[Reenacting a Disadvantaged Business Enterprise Program.]

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

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

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

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

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

1. The City and County of San Francisco and its departments are engaged on an ongoing basis in a large number of public services and projects that are vital to the health, safety and welfare of San Francisco and its citizens, such as the construction and repair of energy, water, and transportation equipment and facilities, and the provision of social, medical, public safety and other services to San Franciscans. Many of these services and projects are required or authorized by law.
2. In order to perform these services and accomplish these projects, the City often enters into contracts with outside entities. The ability to bid, negotiate, award and enforce contracts in a timely manner is often critical to the accomplishment of public projects and services. In order to receive funding and/or secure or maintain legal authorization to proceed, the City may be under an obligation to execute projects or deliver services according to a determined timeline. Failure to meet these requirements may jeopardize receipt of funding or authority to proceed with a needed project or service. Failure to proceed in a timely manner with public projects and services may jeopardize public health and safety, or damage public property.

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

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

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

6. The City is appealing the Superior Court's injunction. At the same time that the City is pursuing relief through the courts, on May 2, 2006, the Board of Supervisors passed
the Local Business Enterprise and Non-Discrimination in Contracting Ordinance ("Permanent Ordinance") as a permanent replacement for the Minority/Women/Local Business Utilization Ordinance. The Permanent Ordinance, which is awaiting the Mayor's signature, will enact the interim Disadvantaged Business Enterprise Program as a permanent ordinance applicable to City contracts issued between July 26, 2004 and September 1, 2006 and will establish a new, race and gender neutral, Local Business Enterprise and Non-Discrimination in Contracting Program for City contracts issued on or after September 1, 2006. The programs would not apply if the City is successful in its appeal and the Court lifts the injunction and upholds the Minority/Women/Local Business Utilization Ordinance.

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

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

This ordinance shall become effective and operative immediately upon passage, and shall expire upon the earlier of (1) the effective date of the Local Business Enterprise and
Non-Discrimination in Contracting Ordinance, or (2) the 61st day following passage unless reenacted as provided by Section 2.107 of the San Francisco Charter.

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

By:  
CATHARINE S. BARNES
Deputy City Attorney
Emergency ordinance reenacting a Disadvantaged Business Enterprise Program set forth in Chapter 14A of the San Francisco Administrative Code; suspending Chapter 12D.A; providing for data collection to ensure nondiscrimination in City contracting; and adopting a declaration of emergency.

May 16, 2006 Board of Supervisors — FINALLY PASSED
Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, Mirkarimi, Peskin, Sandoval
Excused: 2 - Daly, McGoldrick

File No. 060637

I hereby certify that the foregoing Ordinance was FINALLY PASSED on May 16, 2006 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

5/19/06
Date Approved

Mayor Gavin Newsom