth in Section 12C.3(d) that the contractor or
21 subcontractor has discriminated contrary to the provisions of this Chapter, and all moneys due
22 or to become due hereunder may be forfeited to, and retained by, the City.

23
24 Section 4. Article 33 of the San Francisco Police Code is hereby amended by
25 amending Sections 3303, 3304 and 3305 to read as follows:

SUPERVISOR AMMIANO
BOARD OF SUPERVISORS

1 **SEC. 3303. EMPLOYMENT. (a) Prohibited Activity.** It shall be unlawful for any
2 person to do any of the following acts wholly or partially based on actual or perceived race,
3 religion, color, ancestry, age, sex, sexual orientation, gender identity, disability, ((or)) place of
4 birth, association with members of classes protected under this chapter or in retaliation for
5 opposition to any practices forbidden under this chapter of an employee or applicant for
6 employment:

7 (1) By an employer: To fail or refuse to hire, or to discharge any individual; to
8 discriminate against any individual with respect to compensation, terms, conditions or
9 privileges of employment, including promotion; or to limit, segregate or classify employees in
10 any way which would deprive or tend to deprive any individual of employment opportunities, or
11 otherwise adversely affect his/her status as an employee;

12 (2) By an employment agency: To fail or refuse to refer for employment any
13 individual; or otherwise to discriminate against any individual;

14 (3) By a labor organization: To exclude or expel from its membership or to
15 otherwise discriminate against any individual; or to limit, segregate or classify its membership;
16 or to classify or fail or refuse to refer for employment any individual in any way which would
17 deprive or tend to deprive such individual of employment opportunities, or would limit such
18 employment opportunities, or otherwise adversely affect his/her status as an employee or as
19 an applicant for employment;

20 (4) By an employer, employment agency or labor organization:

21 (i) To discriminate against any individual in admission to, or employment in, any
22 program established to provide apprenticeship or other training or retraining, including any on-
23 the-job training program,

24 (ii) To print, publish, advertise or disseminate in any way, or cause to be printed,
25 published, advertised or disseminated in any way, any notice or advertisement with respect to

1 employment, membership in, or any classification or referral for employment or training by any
2 such organization, which indicates an unlawful discriminatory preference.

3 (b) **Bona Fide Occupational Qualification Not Prohibited; Burden of Proof.**

4 (1) Nothing contained in this Section shall be deemed to prohibit selection or
5 rejection based upon a bona fide occupational qualification;

6 (2) In any action brought under Section 3307 of this Article (Enforcement), if a party
7 asserts that an otherwise unlawful discriminatory practice is justified as a bona fide
8 occupational qualification, that party shall have the burden of proving: (1) that the
9 discrimination is in fact a necessary result of a bona fide occupational qualification; and (2)
10 that there exists no less discriminatory means of satisfying the occupational qualification.

11 (c) **Exceptions.**

12 (1) It shall not be an unlawful discriminatory practice for an employer to observe the
13 conditions of a bona fide seniority system or a bona fide employee benefit system, provided
14 such systems or plans are not a subterfuge to evade the purposes of this Article; provided,
15 further, that no such system shall provide a pretext to discriminate against an individual
16 because of his or her actual or perceived race, religion, color, ancestry, age, sex, sexual
17 orientation, gender identity, disability, ((or)) place of birth, association with members of
18 classes protected under this chapter or in retaliation for opposition to any practices forbidden
19 under this chapter;

20 (2) Nothing in this Section shall be construed to apply to employment by any
21 business which employs five or fewer employees including the owner and any management
22 and supervisory employees.

23 **SEC. 3304. HOUSING. (a) Prohibited Activity.** It shall be unlawful for any person to
24 do any of the following acts wholly or partially based on actual or perceived race, religion,
25 color, ancestry, age, sex, sexual orientation, gender identity, disability, ((or)) place of birth,

association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter:

(1) To interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property, including but not limited to the rental thereof; to require different terms for such transaction; or falsely to represent that an interest in real property is not available for transaction;

(2) To include in the terms or conditions of a transaction in real property any clause, condition or restriction;

(3) To refuse to lend money, guarantee the loan of money, accept a deed of trust or mortgage, or otherwise refuse to make available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property;

(4) To refuse or restrict facilities, services, repairs or improvements for any tenant or lessee;

(5) To make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement or advertisement with respect to a transaction or proposed transaction in real property, or with respect to financing related to any such transaction, which unlawfully indicates preference, limitation or discrimination based on race, religion, color, ancestry, age, sex, sexual orientation, gender identity, disability or place of birth.

(b) Exceptions.

(1) Nothing in this Article shall be construed to apply to the rental or leasing of any housing unit in which the owner or any member of his or her family occupies one of the living units and: (1) it is necessary for the owner to use either a bathroom or kitchen facility in

1 common with the prospective tenant; or (2) the structure contains less than three dwelling
2 units;

3 (2) Nothing in this Article shall be deemed to permit any rental or occupancy of any
4 dwelling unit or commercial space otherwise prohibited by law.

5 **SEC. 3305. BUSINESS ESTABLISHMENTS AND PUBLIC ACCOMMODATIONS.**

6 (a) **Prohibited Activity.** It shall be unlawful for any person to do any of the following acts
7 wholly or partially based on actual or perceived race, religion, color, ancestry, age, sex, sexual
8 orientation, gender identity, disability, ((or)) place of birth of a customer, association with
9 members of classes protected under this chapter or in retaliation for opposition to any
10 practices forbidden under this chapter:

11 (1) To deny, directly or indirectly, any person the full and equal enjoyment of the
12 goods, services, facilities, privileges, advantages, and accommodations of any business
13 establishment or place of public accommodations;

14 (2) Except as otherwise permitted by law, to deny, directly or indirectly, any person
15 admittance to the premises of the business establishment or place of public accommodations.
16 No business establishment or place of public accommodations requesting or requiring
17 identification documents to demonstrate or confirm a person's proof of age may deny
18 admittance to any person displaying one valid identification document as proof of age. For
19 purposes of Section 3305 (a)(2), the term "valid identification document" means a document
20 which contains the name, date of birth and picture of the person presenting the document,
21 and is issued by a federal, state, county or municipal government, or subdivision or agency
22 thereof, including, but not limited to, a motor vehicle operator's license or identification card
23 issued to a member of the Armed Forces;

24 (3) To make, print, publish, advertise or disseminate in any way, or cause to be
25 made, printed, published, advertised or disseminated in any way, any notice, statement or

1 advertisement with respect to any business establishment or public accommodation which
2 indicates that the full enjoyment of such establishment or accommodation will be unlawfully
3 refused an individual.
4
5

6 APPROVED AS TO FORM:

7 LOUISE H. RENNE, City Attorney
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10 By: 
11 SUSAN L. FRANKEL
12 Deputy City Attorney
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City and County of San Francisco

Tails

Ordinance

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

File Number: 991146

Date Passed:

Ordinance amending Administrative Code Chapter 12A by amending Sections 12A.1, 12A.5, and 12A.8, Chapter 12B by amending Sections 12B.1 and 12B.2, Chapter 12C by amending Sections 12C.1 and 12C.3, and amending Police Code Article 33 by amending Sections 3303, 3304 and 3305 to prohibit discrimination based on fact or perception, discrimination based on association with members of protected classes of persons or retaliation for opposition to discrimination.

September 21, 1999 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

September 27, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Ammiano, Becerril, Bierman, Kaufman, Leno, Newsom, Teng, Yaki, Yee
Absent: 2 - Brown, Katz

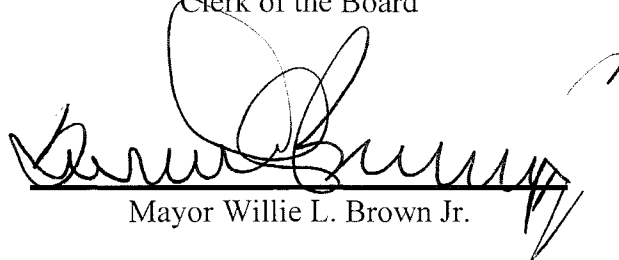
File No. 991146

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on September 27,
1999 by the Board of Supervisors of the City
and County of San Francisco.



Gloria L. Young
Clerk of the Board

OCT - 8 1999
Date Approved



Mayor Willie L. Brown Jr.