

1 [Discrimination Based on Weight or Height]
2 AMENDING CHAPTER 12A OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY
3 AMENDING SECTIONS 12A.1, 12A.5, AND 12A.8 THEREOF, AMENDING CHAPTER 12B
4 OF THE SAN FRANCISCO ADMINISTRATIVE CODE BY AMENDING SECTIONS 12B.1
5 AND 12B.2 THEREOF, AMENDING CHAPTER 12C OF THE SAN FRANCISCO
6 ADMINISTRATIVE CODE BY AMENDING SECTIONS 12C.1 AND 12C.3 THEREOF AND
7 AMENDING ARTICLE 33 OF THE SAN FRANCISCO POLICE CODE BY AMENDING
8 SECTIONS 3303, 3304 AND 3305 THEREOF TO PROHIBIT DISCRIMINATION BASED ON
9 WEIGHT OR HEIGHT.

10 Note: Additions are underlined; deletions are in ((double parentheses)).
11 Be it ordained by the People of the City and County of San Francisco:

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

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

20 Such discriminatory practices are inimical to the public welfare and good order in that
21 they: (a) impede social and economic progress for the entire citizenry by preventing members
22 of minority groups from achieving full development of their individual potentialities and from
23 contributing fully to the cultural and business life of the community; (b) constantly frustrate,
24 degrade and embitter members of minority groups, thereby diminishing their initiative and
25 interests in the community; and (c) tend to create intergroup hostilities and antisocial behavior.

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

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

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

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

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

1 necessary to its inquiry; provided, however, that any such inquiry involving any agency, board,
2 or officer of the City and County shall be governed by the provisions of Subsection (f) hereof.
3 In case of the refusal of any person to attend or testify as required by a subpoena ad
4 testificandum issued by the Commission, the Commission may proceed to petition for a court
5 order pursuant to Section 1991 of the California Code of Civil Procedure.

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

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

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

19 (e) Cooperate with and make written recommendations to City and County
20 agencies, boards and officers, as well as the agencies, boards or officers operating under
21 State law within the City and County of San Francisco, towards the development and
22 implementation of programs and practices for the purpose of furthering the objectives of this
23 ordinance. The Commission and the affected agency, board or officer shall submit reports of
24 progress in establishing and implementing such programs and practices as are from time to
25 time requested by the Mayor through the chair of the Commission.

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

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

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

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

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

25 (2) Induce directly or indirectly or attempt to induce directly or indirectly the sale or

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

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

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

18
19 Section 2. Chapter 12B of the San Francisco Administrative Code is hereby amended
20 by amending Section 12B.1, to read as follows:

21 **SEC. 12B.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE**
22 **NONDISCRIMINATION PROVISIONS; DEFINITIONS.** (a) All contracting agencies of the
23 City, or any department thereof, acting for or on behalf of the City and County, shall include in
24 all contracts and property contracts hereinafter executed or amended in any manner or as to
25 any portion thereof, a provision obligating the contractor not to discriminate on the basis of the

1 fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex,
2 sexual orientation, gender identity, domestic partner status, marital status, disability, Acquired
3 Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association
4 with members of classes protected under this chapter or in retaliation for opposition to any
5 practices forbidden under this chapter against any employee of, any City employee working
6 with, or applicant for employment with such contractor and shall require such contractor to
7 include a similar provision in all subcontracts executed or amended thereunder.

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

1 contractor provides the employee with a cash equivalent.

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

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

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

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

17 "Commission" shall mean the Human Rights Commission of the City and County of
18 San Francisco.

19 "Contract" shall mean an agreement for public works or improvements to be performed,
20 or for goods or services to be purchased or grants to be provided, at the expense of the City
21 and County or to be paid out of moneys deposited in the treasury or out of trust moneys under
22 the control or collected by the City and County, and does not include property contracts,
23 agreements entered into after June 1, 1997 pursuant to settlement of legal proceedings,
24 contracts for urgent litigation expenses, or contracts for a cumulative amount of \$5,000 or less
25 per vendor in each fiscal year.

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

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

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

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

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

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

1 City right-of-way where a contracting utility has the power of eminent domain, or agreements
2 governing the use of City property which constitutes a public forum for activities that are
3 primarily for the purpose of espousing or advocating causes or ideas and that are generally
4 recognized as protected by the First Amendment to the U.S. Constitution, or which are
5 primarily recreational in nature.

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

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

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

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

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

21 (d) The requirements of this Chapter shall apply to (i) any of a contractor's
22 operations within San Francisco; (ii) a contractor's operations on real property outside of San
23 Francisco owned by the City or which the City has a right to occupy if the contractor's
24 presence at that location is connected to a contract or property contract with the City; (iii)
25 where the work is being performed by a contractor for the City within the United States; and

1 (iv) any of a contractor's operations elsewhere within the United States.

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

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

9 (a) The contractor or subcontractor will not discriminate against any employee, City
10 and County employee working with such contractor or subcontractor, or applicant for
11 employment with such contractor or subcontractor on the basis of the fact or perception of that
12 person's race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender
13 identity, domestic partner status, marital status, disability, AIDS/HIV status, weight, height, or
14 association with members of classes protected under this chapter or in retaliation for
15 opposition to any practices forbidden under this chapter. Discrimination on the basis of sex
16 includes sexual harassment as defined in Section 16.9-25(b) of this Code. The contractor or
17 subcontractor will take action to ensure that applicants are employed, and that employees are
18 treated equally during employment, without regard to the fact or perception of their race, color,
19 creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity,
20 domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such
21 action shall include, but not be limited to, the following: Employment, upgrading, demotion or
22 transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms
23 of compensation; and selection for training, including apprenticeship. Nothing in this Chapter
24 shall require or prohibit the establishment of new classifications of employees in any given
25 craft. The provisions of this Section with respect to age shall not apply to (1) termination of

1 employment because of the terms or conditions of any bona fide retirement or pension plan,
2 (2) operation of the terms or conditions of any bona fide retirement or pension plan which has
3 the effect of a minimum service requirement, and (3) operation of the terms or conditions of
4 any bona fide group or insurance plan. The contractor or subcontractor agrees to post in
5 conspicuous places, available to employees and applicants for employment, notices in such
6 form and content as shall be furnished or approved by the awarding authority setting forth the
7 provisions of this Section.

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

1 Director shall be the final arbiter of a contractor's or property contractor's compliance or
2 substantial compliance with this Chapter and the Director's determination shall not be
3 appealable to the Commission. Contractors shall treat as confidential to the maximum extent
4 allowed by law or the requirements of contractor's insurance provider any request by an
5 employee or applicant for employment for domestic partner or spousal benefits or any
6 documentation of eligibility for domestic partner or spousal benefits submitted by an employee
7 or applicant for employment.

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

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

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

24 (d) The contractor or subcontractor will in all solicitations or advertisements for
25 employees placed by or on his or her behalf, state that qualified applicants will receive

1 consideration for employment without regard to the fact or perception of their race, creed,
2 religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic
3 partner status, marital status, disability, weight, height, or AIDS/HIV status.

4 (e) The contractor or subcontractor will send to each labor union or representative
5 of workers with which he or she has a collective bargaining agreement or other agreement or
6 understanding, a notice, in such form and content as shall be furnished or approved by the
7 awarding authority, advising the said labor union or workers' representative of the contractor's
8 or subcontractor's commitments under this Section, and shall post copies of the notice in
9 conspicuous places available to employees and applicants for employment.

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

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

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

21 (2) A finding by the California Fair Employment and Housing Commission that a
22 contractor or subcontractor has violated any provision of the California Fair Employment and
23 Housing Act or the nondiscrimination provisions of this Chapter, provided that the California
24 Fair Employment and Housing Commission has issued a final order pursuant to Section
25 12970 of the Government Code, or has obtained a judgment and order enforcing the final

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

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

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

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

25 (6) The presiding officer of the Commission shall have the power to administer

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

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

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

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

23 (h) The awarding authority may deduct from the amount payable to the contractor or
24 subcontractor by the City under any contract or property contract subject to this Chapter, or
25 may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each

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

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

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

20 (k) The contractor or subcontractor will meet the following standards for
21 compliance:

22 (1) If the contractor or subcontractor has been held to be an irresponsible bidder
23 under Section 12B.2(i) hereof, the contractor or subcontractor shall furnish evidence that it
24 has established and is carrying out a program in conformity with the nondiscrimination
25 provisions of this Chapter.

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

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

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

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

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

20
21 Section 3. Chapter 12C of the San Francisco Administrative Code is hereby amended
22 by amending Sections 12C.1 and 12C.3, to read as follows:

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

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

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

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

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

23 (a) The contractor or subcontractor will not discriminate against any person seeking
24 accommodations, advantages, facilities, privileges, services, or membership in the business,
25 social or other establishment or organization operated by the contractor or subcontractor on

1 the basis of the fact or perception of that person's race, color, creed, religion, national origin,
2 ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status,
3 disability, AIDS/HIV status, weight, height, association with members of classes protected
4 under this chapter or in retaliation for opposition to any practices forbidden under this chapter.
5 Services provided by contractor or subcontractor to the public shall be provided regardless of
6 disability of persons otherwise entitled to or qualified for such services.

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

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

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

21 (2) Upon such finding by the Director or other official designated by the
22 Commission, the awarding authority shall notify the contractor or subcontractor that unless the
23 contractor or subcontractor demonstrates to the satisfaction of the Director or other official
24 designated by the Commission within such reasonable period as the Commission shall
25 determine, that the violation has been corrected, action will be taken as set forth in Section

1 12C.3(d) and/or Section 12C.3(g).

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

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

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

23 (6) All appeals to the Commission shall be open to the public. Records and minutes
24 shall be kept of such proceedings and shall be open to public inspection. Upon reaching a
25 decision in any appeal, the Commission shall give written notice thereof to the Director or

1 other official designated by the Commission, and the appellant or appellants. The decision of
2 the Commission shall be final unless within 15 days of the filing and service of written notice
3 thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party
4 to the contract, property contract or subcontract.

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

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

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

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

24 (f) The contractor or subcontractor will meet the following standards for
25 compliance:

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

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

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

21
22 Section 4. Article 33 of the San Francisco Police Code is hereby amended by
23 amending Sections 3303, 3304 and 3305 to read as follows:

24 **SEC. 3303. EMPLOYMENT. (a) Prohibited Activity.** It shall be unlawful for any
25 person to do any of the following acts wholly or partially based on actual or perceived race,

1 religion, color, ancestry, age, sex, sexual orientation, gender identity, disability, place of birth,
2 weight, height, association with members of classes protected under this chapter or in
3 retaliation for opposition to any practices forbidden under this chapter of an employee or
4 applicant for employment:

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

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

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

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

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

22 (ii) To print, publish, advertise or disseminate in any way, or cause to be printed,
23 published, advertised or disseminated in any way, any notice or advertisement with respect to
24 employment, membership in, or any classification or referral for employment or training by any
25 such organization, which indicates an unlawful discriminatory preference.

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

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

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

9 (c) **Exceptions.**

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

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

21 **SEC. 3304. HOUSING. (a) Prohibited Activity.** It shall be unlawful for any person to
22 do any of the following acts wholly or partially based on actual or perceived race, religion,
23 color, ancestry, age, sex, sexual orientation, gender identity, disability, place of birth, weight,
24 height, association with members of classes protected under this chapter or in retaliation for
25 opposition to any practices forbidden under this chapter:

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

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

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

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

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

20 (b) **Exceptions.**

21 (1) Nothing in this Article shall be construed to apply to the rental or leasing of any
22 housing unit in which the owner or any member of his or her family occupies one of the living
23 units and: (1) it is necessary for the owner to use either a bathroom or kitchen facility in
24 common with the prospective tenant; or (2) the structure contains less than three dwelling
25 units;

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

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

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

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

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

22 (3) To make, print, publish, advertise or disseminate in any way, or cause to be
23 made, printed, published, advertised or disseminated in any way, any notice, statement or
24 advertisement with respect to any business establishment or public accommodation which
25 indicates that the full enjoyment of such establishment or accommodation will be unlawfully

1 refused an individual.

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4 APPROVED AS TO FORM:

5 LOUISE H. RENNE, City Attorney

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8 By:



SUSAN L. FRANKEL
Deputy City Attorney

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City and County of San Francisco

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

Tails

Ordinance

File Number: 000476

Date Passed:

Ordinance amending Chapter 12A of the San Francisco Administrative Code by amending Sections 12A.1, 12A.5, and 12A.8, amending Chapter 12B by amending Sections 12B.1 and 12B.2, amending Chapter 12C by amending Sections 12C.1 and 12C.3, and amending Article 33 of the San Francisco Police Code by amending Sections 3303, 3304 and 3305 to prohibit discrimination based on weight or height.

May 8, 2000 Board of Supervisors — PASSED ON FIRST READING


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

May 15, 2000 Board of Supervisors — FINALLY PASSED

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

File No. 000476


I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on May 15, 2000 by
the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board

MAY 26 2000

Date Approved



Mayor Willie L. Brown Jr.