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July 19, 2005

HONORABLE CITY COUNCIL
Oakland, California

President De La Fuente and Members of the City Council:

**Subject: Report Regarding *Council of the City of New York v. Bloomberg*
*Amicus Brief***

Background

In *Council of the City of New York v. Bloomberg*, New York County Clerk's Index No. 115214/04, the New York Court of Appeals will determine the enforceability of the New York City Equal Benefits Law. That law, which applies to city contracts for goods or services worth more than \$100,000 on an annual basis, requires contractors not to discriminate in the provision of benefits between employees who are married and employees who have domestic partners.

New York City's Equal Benefits Law was enacted in June 2004, after the City Council overrode a veto by Mayor Michael Bloomberg. After the Mayor refused to implement the law, the City Council filed a petition seeking to compel the Mayor to enforce the statute. This petition was granted by the Supreme Court (the trial-level court in New York). The Mayor appealed, and the Archdiocese of New York, the Diocese of Brooklyn and Queens, Catholic Health Care System, St. John's University, and Fordham University filed *amici* briefs in support of the Mayor's position. The Appellate Division of the Supreme Court overturned the Supreme Court's decision and dismissed the petition. The Council appealed that decision to the New York Court of Appeals (New York's highest level court).

The Amicus Brief

The City and County of San Francisco plans on filing an *amicus* brief with the Court of Appeals in support of the New York City Council's position. This brief will argue in favor of enforcement of the New York City Equal Benefits Law from the perspective of a city that has enacted similar legislation. (The New York City Law was modeled on San Francisco's Equal Benefits Ordinance, which was enacted in 1997.) The San Francisco Human Rights Commission and Morrison & Foerster, counsel preparing the *amicus* brief on behalf of San Francisco, has requested that the City of Oakland sign the *amicus* brief counsel will submit.

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The brief will discuss the experience of San Francisco and other *amici* cities, such as Oakland, that have enacted similar equal benefits laws. This aspect of the brief will give the court assurance that other cities, such as Oakland, have successfully enacted similar laws without adverse effects to those cities or their contractors.

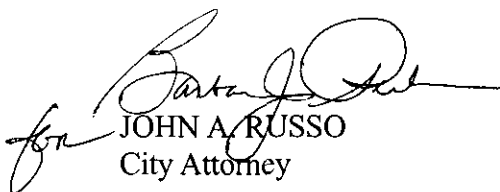
The brief will also address why ERISA preemption does not bar enforcement of the New York City Equal Benefits Law. The brief will discuss various other cases that have addressed the application of ERISA preemption to equal benefits laws, including the litigation concerning the San Francisco ordinance. The *amicus* brief must be filed by August 8, 2005.

On December 18, 2001, the City Council passed Ordinance No. 12394, creating a new Oakland Municipal Code Chapter 2.32, "Equal Benefits Ordinance." The City's Equal Benefits Ordinance was modeled on the City of San Francisco's. The Ordinance sets out the City policy prohibiting discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses. The Ordinance declares that the City prohibits discrimination based on marital status and/or sexual orientation and that the City requires contractors to equalize the total compensation between similarly situated employees with spouses and employees with domestic partners.

Conclusion

This Office requests that the Council authorize it to sign the amicus brief submitted by the City of San Francisco in the New York Court of Appeals in *Council of the City of New York v. Bloomberg*, supporting New York City's Equal Benefits Law. Signing the amicus brief in support of New York City's Equal Benefits Law will further the goals and objectives that underlie the City of Oakland's Equal Benefits Ordinance.

Respectfully submitted,


JOHN A. RUSSO
City Attorney

Attorney Assigned:
Vicki Laden

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RESOLUTION NO. _____ C.M.S.



RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SIGN AN *AMICUS* BRIEF SUBMITTED BY THE CITY OF SAN FRANCISCO IN SUPPORT OF THE *COUNCIL OF THE CITY OF NEW YORK V. BLOOMBERG* IN AN ACTION TO DETERMINE THE ENFORCEABILITY OF THE NEW YORK CITY EQUAL BENEFITS LAW, NEW YORK COURT OF APPEALS, COUNTY CLERK'S INDEX NO. 115214/04

WHEREAS, on December 18, 2001 the City Council unanimously passed Ordinance No. 12394, creating a new Oakland Municipal Code Chapter 2.32, "Equal Benefits Ordinance," and

WHEREAS, the City's Equal Benefits Ordinance prohibits discrimination based on marital status and/or sexual orientation, and

WHEREAS, the City's Equal Benefits Ordinance expresses City policy requiring City contractors to equalize the total compensation between similarly situated employees with spouses and employees with domestic partners, and

WHEREAS, the City's Equal Benefits Ordinance was modeled on that of the City of San Francisco, and

WHEREAS, Oakland Municipal Code Chapter 2.32 prohibits City contractors from discrimination in the provision of benefits between similarly situated employees with spouses and employees with domestic partners, and

WHEREAS, the City of San Francisco's Human Rights Commission has requested that the City of Oakland sign the *amicus* brief to be submitted by San Francisco in *Council of the City of New York v. Bloomberg*, in which the New York Court of Appeals will determine the enforceability of the New York City Equal Benefits Law, a law that is fully congruent with the City's Equal Benefits Ordinance, now therefore be it

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RESOLVED: that the City Attorney, on behalf of the City of Oakland, is authorized to sign the *amicus* brief submitted by the City of San Francisco, in support of *Council of the City of New York v. Bloomberg*, New York Court of Appeals, Clerk's Index No. 115214/04.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, REID, QUAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

Attest: _____

LATONDA SIMMONS
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA

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JUL 19 2005
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