

1 [Administrative Code - Exempting California State University Fresno Foundation from
2 Nonprofit Public Access Ordinance]

3 **Ordinance exempting California State University Fresno Foundation from the Nonprofit**
4 **Public Access Ordinance, Administrative Code, Chapter 12L, to facilitate the Human**
5 **Services Agency's entering into a contract with the Foundation for training services**
6 **required by State law for child welfare staff, supervisors, and foster parents.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. General Background and Findings.

16 (a) The City and County of San Francisco ("City"), acting through the Human Services
17 Agency ("HSA"), receives Title IV-E Child Welfare Program funds from the United States
18 Department of Health and Human Services, allocated by the California Department of Social
19 Services ("DSS") to help administer its county child welfare program. The California Common
20 Core Curricula for Child Welfare Workers is funded by DSS, using Title IV-E funds. Its central
21 purpose is to provide statewide, standardized training for new child welfare workers and
22 supervisors and ongoing training for foster parents, as mandated by state regulation.

23 (b) DSS requires counties to use one of four approved Training Academies in
24 California for these types of trainings. The Bay Area Academy is the only one of the four
25 Training Academies that serves the Bay Area region, including San Francisco. Further,
counties cannot access Title IV-E funds for training purposes, unless a Training Academy is

1 affiliated with a university. The Bay Area Academy is affiliated with California State University,
2 Fresno (the “University”).

3 (c) The California State University Fresno Foundation (“Foundation”), is a 501(c)(3)
4 nonprofit public benefit auxiliary corporation, operating under California Education Code
5 Sections 89900 et seq., to, among other things, promote or assist the University and receive
6 gifts, property, and funds to be used for the benefit of the University. This authority includes
7 entering into contracts for the benefit of the University. The Foundation is responsible for
8 administering the contracts for the trainings of child welfare workers and supervisors and
9 foster parents required by State law.

10 (d) Thus, to fulfill the requirement to provide foster care training to its child welfare
11 staff, service providers, foster parents, and relative caregivers, HSA must do so through the
12 Bay Area Academy, which in turn means that HSA must enter into a professional services
13 agreement with the Foundation. The City has no other option.

14 (e) Nonprofit organizations that contract with the City to provide goods or services in
15 the amount of at least \$250,000 per year in City-administered funds must comply with
16 Administrative Code Chapter 12L (“Chapter 12L”), relating to public access to meetings and
17 records of the nonprofit organization. The five-year contract between HSA and the
18 Foundation for the training services discussed herein will be in the amount of \$6,544,693.
19 Accordingly, absent this ordinance, the Foundation would be required to adhere to the
20 requirements of Chapter 12L.

21 (f) But the Foundation’s Board of Directors already functions under the public meeting
22 requirements in California Education Code Sections 89920-89928, and the Foundation is
23 subject to the public records requirements in California Education Code Sections 89913-
24 89919. These open meeting requirements are longstanding, and the requirements governing
25 access to records were adopted by the Legislature in 2011 following thorough consideration.

1 Both sets of requirements are specifically designed for California State University auxiliary
2 organizations, taking into consideration the nature and function of such entities. In this
3 respect, the Foundation is in a different posture than many nonprofit entities, which typically
4 are not governed by extensive State-imposed public access requirements.

5 (1) Under these Education Code provisions, the Foundation’s Board of
6 Directors must conduct its meetings in public, allowing all persons to attend. The Board must
7 annually establish the times and locations of regular meetings. Persons are entitled to seven
8 days’ notice of meetings. No action may be taken at a meeting unless notice of the meeting
9 has been posted for seven days.

10 (2) Under these Education Code provisions, records of the Foundation are
11 available for the public to inspect and copy on terms that largely parallel the requirements of
12 the California Public Records Act.

13 (g) Chapter 12L, however, establishes several obligations on nonprofit organizations
14 that are not required of the Foundation under the Education Code, including but not limited to
15 the following:

16 (1) Permitting public comment at the two public meetings a year at which the
17 public is permitted to attend, including an opportunity at one of those meetings to address the
18 Board of Directors on issues related to membership on the Board and to propose candidates
19 for membership on the Board ;

20 (2) Requiring 30-day advance notice to the public of the two public meetings a
21 year at which the public is permitted to attend;

22 (3) Requiring the nonprofit organization to seek community members who are
23 recipients of goods or services provided by the organization to be part of its Board of
24 Directors;

1 (4) Requiring the nonprofit organization to maintain and make available for
2 public inspection and copying a packet of financial information concerning the nonprofit
3 organization; and

4 (5) Requiring the nonprofit organization to participate in a dispute resolution
5 procedure if a member of the public asserts that the nonprofit organization has violated
6 Chapter 12L.

7 (h) The Foundation conducts its business in an open forum with generous avenues for
8 public involvement and access to information. The Foundation would have to make significant
9 changes in its structure and operations with respect to public access to meetings and records
10 to comply with Chapter 12L. It would be unduly burdensome to require the Foundation to
11 modify its policies, practices, and procedures to comply with Chapter 12L to accommodate
12 one contract with the City, given that the Foundation already must abide by Education Code
13 requirements governing public access to meetings and records. It is HSA's understanding
14 that the City has no other contractual relationship, within the meaning of Chapter 12L, with the
15 Foundation.

16 Section 2. Exemption of the Foundation From Requirements of Administrative Code
17 Chapter 12L.

18 For the reasons stated in Section 1, the Board of Supervisors hereby exempts the
19 California State University Fresno Foundation from the requirements of Chapter 12L of the
20 Administrative Code.

21 Section 3. Effective Date. This ordinance shall become effective 30 days after
22 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
23 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
24 of Supervisors overrides the Mayor's veto of the ordinance.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: _____
4 Arnulfo Medina
5 Deputy City Attorney

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