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contract with any contractor that discriminates in the provision of . . . health benefits . . . pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses . . ."

Both ordinances provide that noncompliance with the ordinance may be deemed a material breach of the contract. Los Angeles' ordinance requires an explicit provision in all contracts worth more than \$5,000 that states, "During the performance of this contract, the contractor certifies and represents that the contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." San Francisco's ordinance simply requires every contract to incorporate its provisions by reference. Both ordinances state that any subcontracts must contain a clause requiring the subcontractor to comply with the same equal benefits provision with which the contractor must comply. Neither ordinance contains a religious exemption.

Seattle Municipal Code Chapter 20.45 provides that, "No contractor on a City contract shall discriminate in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse . . ." The ordinance only applies to contracts valued above the city's competitive bid threshold (\$33,000 or more in 1999). The ordinance states that all contracts awarded by the city "shall contain provisions developed by the [Executive Services Department] prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof . . ." Seattle's ordinance does not contain a religious exemption, though there are selected instances where the ordinance has not been applied to contracts with faith-based organizations, on an ad hoc, informal basis.

The effect of these ordinances is to require all organizations contracting with the city to provide equal benefits to the domestic partners of their employees. Compliance with these equal benefits ordinances would clearly undermine the theological foundations of many non-profit, religious organizations. Since there is no religious exemption to ordinances like this, there are instances where non-profit religious organizations--left with no choice--have abandoned their important community-building roles in these cities.

B. Antidiscrimination Ordinances

There are three types of ordinances requiring contractual clauses that protect the category of sexual orientation against discrimination. First, about 50 ordinances specifically require nondiscrimination clauses in contracts with the state or local government. In the antidiscrimination ordinance spreadsheet, these ordinances are indicated by a "Yes" under the column entitled, "Expressly relates to K (contract)."

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Second, about 55 ordinances contain a broad ban on employment discrimination on the basis of sexual orientation. These types of broad bans may also be a source of the contractual clauses. In the spreadsheet, these ordinances are indicated by a "Yes" under the column entitled, "Employment Discrimination (Implied)." Third, about 5 ordinances exempt religious organizations from the requirement of antidiscrimination clauses in contracts that protect sexual orientation. In the spreadsheet, these ordinances are indicated by a "Yes" under the column entitled, "Religious Exempt," but only where there is also a "Yes" under the column entitled, "Expressly relates to K (contract)."

Many ordinances extend protections for the category of sexual orientation to all contracts with the state or local government. For example, Dane County, Wisconsin extends its policy to the county's "contracting agencies and their contractors and their unions." Dane County Ordinance, Ch. 19.50. The City of Albany, New York extends protection to any contractual agreement, or grant of funds, by or on behalf of the City of Albany.¹ Code of the City of Albany, New York, Ch. 48, Art. III, § 48-26. The State of Connecticut extends protection to every contract to which the state or any political subdivision of the state is a party. Conn. Gen. Stat. § 4a-60a.

These ordinances are typically crafted to apply to all contracts in which the state or local government grants funds or contracts for services. The ordinances clearly involve all contracts that the state or local government has with service providers and with those receiving funds, including non-profit organizations. Broadly speaking, these ordinances apply even when the funds do not originate with the state or local government, but simply "pass through" the state or local government to the recipient organization.

A small number of state and local governments have included an exemption for faith-based, non-profit organizations. For example, the State of Connecticut provides an exemption for religious organizations with respect to "the employment of individuals to perform work connected with the carrying on by such [organization] of its activities, or with respect to matters of discipline, faith . . . or law which are established by such [organization]." Conn. Gen. Stat. § 46a-81p. Some exemptions are considerably narrower,

¹ The ordinance states that, "Any contractual agreement entered into, or award or grant of funds, by or on behalf of the City of Albany for the provision of city services, shall . . . stipulate that the contractor, awardee or grantee shall not engage in a discriminatory practice prohibited by this article." Code of the City of Albany, New York, Ch. 48, Art. III, § 48-26. Albany's ordinance elsewhere prohibits discrimination on the basis of sexual orientation. Id. at § 48-2.

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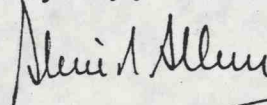
but nonetheless may be interpreted to apply to religious organizations in certain circumstances. For example, the City of Alexandria provides an exemption where "religion . . . is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor." Human Rights Code of the City of Alexandria § 12-4-6. Only about 5 out of the 50 ordinances specifically exempt religious organizations from including an antidiscrimination clause protecting sexual orientation in their contracts.

We hope that this helps present a clearer picture of the nature of these ordinances that present a substantial roadblock to the ability of non-profit religious organizations to continue their vital work. We continue to look forward to our upcoming meeting with you.

In the mean time, if we can assist you further or clarify anything, please do not hesitate to let me know.

With my warmest regards.

Very truly yours,



Blair R. Allan
Of Counsel

cc: Mr. Don Eberly (encl.)
Mr. Stanley Carlson-Thies (encl.)
Captain George Hood (encl.)

Enclosures:

Los Angeles Administrative Code Section 10.8.2.1 et seq.
San Francisco Administrative Code Chapter 12B
Seattle Municipal Code Chapter 20.45
Antidiscrimination Ordinance Spreadsheet (by facsimile)

ORDINANCE NO. 172908

An ordinance adding Section 10.8.2.1 to the Los Angeles Administrative Code to provide that City contractors and sub-contractors shall not discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. Section 10.8.2.1 is hereby added to the Los Angeles Administrative Code to read as follows:

Sec. 10.8.2.1 Equal Benefits Ordinance.

a. All Contracts: Equal Benefits Clause.

No awarding authority of the City, shall execute or amend any contract with any contractor that discriminates in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any other benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, or an internal registry maintained by the contractor, subject to the provisions of this Section. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent to the direct expense to the employer of providing the benefit payment to a spouse or domestic partner, as applicable.

b. Applicability.

The requirements of this Section shall apply to (i) any of a contractor's operations within the City of Los Angeles; and (ii) a contractor's operations on real property outside of the City of Los Angeles owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to a contract with the City; (iii) a contractor's operations elsewhere in the United States where the work is being performed for the City.

c. Mandatory Provisions Pertaining to Equal Benefits.

Every contract with or on behalf of the City of Los Angeles for which the consideration is in excess of \$5,000 shall contain the following provisions which shall be designated as the Equal Benefits Provisions of such contract:

"A. During the performance of this contract, the contractor certifies and represents that the contractor will provide equal benefits to its employees with spouses and its employees with domestic partners.

1. The contractor agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.

"B. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices to the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Equal Benefits Provisions of this contract, and on their or either of their request to provide evidence that it has complied or will comply therewith.

"C. The failure of any contractor to comply with the Equal Benefits Provisions of this contract may be deemed to be a material breach hereof. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.

"D. Upon a finding duly made that the contractor has breached the Equal Benefits Provisions of this contract, this contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder pursuant to the provisions of Section 386 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until it shall establish and carry out a program in conformance with the provisions hereof.

"E. Notwithstanding any other provisions of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

"F. Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

"G. The equal benefits requirements of this section shall not apply to collective bargaining agreements in effect prior to the effective date of Section 10.8.2.1 of the Los Angeles Administrative Code. Amendments, extensions or other modifications of such collective bargaining agreements, occurring subsequent to the effective date of that section, shall incorporate the equal benefits requirements of that section."

"H. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City."

*Sub-
contracts.*

d. Enforcement.

In accordance with Division 22, Chapter 13, Article 10, of this Code, the Board of Public Works, Office of Contract Compliance is responsible for the enforcement of the equal benefits requirements, as referenced in this Section, or as otherwise required, of all City contracts. In enforcing this requirement, the Office of Contract Compliance will monitor, inspect, and investigate to insure that the contractor is acting in compliance with the equal benefits requirements of such City contracts. The Office of Contract Compliance shall promulgate rules and regulations and forms for the implementation of the Equal Benefits Provisions of this contract. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program. Each awarding authority shall cooperate to the fullest extent with the Office of Contract Compliance in their enforcement activities. The failure of any contractor to comply with the equal benefits provisions of a contract may be deemed to be a material breach of the contract.

e. Non-applicability, Exceptions and Waivers.

(1) The Office of Contract Compliance shall waive the requirements of this Section under the following circumstances:

A. Whenever the Office of Contract Compliance finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

B. If the awarding authority certifies in writing to the Office of Contract Compliance that the contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Section capable of responding to the emergency is immediately available; provided that such certification must be made prior to the final approval of the contract.

C. Where the City Attorney certifies in writing to the Office of Contract Compliance that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Section.

(2) This Section shall not apply where the prospective contractor is a public entity and the Office of Contract Compliance finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract are not available from another source, or that the proposed contract is necessary to serve a substantial public interest;

(3) This Section shall not apply where the awarding authority finds that the requirements of this Section will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the awarding authority has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Section.

(4) Upon the request of a potential contractor or upon the awarding authority's own initiative, after taking all reasonable measures to find an entity that complies with the law, and subject to the provisions of paragraph (5) below, the awarding authority may waive any or all of the requirements of this Section for any contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

A. Where the awarding authority determines that there are no qualified responsive bidders or prospective contractors who could be certified as being in compliance with the requirements of this Section and that the contract is for goods, a service or a project that is essential to the City or City residents; or

B. Where the awarding authority determines that transactions entered into pursuant to bulk purchasing arrangements through federal, state or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

C. Where the awarding authority determines that the requirements of this Section would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Section, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Section.

(5) The waiver authority granted to awarding authorities in this Section shall be subject to the requirements that:

A. All proposed waivers must be submitted to the Office of Contract Compliance and the City Clerk. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Section and why the waiver does not defeat the intent of this Section, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Section. Such waivers shall be subject to the prior approval of the Office of Contract Compliance, which shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Office of Contract Compliance has taken no action on the proposed waiver the waiver shall be deemed approved. The City Clerk shall notify all Council members of the proposed waiver.

B. For any contract subject to approval by the Council, the awarding authority shall state in the approving resolution or other action whether any waiver under this section has been or is proposed to be granted for that contract; and

C. The Office of Contract Compliance shall conduct quarterly comprehensive reviews of the use of the waiver authority by awarding authorities and shall make a report to the Council. Awarding authorities which have exercised their waiver authority under this Section in the previous quarter must appear before the Council Committee before which the matter is calendared and report on the use of such waiver authority. If the Council finds abuse of waiver authority by an awarding authority under this section, either as a result of a report of the Office of Contract Compliance or upon its own initiative, the Council may by resolution transfer that waiver authority for that awarding authority to the

Office of Contract Compliance, to be exercised by the Office of Contract Compliance upon recommendation of the awarding authority under any or all of the circumstances enumerated in this section.

(6) Nothing in this section shall limit the right of the City to waive the provisions of this Article.

(7) This Section shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

A. No person, entity or financial institution doing business in the City which is in compliance with this Section is capable of performing the desired transaction(s); or

B. The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Section.

(8) The General Manager of the Department of Water and Power may waive the requirements of this Section where the contractor is providing wholesale or bulk water or power, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the Department of Water and Power; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City of Los Angeles.

(9) The equal benefits requirements of this section shall not apply to any contracts, executed or amended prior to January 1, 2000 or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City, prior to January 1, 2000, unless and until such contracts are amended after January 1, 2000, and would otherwise be subject to this Section.

f. The provisions of this Section shall not apply where the application of these provisions would violate or be inconsistent with the laws, rules or regulations of the United States of America.

g. **Severability.**

If any provision of this section is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

#49686

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than two-thirds of all of its members, at its meeting of

NOV 17 1999

J. MICHAEL CAREY, City Clerk

By Maria Kosterich
Depury

Approved NOV 23 1999

[Signature]
Mayor

Approved as to Form and Legality

JAMES K. HAHN, City Attorney

By [Signature]

LESLIE E. BROWN
Assistant City Attorney

File No. 99-0908

ORDINANCE NO. 172909

An ordinance amending Section 10.8.1 of the Los Angeles Administrative Code to add the definitions of "Domestic Partners."

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS

Section 1. Section 10.8.1 of the Los Angeles Administrative Code is hereby amended by adding the following subsection:

"Domestic partners" means, for purposes of this Article, any two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, who live together, and who have agreed to be jointly responsible for basic living expenses incurred during the domestic partnership. For purposes of this Article, domestic partners must be registered with a governmental entity pursuant to state or local law authorizing such registration or with a internal registry maintained by an employer of at least one of the domestic partners.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than two-thirds of all of its members, at its meeting of

NOV 17 1999

J. MICHAEL CAREY, City Clerk

By Maria Hernandez
Deputy

NOV 23 1999
Approved _____

[Signature]
Mayor

Approved as to Form and Legality

JAMES K. HAHN, City Attorney

By [Signature]
LESLIE E. BROWN
Assistant City Attorney

File No. 99-0908

ORDINANCE NO. 172910

An ordinance amending Section 10.8.2 of the Los Angeles Administrative Code to add "domestic partner status" to the list of prohibited forms of discrimination in City contracts.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. Section 10.8.2 is hereby amended to read as follows:

Sec. 10.8.2. All Contracts: Non-discrimination and Equal Benefits Clause.

a. Non-discrimination.

Notwithstanding any other provision of any ordinance of the City of Los Angeles to the contrary, every contract which is let, awarded, or entered into with or on behalf of the City of Los Angeles, shall contain by insertion therein a provision obligating the contractor in the performance of such contract not to discriminate in his employment practices against any employee or applicant for employment because of the applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition. All subcontracts awarded under any contract mentioned in this section shall contain a like provision.

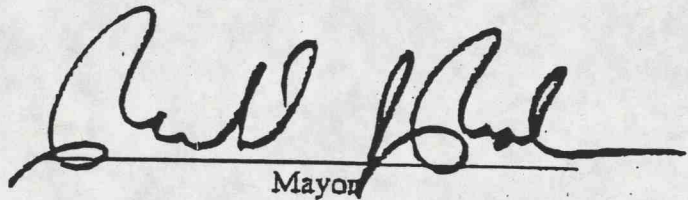
Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, by a vote of not less than two-thirds of all of its members, at its meeting of NOV 17 1999.

J. MICHAEL CAREY, City Clerk

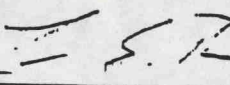
By Marie Kutenich
Deputy

Approved NOV 23 1999


Mayor

Approved as to Form and Legality

JAMES K. HAHN, City Attorney

By 
LESLIE E. BROWN
Assistant City Attorney

File No. 99-0908

ORDINANCE NO. 173054

An ordinance amending Section 10.8.2.1 of the Los Angeles Administrative Code transferring responsibility for the enforcement of the equal benefits provisions from the Office of Contract Compliance to the City Administrative Officer.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. Section 10.8.2.1 is hereby amended to the Los Angeles Administrative Code to read as follows:

Section 10.8.2.1 of the Los Angeles Administrative Code is hereby amended by substituting the word "City Administrative Officer" for the words "Office of Contract Compliance" and "Board of Public Works, Office of Contract Compliance" therein.

#50011

Sec. 2. The City Clerk shall certify to the passage of this ordinance and cause the same to be published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles, at its meeting of JAN 11 2000.

J. MICHAEL CAREY, CITY CLERK

By Maria Koshenich
Deputy

Approved _____

Mayor

Approved as to Form and Legality

JAMES K. HAHN, City Attorney

By LES
LESLIE E. BROWN
Assistant City Attorney

Said ordinance was presented to the Mayor on January 12, 2000; the Mayor returned said ordinance to the City Clerk on January 25, 2000 without his approval or his objections in writing, being more than ten days after the same was presented to the Mayor.

Said ordinance shall become effective and be as valid as if the Mayor had approved and signed it. (Section 30, City Charter)

CHAPTER 12B NONDISCRIMINATION IN CONTRACTS

- Sec. 12B.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions; Definitions.
- Sec. 12B.2. Nondiscrimination Provisions.
- Sec. 12B.3. Human Rights Commission Empowered.
- Sec. 12B.4. Nondiscrimination Guidelines.
- Sec. 12B.5. Chapter Applies Only to Discriminatory Employment Practices.
- Sec. 12B.5-1. Nonapplicability, Exceptions and Waivers.
- Sec. 12B.6. Severability.

SEC. 12B.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS; DEFINITIONS.

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

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

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

"Age" shall mean the age of any employee or applicant for employment who has attained the age of 40 years and has not attained the age of 65 years. For the purposes of this Chapter, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his or her age, if such person has attained the age of 40 years and has not attained the age of 65 years, if the person is physically able and mentally competent to perform the services required.

Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this Chapter.

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

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

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

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

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

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

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

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

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

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

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

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

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

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

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

(d) The requirements of this Chapter shall apply to (i) any of a contractor's operations within

San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to a contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 215-96, App. 5/30/96; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99)

SEC. 12B.2. NONDISCRIMINATION PROVISIONS.

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

SEC. 12B.4. NONDISCRIMINATION GUIDELINES.

The following nondiscrimination guidelines shall apply to all contracts and property contracts subject to this Chapter.

In order to be eligible to submit a bid or proposal or to have a bid or proposal considered by the awarding authority, the prospective contractor shall agree to abide by a nondiscrimination program which conforms to the requirements of the Commission.

The Commission may also require contractors and subcontractors to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying nondiscrimination program.

(a) Nondiscrimination programs developed pursuant to this Section shall be effective for a period of 12 months from the date of approval by the Commission. Contractors or subcontractors who are members in good standing of a trade association which has negotiated a nondiscrimination program with the Commission may make this association program their commitment for the specific contract or property contract upon approval of the Commission without the process of a separate pre-bid or pre-award conference. Such an association agreement shall be effective for a period of 12 months from the date of approval by the Commission. Trade associations shall provide the Commission with a list of members in good standing in such association. The Commission shall annually supply contracting agencies of the City and County with a list of contractors and subcontractors who have developed approved nondiscrimination programs.

(b) The awarding authority shall be responsible for notifying all prospective bidders or proposers of the requirements of this Section and, when requested by the Commission, for notifying the Commission of each contract or property contract which is being proposed to be put to public bid.

(c) The proposed nondiscrimination program described by this Section, and the pre-bid or pre-award conference which may be required by the Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

(1) Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;

(2) Classroom preparation for the job when not apprenticeable;

(3) Pre-apprenticeship education and preparation;

(4) Upgrading training and opportunities;

(5) Encouraging the use of contractors and subcontractors of all ethnic groups, provided, however, that any contract or property contract subject to this Chapter shall require the contractor or subcontractor to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City for such work; and

(6) The entry of qualified minority journeypersons into the industry.

(d) Nondiscrimination agreements resulting from the proposed nondiscrimination programs or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the Commission at its discretion. In addition, the Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this Chapter.

(e) Any job training or education program using the funds, facilities, or staff of the City which, in the judgment of the Board of Supervisors or the Commission, can make a contribution to the implementation of this Chapter shall submit reports to the Commission as requested and shall be required to cooperate with the contractors, subcontractors and unions and with the Commission for the effectuation of the nondiscrimination programs developed under this Chapter. (Amended by Ord. 498-75, App. 1/5/75; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97)

SEC. 12B.5. CHAPTER APPLIES ONLY TO DISCRIMINATORY EMPLOYMENT PRACTICES.

(a) This Chapter shall not confer upon the City and County of San Francisco or any agency, board or commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory

employment practices by contractors or subcontractors engaged in the performance of City and County contracts or property contracts.

(b) The Board of Supervisors shall appropriate such funds from the General Fund of the City, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for the enforcement of this Chapter. (Amended by Ord. 340-68, App. 12/6/68; Ord. 201-97, App. 5/27/97)

SEC. 12B.5-1. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department, board or commission certifies in writing to the Director that pursuant to Administrative Code Sections 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.

(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Chapter shall not apply where the contracting officer finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Chapter and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter;

(4) The waiver authority granted to contracting officers in this Section 12B.5-1(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Chapter and why the waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 12B.5-1(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 12B.5-1(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 12B.5-1(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 12B.5-1(d);

(5) Nothing in this Section 12B.5-1(d) shall limit the right of the Board of Supervisors to waive the provisions of this Chapter.

(e) This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transactions(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

(f) The General Manager of the Public Utilities Commission may waive the requirements of

this Chapter where the contractor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco.

(g) Sections 12B.1(b) and 12B.2(b) shall not apply to any contracts or property contracts executed or amended prior to June 1, 1997, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City, prior to June 1, 1997, unless and until such contracts or property contracts are amended after June 1, 1997, and would otherwise be subject to this Chapter. (Added by Ord. 481-96, App. 12/20/96; amended by Ord. 401-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 431-97, App. 11/21/97)

SEC. 12B.6. SEVERABILITY.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect. (Amended by Ord. 261-66, App. 10/21/66; Ord. 286-97, App. 7/18/97)

CHAPTER 12C NONDISCRIMINATION IN PROPERTY CONTRACTS

- Sec. 12C.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions.
- Sec. 12C.2. Definitions.
- Sec. 12C.3. Nondiscrimination Provisions.
- Sec. 12C.4. Human Rights Commission Empowered.
- Sec. 12C.5. Funding.
- Sec. 12C.5-1. Nonapplicability, Exceptions and Waivers.
- Sec. 12C.6. Severability.

SEC. 12C.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts a provision obligating the contractor not to discriminate on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other

establishments or organizations, operated by that contractor, and shall require such contractor to include a similar provision in all subcontracts.

(b) The requirements of this Chapter shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to as contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99)

SEC. 12C.2. DEFINITIONS.

As used in this Chapter the term:

"Age" for the purpose of membership refers to the age of any person who has attained the age of 18 years, except for bona fide senior citizen organizations.

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

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

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

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

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

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

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

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

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

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

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

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

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

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97)

SEC. 12C.3. NONDISCRIMINATION PROVISIONS.

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

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

(a) The contractor or subcontractor will not discriminate against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization operated by the contractor or subcontractor on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, AIDS/HIV status, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Services provided by contractor or subcontractor to the public shall be provided regardless of disability of persons otherwise entitled to or qualified for such services.

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

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

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

(2) Upon such finding by the Director or other official designated by the Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Section 12C.3(d) and/or Section 12C.3(g).

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

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

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

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

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

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

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

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

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

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

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

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

(Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 201-97, App. 5/27/97;

Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99)

SEC. 12C.4. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12C.3 thereof. (Amended by Ord. 84-77, App. 3/11/77)

SEC. 12C.5. FUNDING.

The Board of Supervisors shall appropriate such funds from the General Fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for enforcement of this ordinance. (Amended by Ord. 84-77, App. 3/11/77)

SEC. 12C.5-1. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department or commission certifies in writing to the Director that pursuant to Administrative Code Section 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.

(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Chapter shall not apply where the contracting officer finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Chapter and that the contract or property contract is for goods, a service or a

project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or