

**Amendment of the Whole
In Board
9/6/05**

FILE NO. 051257

ORDINANCE NO.

1 [Prohibiting contractors and subcontractors who provide goods to the City and County from
2 maintaining sweatshop conditions by violating labor and employment, health and safety, or
3 environmental laws or standards, and requiring compliance with minimum wage and other
4 employment and labor standards.]

5 **Ordinance amending the San Francisco Administrative Code by adding Chapter 12U,**
6 **finding that the City would benefit by spending its funds in a manner that would**
7 **support safe and humane working conditions; requiring contractors and**
8 **subcontractors providing goods to the City and County to comply with laws and**
9 **standards affecting labor and employment conditions for employees performing work**
10 **under the contract and subcontracts, including: not engaging in abusive forms of child**
11 **labor, foreign convict or forced labor, or slave labor; and compliance with all human**
12 **and labor rights and labor standards imposed by law or treaty law on the country**
13 **where the goods are being made or assembled; paying wages that are not less than a**
14 **minimum wage established by the Director of the Office of Contract Administration;**
15 **compliance with all applicable laws governing wages, employee benefits, health and**
16 **safety, labor, environmental conditions, nondiscrimination, freedom of association;**
17 **creating the Sweatfree Procurement Advisory Group to make recommendations on the**
18 **implementation, administration or enforcement of this Chapter to the Director of the**
19 **Office of Contract Administration and the Office of Labor Standards Enforcement;**
20 **targeting the procurement of garments for enforcement of this Chapter during the first**
21 **full fiscal year following the effective date of the Chapter, and, thereafter, targeting**
22 **other goods for enforcement based on recommendations of the Sweatfree**
23 **Procurement Advisory Group submitted by the Director of the Office of Contract**
24 **Administration to the Board of Supervisors and approved by ordinance.**
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2 Note: This Chapter is entirely new.
3 Board amendment additions are double underlined.
4 Board amendment deletions are ~~strikethrough normal~~.

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

6 Section 1. The San Francisco Administrative Code is hereby amended by adding a
7 new Chapter 12U, to read as follows:

8 Chapter 12U –SWEATFREE CONTRACTING

9 Sec. 12U.1. FINDINGS. The Board of Supervisors finds and declares the following:

10 (a) This Chapter shall be known as the Sweatfree Contracting Ordinance.

11 (b) Each year the City and County of San Francisco spends hundreds of millions of dollars
12 contracting with private sector contractors for the purchase or rental of goods. The prudent
13 expenditure of public dollars requires that the City select responsible contractors.

14 (c) The City and County, as a major purchaser of goods, must be cognizant of the labor
15 conditions that may be supported by its actions as a major market participant. Better working
16 conditions assure consistently better quality goods for the City and County, by assuring fewer
17 disruptions in the workplace due to workers' grievances, fewer absences due to illnesses, less fatigue
18 and fewer workplace injuries, less turnover of workers, and greater incentive to perform.

19 (d) In its role as a market participant, the City and County seeks to assure that the integrity of
20 the procurement process is not undermined by contractors or subcontractors who engage in sweatshop
21 practices. Contractors who use Sweatshop Labor are able to underbid responsible contractors who
22 pay fair wages and maintain humane work environments and conditions. Such practices place
23 responsible contractors at a competitive disadvantage, which may dissuade responsible contractors
24 from participating in the City and County's procurement process. This Chapter will encourage

1 responsible contracting with the City and County and reduce any inadvertent support of contractors
2 who use Sweatshop Labor.

3 (e) By adopting this ordinance, the City and County does not intend to preclude the City and
4 County or its contractors or subcontractors from doing business with any foreign country.

5 Sec. 12U.2. Definitions. For the purposes of this Chapter, the following definitions shall apply
6 to the terms use herein.

7 (a) "Abusive Forms of Child Labor" shall mean the following: (1) work performed by a person
8 under the age of 18 when the person does not voluntarily seek the work or the person is threatened by
9 the person's employer with physical, mental or emotional harm for nonperformance; (2) work
10 performed by a person under the age of 18 in violation of any applicable law of the country of
11 manufacture or assembly governing the minimum age of employment, compulsory education, or
12 occupational health and safety; or (3) the use of a person under the age of 18 for illegal activities,
13 including but not limited to the production or trafficking of illicit drugs or for prostitution.

14 (b) "Contract" shall mean an agreement for Goods for an amount greater than \$25,000 and
15 having a term in excess of three months to be purchased or provided at the expense of the City and
16 County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of
17 or collected by the City and County. "Contract" shall also mean any amendment to a contract entered
18 into after the effective date of this Chapter that causes the amount of the contract to exceed \$25,000 or
19 causes the term to exceed three months.

20 (c) "Contractor" shall mean any person or persons, association, cooperative, firm, partnership,
21 corporation, company, venture, trustee, trustee in bankruptcy, receiver, or combination thereof, who
22 enters into a Contract with the City and County.

23 (d) "Director" shall mean the Director of the Office of Contract Administration.
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1 (e) "Foreign Convict or Forced Labor" shall mean any form of labor used to produce or
2 manufacture goods prohibited from importation into the United States under 19 U.S.C. § 1307, which
3 includes Abusive Forms of Child Labor and Slave Labor.

4 (f) " Good" shall mean any good, including without limitation, any material, supply, or
5 equipment.

6 (g) "Slave Labor" shall mean any form of slavery, sale and trafficking of persons, debt
7 bondage, indentured servitude, serfdom, or forced or compulsory labor.

8 (h) "Subcontract" shall mean any subcontract agreement or arrangement directly with a
9 Contractor for any work under a Contract (first tier subcontract) and shall mean any subcontract
10 agreement or arrangement between subcontractors, at any tier, except for any agreement or
11 arrangement between subcontractors if the amount of the agreement or arrangement is less than the
12 lesser of (1) 10 percent of the amount of the higher tier subcontractor's work; or (2) \$25,000.
13 "Subcontract" also shall mean any subcontract agreement or arrangement that any Contractor or
14 subcontractor creates by dividing work into smaller increments for award to any subcontracting entity
15 created for the purpose of awarding a subcontract that is not subject to this Chapter on the basis that it
16 fails to meet either of the monetary thresholds for a Subcontract set above in this subsection (h).

17 (i) "Subcontractor" shall mean any person or persons, association, cooperative, firm,
18 partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof, including
19 without limitation any subcontractor, entering into a Subcontract.

20 (j) "Sweatshop Labor" shall mean, work performed by any Worker under terms or conditions
21 that seriously or repeatedly violate laws of the jurisdiction within which the work is performed
22 governing: (i) wages; (ii) employee benefits; (iii) health and safety, including without limitation
23 exposure to hazardous or toxic substances; (iv) labor, including without limitation collective
24 bargaining rights; (v) environmental conditions; (vi) nondiscrimination, harassment, or retaliation,

1 including without limitation all laws prohibiting workplace and employment discrimination; (vii)
2 freedom of association; or (viii) building or fire codes. "Sweatshop Labor" also shall mean any work
3 performed by any person contributing to the provision of Goods to the City and County under a
4 Contract or Subcontract that constitutes Foreign Convict or Forced Labor, or Abusive Forms of Child
5 Labor or Slave Labor.

6 (k) "Worker" shall mean any employee of a Contractor or Subcontractor who contributes
7 to the provision of Goods to the City and County under a Contract or Subcontract, including but not
8 limited to any manufacturing or assembling of the Goods.

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10 Sec. 12U.3 PROHIBITION ON SWEATSHOP CONDITIONS. Each Contractor and
11 Subcontractor shall comply with each of the following requirements:

12 (a) Each Contractor and Subcontractor, regarding any Worker, shall comply with all human
13 and labor rights and labor standards imposed by treaty or law on the country in which the Goods are
14 made or assembled, and shall not engage in Sweatshop Labor.

15 (b) Each Contractor and Subcontractor shall pay at least the following minimum wages to
16 Workers: (1) to Workers working in the United States a base hourly wage, to be set and adjusted
17 annually by the Director, to produce for 2,080 hours worked, an annual income equal to or greater
18 than the U.S. Department of Health and Human Services most recent poverty guidelines for a family of
19 three plus an additional 20 percent of the wage level paid, including without limitation amounts paid as
20 hourly wages or health benefits; and (2) for Workers working in countries other than the United States,
21 a wage, to be set and adjusted annually by the Director, that shall be comparable to the wage for
22 domestic manufacturers established above, adjusted to reflect the country's level of economic
23 development by using the World Bank's most recent Gross National Income per capita Purchasing
24 Power Parity Index.

1 (c) This Chapter specifies a minimum level of compensation to be paid Workers and shall not be
2 construed to preempt or otherwise limit any other applicable law, regulation or requirement that
3 requires a higher level of compensation.

4 (d) Each Contractor and Subcontractor shall keep or cause to be kept for a period of not less
5 than three years from the date of the expiration or termination of the term of the Contract, basic payroll
6 and time records for each Worker, and copies of any tax records filed with a governmental entity
7 during the term. Such records shall include the following for each Worker: (a) name and job
8 classification; (b) a general description of the work the Worker performed each day and the rate of pay
9 (including rates of contributions for, or costs assumed to provide fringe benefits); and (c) the daily and
10 weekly number of hours worked, deductions made; and (d) actual wages paid.

11 (e) Each Contractor and Subcontractor shall maintain weekly certified payroll records for
12 submission to the Office of Contract Administration, the Office of Labor Standards Enforcement, or the
13 Director's designee or other authorized officers or agents of the City and County upon demand. The
14 Contractor shall be responsible for submitting the payroll records of its Subcontractors, although
15 Subcontractors shall submit such records directly to the City and County upon request. All certified
16 payroll records shall be accompanied by a statement signed by the Contractor, or Subcontractor if
17 requested by the City and County to submit the records, stating that the records are complete and
18 correct.

19 (f) All records required to be maintained by this Chapter shall at all times be open to inspection
20 and examination of the duly authorized officers and agents of the City and County of San Francisco.

21 (g) All Contractors and Subcontractors shall comply with the overtime laws and regulations
22 applicable to their Workers. All overtime hours shall be worked voluntarily.

23 (h) No Contractor or Subcontractor shall subject any Worker to any physical, sexual, or other
24 illegal harassment or abuse, including corporal punishment, illegal discrimination or retaliation for
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1 exercising his or her right to free speech and assembly or other rights protected under applicable labor
2 or employment laws.

3 (i) No Contractor or Subcontractor shall require or compel any Worker to use contraceptives or
4 take pregnancy tests.

5 (j) Before commencing any work under the Contract, the Contractor shall provide the City and
6 County a list of the names and addresses of each Subcontractor to be utilized in the performance of the
7 Contract, ~~the amount to be paid each,~~ the Contractor's and each Subcontractor's applicable state tax
8 identification number and the address of each manufacturing or other facility or operation of the
9 Contractor and its Subcontractors for the performance of the Contract. The Office of Contract
10 Administration shall post this information on its internet website before a Contractor or any of its
11 Subcontractors may commence work under the Contract. Contractor shall update the list to show any
12 changes in the Subcontractors, or the facilities or operation during the term of the Contract. Before
13 commencing any work under the Contract, the Contractor also shall provide the City and County a
14 written statement showing the amount to be paid each Subcontractor and shall update this information
15 in writing to show changes in the amount to be paid any Subcontractor or amounts to be paid
16 Subcontractors added after submittal of the most recent statement to the City and County.

17 (k) During each year of the term of a Contract, the Director, the Office of Labor Standards
18 Enforcement, or the Director's designee may request a written assurance from the Contractor and each
19 of its Subcontractors that the Contractor or Subcontractor is in compliance with this Chapter. The
20 request may seek confirmation of compliance with some or all of the requirements of this Chapter, and
21 may require the response to be submitted under penalty of perjury. The Contractor or Subcontractor
22 shall provided the written assurance within the time period specified by the Director, the Office of
23 Labor Standards Enforcement, or the Director's designee, which shall not be less than 14 days from
24 receipt of the request.

1 (l) Each Contractor and Subcontractor shall be responsible for ensuring the Subcontractor's
2 compliance with this Chapter.

3 (m) Contractors and Subcontractors shall demonstrate commitment to best practices and
4 continuous improvement in management practices to eliminate Sweatshop Labor, including the right to
5 freedom of association and collective bargaining. No Contractor or Subcontractor shall subject a
6 Worker to harassment, intimidation or retaliation as a result of his or her efforts to freely associate or
7 bargain collectively. This subsection shall not apply to Contractors or Subcontractors subject to the
8 National Labor Relations Act, 29 U.S.C. §§ 151 et seq.

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10 Sec. 12U.4 CONTRACTUAL REQUIREMENT. Each Contract shall include an agreement by
11 the Contractor to comply with the requirements of this Chapter, and shall incorporate this Chapter by
12 reference. Contracts shall provide the following: (1) that in the event the Director determines that any
13 Contractor or Subcontractor has failed to comply with any provision of this Chapter or any regulations
14 implementing this Chapter, the Contractor shall be liable for liquidated damages equal to the greater
15 of \$1,000 or 20% of the amount of the Goods provided in violation of this Chapter, as determined by
16 the Director; and (2) the City and County may deduct any liquidated damages owed by a Contractor
17 from any monies owed the Contractor under the Contract or any other agreement that the Contractor
18 has with the City and County.

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20 Sec. 12U.5. PHASE-IN PERIOD. During the first full fiscal year of the City and County after
21 the effective date of this Chapter, the City and County shall target for enforcement only Contracts for
22 apparel, garments and corresponding accessories, materials, supplies or equipment. Agreements for
23 other Goods shall be targeted for enforcement in accordance with the procedure set forth in Section
24 12U.6.

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Sec. 12U.6. ADVISORY GROUP.

(a) The City and County shall establish a Sweatfree Procurement Advisory Group. The Sweatfree Procurement Advisory Group shall evaluate the industries engaged in the manufacture and sale of goods to determine whether contracts for any goods, in addition to apparel and garments, should be targeted for enforcement, and to evaluate the implementation, administration, and enforcement of this Chapter. To determine whether a particular good shall be targeted for enforcement, the factors that the Sweatfree Procurement Advisory Group shall consider shall include, but not be limited to: (a) the amount the City and County has spent, and anticipates spending for such good; (b) evidence of Sweatshop Labor or other conditions prohibited by this Chapter in the manufacturing, assemblage or distribution of such good; and (c) any financial impact that targeting the good for enforcement will have on the City and County. At the end of the first full fiscal year of the City and County following the effective date of this Chapter, and annually thereafter, the Sweatfree Procurement Advisory Group shall submit a written report to the Director and the Office of Labor Standards Enforcement that contains any recommendations on the administration, implementation, and enforcement of this Chapter, or the application of this Chapter to other goods. The report shall include the supporting information upon which each recommendation is based and a report on the financial impact that adoption of the recommendation will have on the City and County. The Director may submit any recommendation to extend the applicability of this Chapter to other goods to the Board of Supervisors. Upon the adoption of an ordinance approving such recommendation, Contracts for the purchase of such goods shall be subject to this Chapter. The Director in the Director's discretion may adopt other recommendations of the Sweatfree Procurement Advisory Group subject to the Municipal Code and the Charter.

1 (b) The Sweatfree Procurement Advisory Group shall determine how the City and County may
2 maximize its purchase of goods produced in San Francisco. Within four months of its formation, the
3 Sweatfree Procurement Advisory Group shall examine how the City and County may provide
4 preferences and/or incentives to garment industry manufacturers in San Francisco that are in
5 compliance with this Chapter, and explore the expansion of preferences and/or incentives to other
6 industries. Within the four-month period, the Sweatshop Procurement Advisory Group shall propose
7 legislation to immediately implement the preferences and/or incentives.

8 (c) The Sweatfree Procurement Advisory Group shall consist of eleven members. The Mayor
9 and the Board of Supervisors shall each appoint five members. The Controller shall appoint one
10 member. Each member shall be appointed to a term of two years. At least one of the Board of
11 Supervisors' appointees and one of the Mayor's appointees must have significant experience
12 representing employees in labor matters. At least one of the Board of Supervisors' appointees and one
13 of the Mayor's appointees must have significant experience acquiring goods or services for a public
14 entity. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must
15 have significant experience as an advocate for human rights or the poor. The Controller's appointee
16 shall have significant experience in finance, financial auditing, or accounting. All members of the
17 Sweatfree Procurement Advisory Group shall be appointed within sixty days of the effective date of this
18 Chapter. Each member shall serve at the pleasure of the appointing authority. The Sweatfree
19 Procurement Advisory Group shall meet not less than once each fiscal year.

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21 Sec. 12U.7 ADMINISTRATION AND ENFORCEMENT.

22 (a) The Director shall implement and administer, and the Director and the Office of Labor
23 Standards Enforcement shall enforce the requirements of this Chapter. The Director may issue
24 regulations for the implementation and administration of this Chapter. The Director may, in
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1 consultation with the Office of Labor Standards Enforcement, issue regulations for the enforcement of
2 this Chapter. The Director may delegate, in writing, responsibilities to other departments, offices,
3 employees, officers, or agents of the City and County. Each City department, when requested by the
4 Director, shall cooperate with the Director in the implementation or administration of this Chapter,
5 and when requested by the Director or Office of Labor Standards Enforcement, shall cooperate with
6 the enforcement of this Chapter by providing relevant information that is in the department's
7 possession and control, and providing any other assistance that it is feasible for the department to
8 provide. The City and County may, subject to the Charter, including without limitation its budgetary
9 and fiscal provisions, and the Municipal Codes, enter into contracts with any entity and cooperative
10 agreements or arrangements with any public entity for assistance in implementing, administering or
11 enforcing this Chapter, and shall explore efficient and cost-effective mechanisms for ensuring the
12 compliance of Contractors.

13 (b) Until such time as the City and County determines that it is able to adequately monitor
14 compliance with this Chapter using City personnel, the City and County shall, subject to the Charter,
15 including without limitation its budgetary and fiscal provisions, and the Municipal Codes, enter into an
16 agreement with an independent non-profit organization with expertise in monitoring and reporting on
17 Sweatshop Labor for assistance monitoring the compliance of Contractors. This subsection does not in
18 anyway limit the City's ability to contract for assistance under subsection 12.U.7(a).

19 (c) Each Contractor and Subcontractor shall cooperate fully with any investigation of the
20 Director, the Office of Labor Standards Enforcement, the Director's designee or contractors, including
21 without limitation any independent non-profit monitor, and other City employees and agents authorized
22 to assist in the implementation, administration or enforcement of this Chapter. Such persons or entities
23 shall, in the performance of their duties, have the right to engage in random inspections of any worksite
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1 where the Contract or any Subcontract is performed and have access to any Worker or any record
2 required to be maintain in Section 12U.3.

3 (d) Any failure of a Contractor or Subcontractor to perform in accordance with this Chapter
4 shall be a material breach of the Contract. In such an event, the City and County may take any or all
5 of the following actions:

6 (1) Assess liquidated damages as provided for in the Contract.

7 (2) Terminate the Contract

8 (3) Commence debarment proceedings pursuant to Chapter 28 of this Code against the
9 Contractor, where the Contractor has failed to comply with this Chapter, or against the Subcontractor,
10 or Contractor and Subcontractor, where the Subcontractor has failed to comply with this Chapter.

11 (4) Withhold payments under the Contract until the Contractor or its Subcontractor is in full
12 compliance with this Chapter.

13 (5) Require the Contractor or Subcontractor, at its expense, to provide training and best
14 practices guidelines to managers and employees at the facility or operation where the violation
15 occurred to ensure future compliance. Upon request by the Director or the Director's designee, the
16 Contractor or Subcontractor shall submit such materials for the City and County's review and approval
17 prior to distribution to managers and employees.

18 (6) Any Contractor or Subcontractor shall provide the Director or the Director's designees or
19 contractor, and other City employees and agents authorized to assist in the administration and
20 enforcement of this Chapter immediate access to the facility or operation where the violation has
21 occurred for an inspection of the facility or operation and records, and interviews of Workers.

22 (7) During the term of the Contract, but not more than once every 30 days, the Director, the
23 Office of Labor Standards Enforcement, or the Director's designee may require the Contractor or
24 Subcontractor to provide a written summary of the steps taken to remedy the noncompliance and any
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1 difficulties encountered in curing the noncompliance. The request may require the response to be
2 submitted under penalty of perjury. The Contractor or Subcontractor shall provided the written
3 summary within the time period specified by the Director, the Office of Labor Standards Enforcement,
4 or the Director's designee, which shall not be less than 14 days from receipt of the request.

5 (8) Pursue any other remedies available to the City and County at law or in equity.

6 Sec. 12U.8. EFFECTIVE DATE. This Chapter shall be effective ninety days after it is adopted.
7 This legislation is intended to have prospective effect only.

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9 Sec. 12U.9. EXCEPTIONS. This Chapter shall not apply in the following circumstances:

10 (a) When a Contract involves the expenditure of funds received by the City and County and the
11 application of this Chapter would violate or be inconsistent with the terms or conditions of the
12 applicable grant agreement, subvention or agreement or the instructions of an authorized
13 representative of any such agency with respect to any such grant agreement, subvention or agreement.

14 (b) When the Director or the Director's designee determines that there is only one responsible
15 contractor available to provide the Goods and that contractor is unable to comply with this Chapter, or
16 the City and County department, commission, office or other City and County entity seeking to enter
17 into the contract certifies in writing to the Director, and the Director finds that there are no qualified
18 responsive bidders or proposers or prospective contractors that would comply with the requirements of
19 this Chapter and the Contract is for Goods that are essential to the City or the public.

20 (c) When the Contract is with a public entity.

21 (d) When the acquisition of Goods is only incidental to the other purchases under the Contract.
22 The acquisition of Goods shall be incidental if the amount paid by the City for the Goods is 10 percent
23 or less than the total amount of the Contract.

1 (e) If the department recommending the Contract certifies in writing to the Director that
2 pursuant to Administrative Code Section 6.60 or 21.15 that the Contract is necessary to respond to an
3 emergency which endangers the public health or safety and no entity which complies with the
4 requirements of this Chapter capable of responding to the emergency is immediately available.

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6 Sec. 12U.10. PREEMPTION. Nothing in this Chapter shall be interpreted or applied so as to
7 create any power or duty in conflict with any federal or state law.

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9 Sec. 12U.11. SEVERABILITY. If any part or provision of this Chapter, or the application of
10 this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including
11 the application of such part or provisions to other persons or circumstances, shall not be affected by
12 such holding and shall continue in full force and effect. To this end, the provisions of this Chapter are
13 severable.

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

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18 By: _____
ROBERT A. BRYAN
19 Deputy City Attorney