

1 [Administrative Code – Benefit Corporation Discount]

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3 **Ordinance amending the San Francisco Administrative Code by adding Chapter 14C,**  
 4 **Sections 14C.1 through 14C.3, to provide for a downward adjustment in price or**  
 5 **upward adjustment in rating of a proposal or bid from a California Benefit Corporation**  
 6 **for a competitively-solicited City contract.**

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

10

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

12 Section 1. Findings.

13 As established by California law, effective January 1, 2012, there is a new subtype of  
 14 stock corporation in California, called a California Benefit Corporation. A benefit corporation is  
 15 formed and subject to the California Corporations Code but has additional rights and  
 16 responsibilities that do not apply to other California business corporations. This new  
 17 corporation subtype allows entrepreneurs and investors to operate as publically held stock  
 18 corporations focused on social and environmental objectives rather than the economic return  
 19 to investors. organize stock corporations that can pursue both economic and social objectives.  
 20 California Benefit Corporations also differ from nonprofit corporations because they are for-  
 21 profit entities and are not restricted to a charitable purpose. The new stock corporation  
 22 subtype is different from traditional for profit corporations that are organized to pursue profit  
 23 and nonprofit corporations that must be used solely to promote social benefits.

24 A corporation may become a benefit corporation by amending the corporation's articles  
 25 to include a statement that the corporation is a benefit corporation. A benefit corporation must

1 have the purpose of creating a general public benefit. The California Corporations Code  
2 §14601(c) defines a general public benefit as “a material positive impact on society and the  
3 environment, taken as a whole, as assessed against a third-party standard, from the business  
4 and operations of a benefit corporation.” In addition to creating a general public benefit, a  
5 benefit corporation may adopt one or more specific public benefits by identifying them in the  
6 corporation's articles. California Corporations Code §14601(e) sets forth seven possible  
7 specific public benefits as “(1) providing low-income or underserved individuals or  
8 communities with beneficial products or services, (2) promoting economic opportunity for  
9 individuals or communities beyond the creation of jobs in the ordinary course of business, (3)  
10 preserving the environment, (4) improving human health, (5) promoting the arts, sciences, or  
11 advancement of knowledge, (6) increasing the flow of capital to entities with a public purpose,  
12 and (7) the accomplishment of any other particular benefit for society or the environment.”  
13 The purpose of creating a general public benefit is in addition to, and may be a limitation  
14 upon, the corporation's purpose under the California Corporation Code.

15 The directors of benefit corporations may pursue the creation of general public benefit  
16 and any identified specific public benefits and without exposure to shareholder suits. ~~not run~~  
17 the risk of being accused of failing to create economic benefits for the shareholders. Each  
18 year, the directors of the benefit corporation must prepare an annual benefit report using a  
19 third-party standard to analyze the ways in which the benefit corporation pursued the general  
20 public benefit during the applicable year, the ways in which the benefit corporation pursued  
21 the specific public benefit, if applicable, and an overall assessment of the benefit corporation's  
22 social and environmental performance. The benefit corporation must post the annual report on  
23 its website.

24 No person may bring an action or claim against a benefit corporation to enforce its  
25 obligations under the benefit corporations laws except through a benefit enforcement

1 proceedings either directly or through derivative actions brought by shareholders, directors,  
2 and other beneficial owners.

3  
4 Section 2. The San Francisco Administrative Code is hereby amended by adding  
5 Chapter 14C, Sections 14C.1 through 14C.3, to read as follows:

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

7 This Chapter shall be entitled “the California Benefit Corporation (‘Benefit Corporation’)  
8 Discount Ordinance”.

9 **SEC. 14C.2. DEFINITIONS.**

10 (a) “Benefit Corporation” means is defined as a California Benefit Corporation that is  
11 incorporated in California under California Corporations Code §§14600-14631, as amended, or any  
12 successor legislation, and is in good standing with the State of California.

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

15 (c) “Contract” means any agreement that falls within the scope of Administrative Code  
16 Chapter 6 or Chapter 21.

17 (d) “Contractor” means any person or entity who contracts directly with the City.

18 (e) “Contract Awarding Authority” means any City officer, department head, commission, or  
19 board authorized to enter into Contracts on behalf of the City.

20 (f) “HRC” means the Human Rights Commission.

21 (g) “Nonprofit” means a nonprofit corporation that is incorporated in California under  
22 California Corporations Code §5000 et seq. as amended, or any successor legislation  
23 organized primarily or exclusively for charitable purposes and qualifies for the exemptions  
24 provided under California Revenue and Taxation Code Section 23701 and Internal Revenue  
25 Code Section 501(c)(3).

Supervisor Chiu  
BOARD OF SUPERVISORS

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

4 (i) "S.F. Business" means a business that is physically located at, and registered with  
5 the Office of the Treasurer & Tax Collector's Business Registration records, and maintains an  
6 address located within the geographic limits of the City and County of San Francisco  
7 means a business that has a principal place of business located in the geographic limits of San  
8 Francisco and is registered with the Office of the Treasurer & Tax Collector's Business  
9 Registration records, excluding a certified 14B LBE.

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

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

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

18 (a) Eligibility . To be eligible for the Benefit Corporation Discount, the corporation must:  
19 (1) not be a subsidiary of a non Benefit Corporation; and (2) have been incorporated as a  
20 Benefit Corporation in California for at least six (6) months preceding the application of the  
21 Benefit Corporation Discount.

22 (b) California Secretary of State Verification. The HRC shall verify current Benefit  
23 Corporation status with the California Secretary of State and apply the Benefit Corporation  
24 Discount. As part of the verification process, HRC may require a Benefit Corporation to  
25 submit additional documentation with the bid or proposal to verify status.

1 (c) Third Party Verification. HRC may not apply the Benefit Corporation Discount until  
2 the Benefit Corporation has received third party verification. HRC shall adopt rules and  
3 regulations consistent with this Ordinance for determining if a Benefit Corporation has  
4 complied with third party verification.

5 (ad) Discount. Notwithstanding any other provision of the Administrative Code, HRC  
6 Contract Awarding Authorities shall apply a Benefit Corporation Discount as provided in this  
7 Chapter Ordinance to bids or proposals submitted by a Benefit Corporation for purpose of  
8 determining the apparent highest ranked proposal or the apparent low bid, unless application of the  
9 Benefit Corporation Discount would adversely impact the ranking for negotiation or award  
10 process of a bid or proposal submitted by the following:

11 (1) a 14B LBE, or a

12 (2) Nonprofit bidder or proposer, or

13 (3) S.F. Business unless the Benefit Corporation is also a S.F. Business; or

14 (4) Regional Business unless the Benefit Corporation is also a Regional Business.

15 ~~or an S.F. Business. In addition, the application of the Benefit Corporation Discount~~  
16 ~~shall not adversely impact an S.F. Business except unless if the Benefit Corporation seeking~~  
17 ~~the discount is also aeither an S.F. Business or an Regional Business.~~

18 (e) Contract Awarding Authority. The Contract Awarding Authority is required to  
19 cooperate with the HRC in applying the Benefit Corporation Discount.

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

23 (eg) Amount of Discount. Contract Awarding Authorities HRC shall apply a Benefit  
24 Corporation Discount as follows:

1           (1) For bids and proposals from Benefit Corporations that are ineligible for Administrative  
2 Code Chapter 14B LBEs or SBA LBE Discounts 14B LBE Discounts, Contract Awarding  
3 Authorities HRC shall apply a Discount in the amount of eight four percent (8% 4%), such that bids  
4 or proposals shall be reduced increased or reduced increased, as appropriate, by an amount equal  
5 to eight four percent (8% 4%) at each stage of the proposal selection process for purposes of  
6 determining the apparent highest ranked proposal or the apparent low bid. Benefit Corporations that  
7 receive a 14B LBE Discount may not also receive a Benefit Corporation Discount.; and

8           (2) ~~For bids and proposals from B Corporations that will receive Administrative Code~~  
9 ~~Chapter 14B LBE or SBA LBE Discounts, Contract Awarding Authorities shall apply a~~  
10 ~~Discount in the amount of four percent (2%) in addition to the Administrative Code Chapter~~  
11 ~~14B Discount, such that bids or proposals shall be increased or reduced, as appropriate, by~~  
12 ~~no more than a total of twelve percent (12%) at each stage of the proposal selection process~~  
13 ~~for purposes of determining the apparent highest ranked proposal or the apparent low bid;~~  
14 and

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

18           (d) ~~Verification of Status. Contract Awarding Authorities provide for the B Corporation~~  
19 ~~and shall verify current Benefit Corporation status with the California Secretary of State.~~

20           In addition, B Corporations shall, when applying for a B Corporation Discount, submit  
21 copies of their share certificates required under Division 1, Chapter 4 (beginning with Section  
22 400) of the California Corporations Code

23           (e) ~~Eligibility. In addition, To be eligible for the Benefit Corporation Discount, the~~  
24 ~~corporation must: (1) have been incorporated in California as a Benefit Corporation for at least~~  
25 ~~six (6) months preceding the application of the Benefit Corporation Discount; (2)~~

1 ~~B Corporations shall, when applying for a B Corporation Discount, submit with their bid or~~  
2 ~~proposal copies of their share certificates required under Division 1, Chapter 4 (beginning with~~  
3 ~~Section 400) of the California Corporations Code, and a copy of their most recent annual~~  
4 ~~benefit report required under Division 3 of Title 1, Sections 14621 and 14630 of the California~~  
5 ~~Corporations Code; and (3) provide evidence, as determined by the HRC, of third party~~  
6 ~~verification of their compliance with and contribution to the community consistent with the~~  
7 ~~general public benefit and specific public benefit as outlined in their articles of incorporation in~~  
8 ~~accordance with California Corporations Code §14610.~~

9 (fh) Review by HRC and Controller. For the first two years of the this Ordinance is in  
10 effect, the Director of the HRC, in coordination with the Controller, shall conduct a biannual  
11 evaluation of the impact of the Benefit Corporation Discount in City contracting. Thereafter,  
12 the HRC Director and the Controller shall conduct an annual evaluation. This report shall  
13 analyze Benefit Corporation participation levels by reviewing the number of City contracts  
14 awarded to Benefit Corporation bidders or proposers, including the size, type, and dollar  
15 amount of the contract; and analyzing the effectiveness of the third party verification  
16 mechanism for measuring whether Benefit Corporations awarded City Contracts are  
17 contributing to the community. This report may provide recommendations to the Board of  
18 Supervisors for amendments to this Ordinance.

19 (fi) Exceptions. This Ordinance Chapter shall not apply where the Contracting Awarding  
20 Authority finds that the requirements of this Ordinance Chapter would violate or conflict are  
21 inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or  
22 other grant awarding entity or the instructions of an authorized representative of any such agency with  
23 respect to any such grant, subvention or agreement, provided that the Contracting Awarding Authority  
24 shall make a good faith attempt to change the terms or conditions of any such grant, subvention or  
25 agreement to authorize application of this Ordinance Chapter.

1            (j) Severability. If any section, clause, phrase, or portion of this Ordinance Chapter is for  
2            any reason held invalid or unconstitutional by any court or Federal or State agency of competent  
3            jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such  
4            holding shall not affect the validity of the remaining portions thereof. To this end, the provisions of this  
5            Ordinance ordinance shall be deemed severable.

6            Section 3. Effective Date. This Ordinance shall become effective 30 days from the  
7            date of passage.

8            Section 4. Operative Date. This Ordinance shall become operative 90 days from the  
9            date of passage effective date of the Ordinance and shall expire three years thereafter unless  
10           extended by ordinance of the Board. Upon the expiration of this Ordinance, the City Attorney  
11           shall cause this Chapter to be removed from the Administrative Code.

12           Section 5. This section is uncodified. In enacting this Ordinance, the Board intends to  
13           amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
14           punctuation, charts, diagrams, or any other constituent part of the Administrative Code that  
15           are explicitly shown in this legislation as additions, deletions, Board amendment additions,  
16           and Board amendment deletions in accordance with the "Note" that appears under the official  
17           title of the legislation.

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

20           By: \_\_\_\_\_  
21           ALICIA CABRERA  
22           Deputy City Attorney



FILE NO.

## LEGISLATIVE DIGEST

[Administrative Code – Benefit Corporation Discount]

**Ordinance amending the San Francisco Administrative Code by adding Chapter 14C, Sections 14C.1 through 14C.3, to provide for a downward adjustment in price or upward adjustment in rating of a proposal or bid from a California Benefit Corporation for a competitively-solicited City contract.**

### Existing Law

Currently, the City does not apply an adjustment in price for bids or proposals submitted by a Benefit Corporation for a competitively-solicited City contract.

### Amendments to Current Law

Under the proposal, Contract Awarding Authorities would apply a downward adjustment in price or upward adjustment in rating of a proposal from a Benefit Corporation for purposes of determining the apparent highest ranked proposal or the apparent low bid. The proposed discount would apply to City contracts that exceed the Threshold Amount in Chapter 6 or the Minimum Competitive Amount in Chapter 21.

### Budget and Finance Committee Amendments

On March 14, 2012, Supervisor Chiu proposed the following amendments to this legislation:

- 1) Limit the application of the Benefit Corporation Discount to apply only if the application of the discount would not adversely impact the ranking for negotiation or award process of a bid or proposal submitted by a Micro-LBE, Small-LBE, SBA-LBE, or a California non-profit; and
- 2) Limit the Benefit Corporation Discount to all Contracts that exceed the Threshold Amount in Chapter 6 or the Minimum Competitive Amount in Chapter 21, but are less than \$10,000,000; and
- 3) Reduce the California Benefit Corporation Discount from eight percent (8%) to four percent (4%); and
- 4) Delete the provision that would have allowed companies receiving a Local Business Enterprise (Administrative Code 14B) bid discount or rating bonus from combining or aggregating discounts; and
- 5) Require businesses applying for the Benefit Corporation Discount to have been incorporated as a B Corporation for at least six (6) months preceding the application of the discount; and
- 6) For the first two years of the Ordinance, the Director of the Human Rights Commission in coordination with the Controller, shall conduct a biannual evaluation of the impact of the B

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Corporation Discount on 14B LBEs and City contracting. Thereafter, the Director shall conduct an annual evaluation.

During the March 14, 2012 Budget and Finance Committee, Supervisor Chiu asked the City Attorney's Office to include language that would: 1) expand the categories of protected businesses a Benefit Corporation could not displace to also include San Francisco Businesses; and 2) to require a Benefit Corporation to provide evidence, as determined by the Human Rights Commission, of third party verification.

On April 4, 2012 Supervisor Chiu revised the Ordinance to include findings and the following amendments:

- 1) HRC shall verify current Benefit Corporation status with the California Secretary of State; and
- 2) Prohibit application of the Benefit Corporation Discount to a Benefit Corporation that is a subsidiary of a non Benefit Corporation; and
- 3) Authorize HRC to implement rules and regulations consistent with the Ordinance for third party verification.

On April 11, 2012 Supervisor Chiu revised the Ordinance to include the following amendments:

- 1) To expand the category of protected businesses to include a regional business. A regional business is a business that has a principal place of business located in the geographic limits of the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Sonoma, and Sacramento; and
- 2) To include an operative date of 90 days from the effective date of the Ordinance; and
- 3) To include an expiration date of three years from the effective date unless extended by the ordinance of the Board.