San Francisco’s Worker Privacy Ordinance
ple can be compelled. More importantly, it requires individualized suspicion and a real concern for safety. Finally, it makes clear that employers have no legitimate interest in regulating the off-the-job conduct of employees that does not impact performance.

The San Francisco ordinance has received widespread popular support and has served as the catalyst for proposed legislation in other jurisdictions as human beings are forced to resort to the political process to reclaim dominion over their personal lives and bodies.

APPENDIX

San Francisco’s Worker Privacy Ordinance

File No. 97-85-44
November 1, 1985
(Employee Activities and Drug Testing)

Amending Part II, Chapter VIII of the San Francisco Municipal Code (Police Code) by adding article 33A thereto to prohibit employer interference in employee relationships and activities and to prohibit employer drug testing of employees.

Note: This entire Article is new.

Be it ordained by the People of the City and County of San Francisco: Part II, Chapter VIII of the San Francisco Municipal Code (Police Code) is hereby amended by adding Article 33A thereto, to read as follows:

ARTICLE 33A PROHIBITION OF EMPLOYER INTERFERENCE WITH EMPLOYEE RELATIONSHIPS AND ACTIVITIES AND REGULATION OF EMPLOYER DRUG TESTING OF EMPLOYEES

Sec. 3300A.1 POLICY. It is the public policy of the City and County of San Francisco that all citizens enjoy the full benefit of the right to privacy in the workplace guaranteed to them by Article 1, Section 1 of the California Constitution. It is the purpose of this Article to protect employees against unreasonable inquiry and investigation into off-the-job conduct, associations, and activities not directly related to the actual performance of job responsibilities.

Sec. 3300A.2 DEFINITIONS.

(1) “Employee” shall mean any person working for salary or wages within the City and the County of San Francisco, other than members of the uniformed ranks of the police, sheriff’s and fire departments, police department communication dispatchers, and any persons operating emergency service vehicles for the City and County of San Francisco.

(2) “Employee labor organization” shall mean any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(3) “Employer” shall mean the City and County of San Francisco, any individual, firm, corporation, partnership, or other organization or group of persons however organized, located or doing business within the City and County of San Francisco, that employs personnel for sal-
any or wages, or any person acting as an agent of such an organization.

Sec. 3300A.3 EMPLOYER INTERFERENCE IN PERSONAL RELATIONSHIPS OF EMPLOYEES PROHIBITED. No employer may make, adopt, or enforce any rule or policy forbidding or preventing employees from engaging or participating in personal relationships, organizations, activities, or otherwise restricting their freedom of association, unless said relationships, activities, or associations have a direct and actual impact on the employees' ability to perform their assigned responsibilities.

Sec. 3300A.4 CONFLICTS OF INTEREST. It is not the intention of the Board of Supervisors in adopting this Article to prohibit an employer from promulgating or enforcing rules or policies prohibiting conflicts of interest, which prohibit employees from making, participating in making, influencing or attempting to influence decisions in which they have a financial interest, as such would be defined under Government code section 8100D et. seq. were they public officials, or which prohibit employees from being financially interested, within the meaning of Government Code section 1090, et. seq. were they public employees, in any contract made by them in their capacity as employees.

Sec. 3300A.5 EMPLOYER PROHIBITED FROM TESTING OF EMPLOYEES. No employer may demand, require, or request employees to submit to, to take or to undergo any blood, urine, or encephalographic test in the body as a condition of continued employment. Nothing herein shall prohibit an employer from requiring a specific employee to submit to blood or urine testing if:
(a) the employer has reasonable grounds to believe that an employee's faculties are impaired on the job; and
(b) the employee is in a position where such impairment presents a clear and present danger to the physical safety of the employee, another employee or to a member of the public; and
(c) the employer provides the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by State licensed independent laboratory/testing facility and provides the employee with a reasonable opportunity to rebut or explain the results.
In conducting those tests designed to identify the presence of chemical substances in the body, and not prohibited by this section, the employer shall ensure to the extent feasible that the test only measure and that its records only show or make use of information regarding chemical substances in the body which are likely to affect the ability of

the employee to perform safely his or her duties while on the job.

Under no circumstances may employers request, require or conduct random or company-wide blood, urine or encephalographic testing.

In any action brought under this Article alleging that the employer had violated this section, the employer shall have the burden of proving that the requirements of Subsections (a), (b) and (c) as stated above have been satisfied.

Sec. 3300A.6 MEDICAL SCREENING FOR EXPOSURE TO TOXIC SUBSTANCES. Nothing in this Article shall prevent any employer from conducting medical screening, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of their job responsibilities. Any such screenings or tests must be limited to the specific substances expressly identified in the employee consent form.

Sec. 3300A.7 PROHIBITING USE OF INTOXICATING SUBSTANCES DURING WORKING HOURS: DISCIPLINE FOR BEING UNDER THE INFLUENCE OF INTOXICATING SUBSTANCES DURING WORKING HOURS. Nothing in this Article shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours, or restrict an employer's ability to discipline employees for being under the influence of intoxicating substances during work hours.

Sec. 3300A.8 ENFORCEMENT.
(a) Any aggrieved person may enforce the provisions of this Article by means of a civil action. Any person who violates any of the provisions of this Article or who aids in the violation of this Article shall be liable to the person aggrieved for special and general damages, together with attorney's fees and the costs of action.
(b) Injunction
(1) Any person who commits, or proposes to commit, an act in violation of this Article may be enjoined therefrom by any court of competent jurisdiction.
(2) An action for injunctive relief under this subsection may be brought by any aggrieved person, by the District Attorney, or by the City Attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

Sec. 3300A.9 CITY UNDERTAKING LIMITED TO PROMO-
Sec. 3300A.3 EMPLOYER INTERFERENCE IN PERSONAL RELATIONSHIPS OF EMPLOYEES PROHIBITED. No employer may make, adopt, or enforce any rule or policy forbidding or preventing employees from engaging or participating in personal relationships, organizations, activities, or otherwise restricting their freedom of association, unless said relationships, activities, or associations have a direct and actual impact on the employees' ability to perform their assigned responsibilities.

Sec. 3300A.4 CONFLICTS OF INTEREST. It is not the intention of the Board of Supervisors in adopting this Article to prohibit an employer from promulgating or enforcing rules or policies prohibiting conflicts of interest, which prohibit employees from making, participating in making, influencing or attempting to influence decisions in which they have a financial interest, as such would be defined under Government code section 8100D et. seq. were they public officials, or which prohibit employees from being financially interested, within the meaning of Government Code section 1090, et. seq. were they public employees, in any contract made by them in their capacity as employees.

Sec. 3300A.5 EMPLOYER PROHIBITED FROM TESTING OF EMPLOYEES. No employer may demand, require, or request employees to submit to, to take or to undergo any blood, urine, or encephalographic test in the body as a condition of continued employment. Nothing herein shall prohibit an employer from requiring a specific employee to submit to blood or urine testing if:

(a) the employer has reasonable grounds to believe that an employee's faculties are impaired on the job; and

(b) the employee is in a position where such impairment presents a clear and present danger to the physical safety of the employee, another employee or to a member of the public; and

(c) the employer provides the employee, at the employer's expense, the opportunity to have the sample tested or evaluated by State licensed independent laboratory/testing facility and provides the employee with a reasonable opportunity to rebut or explain the results.

In conducting those tests designed to identify the presence of chemical substances in the body, and not prohibited by this section, the employer shall ensure to the extent feasible that the test only measure and that its records only show or make use of information regarding chemical substances in the body which are likely to affect the ability of the employee to perform safely his or her duties while on the job.

Under no circumstances may employers request, require or conduct random or company-wide blood, urine or encephalographic testing.

In any action brought under this Article alleging that the employer had violated this section, the employer shall have the burden of proving that the requirements of Subsections (a), (b) and (c) as stated above have been satisfied.

Sec. 3300A.6 MEDICAL SCREENING FOR EXPOSURE TO TOXIC SUBSTANCES. Nothing in this Article shall prevent any employer from conducting medical screening, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of their job responsibilities. Any such screenings or tests must be limited to the specific substances expressly identified in the employee consent form.

Sec. 3300A.7 PROHIBITING USE OF INTOXICATING SUBSTANCES DURING WORKING HOURS: DISCIPLINE FOR BEING UNDER THE INFLUENCE OF INTOXICATING SUBSTANCES DURING WORKING HOURS. Nothing in this Article shall restrict an employer's ability to prohibit the use of intoxicating substances during work hours, or restrict an employer's ability to discipline employees for being under the influence of intoxicating substances during work hours.

Sec. 3300A.8 ENFORCEMENT.

(a) Any aggrieved person may enforce the provisions of this Article by means of a civil action. Any person who violates any of the provisions of this Article or who aids in the violation of this Article shall be liable to the person aggrieved for special and general damages, together with attorney's fees and the costs of action.

(b) Injunction

(1) Any person who commits, or proposes to commit, an act in violation of this Article may be enjoined therefrom by any court of competent jurisdiction.

(2) An action for injunctive relief under this subsection may be brought by any aggrieved person, by the District Attorney, or by the City Attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

Sec. 3300A.9 CITY UNDERTAKING LIMITED TO PROMO-
TION OF GENERAL WELFARE. In undertaking the adoption and enforcement of this ordinance, the City and County is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Sec. 3300A.10 PREEMPTION. In adopting this Article, the Board of Supervisors does not intend to regulate or affect the rights or authority of an employer to do those things that are required, directed, or expressly authorized by federal or state law or administrative regulation or by a collective bargaining agreement between an employer and an employee labor organization. Further, in adopting this Article, the Board of Supervisors does not intend to prohibit that which is prohibited by federal or state law or administrative regulation or by a collective bargaining agreement between an employer and an employee labor organization.

Sec. 3300A.11 SEVERABILITY. If any part or provision of this Article, or the application thereof to any person or circumstance, is held invalid, the remainder of this Article including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

Drug Testing in the Federal Government

Patricia Schroeder* and Andrea L. Nelson**

Introduction

When the President's Commission on Organized Crime issued its March 1986 report recommending that federal employees and contractors be subject to drug testing, there was little indication that drug testing would become one of the hottest political and media issues of 1986. Initial reaction to the drug testing recommendations was critical. It was ridiculed during Congressional hearings. The editorial boards of such diverse newspapers as the New York Times, the Washington Post, the Philadelphia Inquirer and the Wall Street Journal all agreed that the drug testing recommendation was bad public policy. Indeed, the issue might have died quietly had it not been for the drug-induced deaths of two prominent athletes in the early summer of 1986 and the national media focus on the cocaine derivative “crack.”

An anti-drug surge hit the capital like a tidal wave. Politicians fought to out-do one another in demonstrating their opposition to drug use. Bills were introduced, press conferences were held, and plastic vials were filled with urine. Drug wars soon became Jar Wars.

The Politics of Anti-Drug Legislation

In July, the Democratic leadership of the House of Representatives set enactment of comprehensive anti-drug legislation as its highest priority. At the same time, the Reagan Administration was struggling to wrest control of the anti-drug initiative away from the House. The Administration sought to project the President as a leader on this issue.

Congress tried to identify various methods for reducing drug use. Amid work on increased funding for drug interdiction efforts, anti-drug education programs, and drug treatment facilities, the issue of drug testing of federal employees re-surfaced. Several bills to require drug testing of federal employees were introduced. One would have re-

* Member, United States House of Representatives (D-Colorado). Chairwoman, Subcommittee on Civil Service, Committee on Post Office and Civil Service.