FILE NO. 990298

ORDINANCE NO. 108-99

1 [Card Check Ordinance]

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AMENDING ARTICLE VII, CHAPTER 23, PART I OF THE SAN FRANCISCO MUNICIPAL CODE (ADMINISTRATIVE CODE) BY AMENDING SECTIONS 23.32, 23.33 AND 23.34 OF THE ORDINANCE GOVERNING LABOR REPRESENTATION PROCEDURES IN HOTEL AND RESTAURANT DEVELOPMENTS IN WHICH THE CITY HAS AN ONGOING PROPRIETARY INTEREST (THE "CARD CHECK ORDINANCE") IN ORDER TO CLARIFY CERTAIN DEFINED TERMS, NOTICE REQUIREMENTS, CONTRACT LANGUAGE REQUIREMENTS, EXEMPTIONS AND APPLICABILITY OF ORDINANCE TO PRE-EXISTING AGREEMENTS AND BY ADDING SECTIONS 23.36 AND 23.37 REGARDING EFFECTIVE DATE, APPLICABILITY AND SEVERABILITY.

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. Article VII of the San Francisco Administrative Code is hereby amended by amending Sections 23.32, 23.33 and 23.34, to read as follows:

SEC. 23.32. DEFINITIONS. For purposes of this Article, the following definitions shall apply:

- "Card check agreement" means a written agreement between an employer and (1) a labor organization providing a procedure for determining employee preference on the subject of whether to be represented by a labor organization for collective bargaining, and if so, by which labor organization to be represented, which provides, at a minimum, the following:
- (a) Determining employee preference regarding union representation shall be by a card check procedure conducted by a neutral third party in lieu of a formal election;
 - (b) All disputes over interpretation or application of the parties' card check

SUPERVISOR KATZ, BIERMAN, AMMIANO, YEE **BOARD OF SUPERVISORS**

agreement, and over issues regarding how to carry out the card check process or specific card check procedures shall be submitted to binding arbitration;

- (c) Forbearance by any labor organization from economic action against the employer at the worksite of an organizing drive covered by this Article, and in relation to an organizing campaign only (not to the terms of a collective bargaining agreement), so long as the employer complies with the terms of the card check agreement;
- (d) Language and procedures prohibiting the labor organization or the employer from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a bargaining representative.
- (2) "City contract" means a lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement to which the City is a party and in which the City has a proprietary interest.
- (3) "Collective bargaining agreement" means an agreement between an employer and a labor organization regarding wages, hours and other terms and conditions of employment of the employer's employees. For purposes of this Article, a collective bargaining agreement does not include a card check agreement as defined herein.
- (4) "Developer" means any person, corporation, association, general or limited partnership, limited liability company, joint venture or other entity which does or which proposes to purchase, lease, develop, build, remodel or otherwise establish a hotel or restaurant project.
- (5) "Economic action" means concerted action initiated or conducted by a labor union and/or employees acting in concert therewith, to bring economic pressure to bear against an employer, as part of a campaign to organize employees or prospective employees of that employer, including such activities as striking, picketing, or boycotting. A lawsuit to enforce this Article is not "economic action."

- (6) "Employer" means any developer, manager/operator or subcontractor who employs individuals in a hotel or restaurant in a hotel or restaurant project.
- (7) "Hotel or restaurant project" means a development project or facility in which the City has a proprietary interest and which contains a hotel or restaurant. For purposes herein a "hotel" shall mean any use or facility falling within either definition of Section 314.1(g) or (h) of the San Francisco Planning Code. For purposes herein a "restaurant" shall mean any facility that has as its principal purpose the sale of food and beverage for primarily on-site consumption, including any such facility operating within or as part of another facility, such as a stadium, hotel or retail store. A hotel or restaurant project, as defined herein, includes a mixed-use development project in which the City has a proprietary interest which contains a hotel or restaurant, regardless of whether the City's proprietary interest is in the hotel or restaurant portion of such mixed use development or the mixed-use development project as a whole. Notwithstanding the foregoing or anything else contained herein, the requirement in this Article that an employer enter into a card check agreement shall apply only to those employers who employ employees in a hotel or restaurant and shall not apply to those portions of a mixed-use development project which do not contain a hotel or restaurant.
- (8) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (9) "Manager/operator" means any person, corporation, association, limited or general partnership, joint venture or other entity (including a developer) that operates or manages a hotel or restaurant in a hotel or restaurant project, or provides any material portion of the services provided by such hotel or restaurant in a hotel or restaurant project, whether by subcontract or City contract.

- (10) "Proprietary interest" means any nonregulatory arrangement or circumstance in which the financial or other nonregulatory interests of the City in a hotel or restaurant project could be adversely affected by labor/management conflict or consumer boycotts potentially resulting from a union organizing campaign, in the following circumstances:
- (i) The City receives significant ongoing revenue (such as rent payments) under a lease of real property owned by the City for the development of a hotel or restaurant project, excluding government fees or tax or assessment revenues, or the like (except for tax revenues under the circumstances specified in (ii)); or
- (ii) The City receives ongoing revenue from a hotel or restaurant project to pay debt service on bonds or loans provided by the City to assist the development of such hotel or restaurant project (including incremental tax revenues generated by the hotel or restaurant project or the development project in which it is located and used, directly or indirectly, to pay debt service on bonds or to repay a loan by the City where the proceeds are used for development of that hotel or restaurant project or the development project in which it is located);
- (iii) The City has agreed to underwrite or guarantee the development or operation of a hotel or restaurant project, or loans related thereto.

In addition to the circumstances described in (i) — (iii) above, the City shall be deemed to have a proprietary interest in a hotel or restaurant project if the City determines or an interested party demonstrates prior to the effective date of the subcontract or City contract pursuant to which a hotel or restaurant will be operated in a hotel or restaurant project that there is a significant risk that the City's financial or other nonregulatory interest in a hotel or restaurant project could be adversely affected by labor/management conflict or consumer boycotts potentially resulting from a union organizing campaign except that no circumstance or arrangement shall be considered "financial or non-regulatory" under this definition if it is

such that arises from the exercise of regulatory or police powers such as taxation, (except as provided in (ii) above), zoning or the issuance of permits and licenses.

- (11) "Subcontract" means any lease, sublease, management agreement or other similar agreement between a developer or a manager/operator and a subcontractor which contemplates or permits the subcontractor to operate or manage <u>all or a portion of</u> a hotel or restaurant in a hotel or restaurant project.
- (12) "Subcontractor" means any person, corporation, association, limited or general partnership, limited liability company, joint venture or other entity that enters into a subcontract with a developer or manager/operator.
- (13) "Substantial Amendment" to a Pre-Existing Agreement, for purposes of the exemption for Employers operating before the effective date of this Chapter in Section 23.34(b)(2) and Section Two of this Ordinance, means an amendment to or renewal or extension of a Pre-Existing Agreement that provides for or permits any of the following:
 - (a) a change in use within the scope of this Article (i.e., which provides for the operation of a hotel or restaurant);
 - (b) an increase in square footage, seating or rooms of more than 25%; except neither of the following, by themselves, shall constitute a "Substantial Amendment:
 - (i) addition of outside seating or patio dining which increases the total seating or square footage devoted to seating by less than 25%
 - (ii) an increase in space for purpose of parking or storage; or
 - (c) a new lease period of greater duration than the period provided in the Pre-Existing Agreement.

SEC. 23.33. POLICY, REQUIREMENTS AND PROCEDURES TO MINIMIZE

LABOR/MANAGEMENT CONFLICT WHEN CITY HAS PROPRIETARY

INTEREST. (a) General Policy. The Board of Supervisors declares as a matter of general policy that when the City retains or acquires a proprietary interest in a hotel or restaurant project, it is essential for the protection of the City's investment and/or business interests to require that employers operating a hotel or restaurant in such hotel or restaurant project agree to abide by card check procedures for determining employee preference on the subject of labor union representation, as specified in this Article.

- (b) Primary Obligations. Pursuant to the policy stated in Subsection (a), ((and except as provided in Section 23.34(b),)) the following requirements are imposed, except no Employer, Developer or Manager/Operator shall be responsible for obligations under this Article if that person or entity is otherwise exempt from those obligations pursuant to Section 23.34(b), or if the City does not have a Proprietary Interest in the subject Hotel or Restaurant Project:
- (1) Employers. An employer of employees working in a hotel or restaurant in a hotel or restaurant project, shall:
- (i) Enter into a card check agreement, as specified in this Article, with a labor organization which requests such an agreement for the purpose of seeking to represent those employees before executing the subcontract or City contract pursuant to which it will operate a hotel or restaurant in a hotel or restaurant project;
- (ii) If the parties are unable to agree to the terms of a card check agreement within 60 days of the commencement of such negotiations, they must enter into expedited binding arbitration in which the terms of a card check agreement will be imposed by an arbitrator. In such proceedings, to be conducted by an experienced labor arbitrator selected as provided by the rules of the American Arbitration Association or equivalent organization, the arbitrator shall

consider any model card check agreement provided by the City and/or to prevailing practices and the terms of card check agreements in the same or similar industries, except that such card check agreement must include the mandatory terms identified in Section 23.32(1);

- (iii) Comply with the terms of that card check agreement and this Article; and
- (iv) Include in any subcontract ((with a subcontractor)) which contemplates or permits a Subcontractor to operate or manage a hotel or restaurant in a Hotel or Restaurant Project, as defined herein, or to provide a service essential to the operation of such a hotel or restaurant, a provision requiring that subcontractor to comply with the requirements provided in this Article. This provision shall be a material and mandatory term of such subcontract, binding on all successors and assigns, and shall state (modified as necessary to accommodate particular circumstances):

"The City and County of San Francisco has enacted an Ordinance at Chapter 23, Article V of its Administrative Code, commencing at Section 23.31, which may apply to [Subcontractor]. Its terms are expressly incorporated by reference hereto. To the extent [Subcontractor] or its successors or assigns employs employees in a hotel or restaurant in [this facility] within the scope of that Ordinance, [Subcontractor] hereby agrees as a material condition of this [Subcontract] to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent [Subcontractor's] employees, if and as required by that Article, and to otherwise fully comply with the requirements of that Article. [Subcontractor] recognizes that, as required by that Article, it must enter into a Card Check Agreement with a Labor Organization(s) as specified by that Article before executing this [Subcontract], and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this [Subcontract]."

Notwithstanding the requirements provided in (i) — (iv), any employer who has in good faith fully complied with those requirements will be excused from further compliance as to a labor organization which has taken economic action against that employer at that site in furtherance of a campaign to organize that employer's employees at that site for collective bargaining. This clause shall not be interpreted, however, to apply to economic action against an employer at other locations where that employer does business, or at any location for purposes other than organizing the employer's employees; nor shall economic action by one labor organization excuse an employer from the obligations of this Article or a card check agreement as to a different labor organization.

- (2) Developers and Manager/Operators. Any developer or manager/operator of a hotel or restaurant project must:
- (i) To the extent it employs employees in a hotel or restaurant in a hotel or restaurant project, abide by the requirements stated in Subsection (1);
- (ii) Include the provision specified in (1)(iv) in any subcontract, modified as necessary to accommodate the circumstances of that particular subcontract;
- (iii) Refrain from executing a subcontract by which an employer subject to (1) is authorized or permitted to operate a hotel or restaurant in a hotel or restaurant project until that employer has entered into a card check agreement with a labor organization, as required in (1);
- (iv) Notify local labor council(s) and/or federation(s) of any hotels(s) or restaurant(s) and/or any employer(s) that will operate a hotel or restaurant in a hotel or restaurant project which may be subject to the requirements of (1), as soon as the developer or manager/operator identifies such hotel(s) or restaurant(s) or employer(s), but in no event later than 21 days before requiring an employer to sign a subcontract. This notification requirement applies only to hotels or restaurants or employers that will operate in a Hotel or

Restaurant Project, as defined herein and only where the City's proprietary interest is based on a lease, a loan or a guarantee, as specified in Section 23.32(10)(i)-(iii);

- (v) Inform any prospective subcontractor, that if the subcontractor acts as an employer subject to the requirements of (1), it must enter into a card check agreement pursuant to this Article before it may execute the subcontract, and as a condition precedent to any rights or obligations under such document;
- (vi) Take reasonable steps to enforce the ef terms of any subcontract requiring compliance with this Article. To the extent a developer or manager/operator is found to have intentionally aided, abetted or encouraged a subcontractor's failure to comply with such a provision or the terms of this Article, either by action or inaction, that developer or manager/operator shall be jointly and severally liable for all damages awarded pursuant to Section 23.35.
 - (3) The City.
- (i) City Contracts. Any City contract executed under the authority of any commission, department, authority or officer of the City, which contemplates the use or operation of a hotel or restaurant in a hotel or restaurant project must include a provision requiring that any developer or operator/manager of a hotel or restaurant project pursuant to that City contract, and any employer(s) operating in such hotel or restaurant project, agree to comply with the requirements imposed in Subsections (1) and (2), as essential consideration for the City entering into the City contract.
- (ii) Model Card Check Agreement. To facilitate the requirements imposed by this Section, the City's Mayor or the Mayor's designee may provide a model recommended card check agreement that includes the mandatory terms identified in Section 23.32(1) and which provides the maximum protection against labor/management conflict arising out of an organizing drive, and make such model recommended agreement available to parties

required to enter into such agreement. The City may also prepare guidelines establishing standards and procedures related to this Article. Notwithstanding this provision regarding the preparation of a model card check agreement or related guidelines, this Article shall be self-executing, and shall apply in all circumstances and to the extent provided in this Article, in the absence of or regardless of such model card check agreement or guidelines.

- (iii) Requests for Proposals ("RFPs"). Any commission, department, authority or officer of the City which issues a request for proposals or invitation to bid or similar document regarding development of City property which could result in a proposal contemplating operation of a hotel or restaurant project after the effective date of this ordinance, must include in such document a summary description of and reference to the policy and requirements of this Article. Failure to include description or reference to this Article in an RFP or similar document shall not exempt any developer, manager/operator or employer otherwise subject to the requirements of this Article.
- apply to particular developers, manager/operators and employers whenever the City has a proprietary interest in a hotel or restaurant project, except as otherwise provided hereunder. The determination whether or not the City has a proprietary interest in a hotel or restaurant project, and if so, whether an exemption applies under Section 23.34(b), shall be made on a case-by-case basis by the Mayor or the Mayor's designee by applying the standards and principles described herein and any further standards and principles provided in guidelines distributed pursuant to Section 23.33(b)(3)(ii) hereof. Any party otherwise subject to the terms of this Article because the City has a proprietary interest in a hotel or restaurant project defined in Section 23.32(10)(i) (iii) above that claims an exemption from the terms of this Article under Section 23.34 below shall have the burden of demonstrating that the basis for such exemption is clearly present.

SEC. 23.34. SCOPE AND EXEMPTIONS. (a) Scope. The requirements of this Article apply only to the procedures for determining employee preference regarding whether to be represented by a labor organization for purposes of collective bargaining and/or by which labor organization to be represented. Accordingly, this Article does not apply to the process of collective bargaining in the event a labor organization has been recognized as the bargaining representative for employees of employers subject to this Article. Moreover, nothing in the Article requires an employer or other entity subject to this Article to recognize a particular labor organization; nor does any provision of this Article require that a collective bargaining agreement be entered into with any labor organization, or that an employer submit to arbitration regarding the terms of a collective bargaining agreement.

- (b) Exemptions. The requirements of this Article shall not apply to:
- (1) Employers employing fewer than the equivalent of 50 full-time or part-time employees, provided that: (i) when a restaurant is located on the same premises as the a hotel and routinely provides food or beverage services to the hotel's guests, employees of the restaurant and hotel shall be aggregated for purposes of determining the applicability of this ordinance; (ii) all employees employed in all restaurants which operate under the jurisdictional control of the San Francisco Airport Commission and which are owned, operated or managed by the same owner, operator or manager shall be aggregated for purposes of determining the applicability of this Ordinance; or
- (2) Employers commencing operation in a hotel or restaurant in a hotel or restaurant project before the effective date of this Ordinance, or a hotel or restaurant project under any subcontract or City contract entered into before the effective date of this ordinance, ((or renewed without substantial amendment after such effective date)) ("Pre-Existing Agreement"). This exemption applies to an Employer and to his or her family for the duration of such Pre-Existing Agreement, unless it is amended during its term resulting in a Substantial

Amendment, as defined in Section 23.32(13). This exemption shall apply beyond the expiration of the Pre-Existing Agreement if it is renewed or extended without a change in ownership of the Employer, and without changes resulting in Substantial Amendment, as defined in Section 23.32(13). For purposes of this exemption, "change in ownership" shall mean a change in ownership, from the effective date hereof, of 25% or more, unless such change is among members of the same family; or

- (3) Any employer which is signatory to a valid and binding collective bargaining agreement covering the terms and conditions of employment for its employees at that hotel or restaurant project, or which has entered into a card check agreement with a labor organization regarding such employees which agreement provides at least equal protection from labor/management conflict as provided by the minimum terms provided in Section 23.32(1); or
- (4) Any hotel or restaurant project where the Mayor or the Mayor's designee determines that the risk to the City's financial or other nonregulatory interest resulting from labor/management conflict is so minimal or speculative as not to warrant concern for the City's investment or other nonregulatory interest; or
- (5) Any hotel or restaurant project where the developer, manager/operator or employer, is an agency of the federal government or a statewide agency or entity ("public agency") and that public agency would prohibit application of this Article; or
- (6) Any hotel or restaurant project where the requirements of this Article would violate or be inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency related to such hotel or restaurant project, or any related rules or regulations; or
- (((7) Any hotel or restaurant project located on property under the jurisdictional control of the San Francisco Airport Commission.))

Section 2. Article VII of the San Francisco Administrative Code is hereby amended by adding Sections 23.36 and 23.37 to read as follows:

SEC. 23.36. EFFECTIVE DATE AND APPLICATION. This Ordinance shall become effective 30 days after it is enacted, is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any Pre-Existing Agreement to which the City is a party, unless such Pre-Existing Agreement has been Substantially Amended after the effective date of this Ordinance.

SEC. 23.37. SEVERABILITY. If any part or provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

APPROVED AS TO FORM:

LOUISE H. RENNE, City Attorney

By:

JONATHAN HOLTZMAN Deputy City Attorney

SUPERVISOR KATZ BOARD OF SUPERVISORS



City and County of San Francisco

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

Tails

Ordinance

File Number:

990298

Date Passed:

Ordinance amending Administrative Code Sections 23.32, 23.33, 23.34 of the ordinance governing labor representation procedures in hotel and restaurant developments in which the City has an ongoing proprietary interest (The Card Check Ordinance) in order to clarify certain defined terms, notice requirements, contract language requirements, exemptions and applicability of ordinance to pre-existing agreements and by adding Sections 23.36 and 23.37 regarding effective date, applicability and severability.

April 19, 1999 Board of Supervisors — PASSED ON FIRST READING

Ayes: 7 - Ammiano, Becerril, Brown, Katz, Leno, Yaki, Yee

Noes: 1 - Kaufman

Absent: 3 - Bierman, Newsom, Teng

April 26, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Leno, Newsom, Teng,

Yaki, Yee

Noes: 1 - Kaufman

File No. 990298

I hereby certify that the foregoing Ordinance was FINALLY PASSED on April 26, 1999 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young

Clerk of the Board

MAY - 7 1999

Date Approved

Mayor Willie L. Brown Jr.

FILE NO	990377	
Governmen		

ORDINANCE NO. 109-99 RO#98083 SA#17

2	APPROPRIATING \$600,000 OF FEDERAL AND STATE PUBLIC ASSISTANCE FOR THE ADAPTATION AND INSTALLATION OF SAN FRANCISCO'S COMPUTER ASSISTED SUPPORT ENFORCEMENT SYSTEM (CASES), A CHILD SUPPORT OPERATING SYSTEM THROUGHOUT THE CALIFORNIA COUNTIES FOR THE DISTRICT ATTORNEY FOR FISCAL YEAR 1998-99.				
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4	Be it ordained by the people of the City and County of San Francisco:				
5	Section 1. Funds are hereby appropriated for FY 1998-99 as follows:				
6	Department and Number	Source of Funds and Purpose of Appropriation	Amount <u>Debit</u>	<u>Credit</u>	
7	<u>Fund</u>	Department	Program		
8	1G-AGF-FAM General Fund-	DAT02 Family Support	CAR Cases Consortium		
9	DA-Family Support				
ιο	Funding Sources				
l1 l2	400-40199 (045014)	Other Federal Public Assistance Administration Program	\$396,000		
13	450-45299 (045014)	Other State Public Assistance Program	\$204,000		
14	Funding Uses				
l 5 l 6	021-02700 (045014)	Other Professional Services		\$600,000	
17		Total	\$600,000	\$600,000	
18			FUNDS AVAILABLE		
19	APPROVED AS TO FORM: LOUISE H. RENNE, CITY ATTORNEY		EDWARD M. HARRINGTON CONTROLLER		
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21	BY: \591		BY: Sawall Jam		
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BOARD OF SUPERVISORS

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City and County of San Francisco Tails

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

Ordinance

File Number:

990377

Date Passed:

Ordinance appropriating \$600,000, District Attorney, of Federal and State Public Assistance for the adaptation of San Francisco's Computer Assisted Support Enforcement System (CASES), a child support operating system throughout the California counties for fiscal year 1998-1999.

April 19, 1999 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 8 - Ammiano, Becerril, Brown, Katz, Kaufman, Leno, Yaki, Yee

Absent: 3 - Bierman, Newsom, Teng

April 26, 1999 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom,

Yaki, Yee

Absent: 1 - Teng

File No. 990377

I hereby certify that the foregoing Ordinance was FINALLY PASSED on April 26, 1999 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young

Clerk of the Board

MAY - 7 1999

Date Approved

Mayor Willie L. Brown Jr.