File No. 230213 **Committee Item No.** 3
Board Item No. 18

COMMITTEE/BOARD OF SUPERVISORS

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Completed by: Victor Young **Date** April 13, 2023
Completed by: _____ **Date** _____

[Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]

Ordinance amending the Administrative Code to repeal Chapter 12X, and thereby repeal the prohibitions on City-funded travel to a state, and the City's entering into a contract with a contractor that has its United States headquarters in a state or where any or all of the contract would be performed in a state, that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws.

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

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

Section 1. The Administrative Code is hereby amended by repealing Chapter 12X in its entirety, as follows:

~~***CHAPTER 12X:***~~

~~***PROHIBITING CITY TRAVEL AND CONTRACTING***~~

~~***IN STATES THAT ALLOW DISCRIMINATION***~~

~~***ARTICLE I: STATES THAT ALLOW DISCRIMINATION AGAINST LGBT INDIVIDUALS***~~

~~***SEC. 12X.1. FINDINGS AND PURPOSE.***~~

~~*LGBT individuals are entitled to live free from discrimination on the basis of sexual orientation, gender identity, and gender expression. San Francisco has a long history of protecting and promoting the rights of LGBT individuals. San Francisco is also a city open to the free expression and protection of religious views of all kinds.*~~

~~*Since the U.S. Supreme Court's landmark decision in Obergefell v. Hodges on June 26, 2015, recognizing the constitutional right of same-sex couples to marry, states have enacted laws aimed at reducing the legal protections for the LGBT community. In March 2016, North Carolina passed a law nullifying municipal anti-discrimination protections for LGBT individuals in the state. Under the North Carolina law, any existing local LGBT anti-discrimination measure is unenforceable, as would be any future measure adopted by a local government. The law also discriminates against transgender people by requiring them to use public bathrooms that correspond to their biological sex rather than their gender identity. Other states, are considering similar laws. In April 2016, Mississippi enacted a law that would permit discrimination against LGBT individuals if the person choosing to treat LGBT individuals differently claims that the disparate treatment is based on "sincerely held religious beliefs." Such laws have been proposed in other states. The City and County of San Francisco does not support discrimination against LGBT individuals under any circumstances, including when such discrimination is based on religion.*~~

~~*The Board of Supervisors finds that the City should not require its employees, many of whom are LGBT individuals, to be subjected to these discriminatory laws while traveling on City business. No individual, and certainly no employee of the City while conducting City business, should suffer the indignity of being denied services on the basis of being lesbian, gay, bisexual, or transgender. The City and the country have moved in the direction of granting more rights and more protections to LGBT individuals. These new laws represent an affront to progress and to the recognition that the LGBT community is entitled to equal treatment under the law.*~~

~~*Further, the City has a strong interest in dissociating itself from the discriminatory practices of states that have enacted or in the future might enact such laws, and from companies that choose to have their headquarters therein. City funds should not be expended, directly or indirectly, in states that perpetuate unequal treatment of the LGBT community. The Board finds that supporting such states*~~

~~*through the tax revenue that would result from the expenditure of City funds therein is inconsistent with the principles of equality that San Francisco strives to promote.*~~

~~***SEC. 12X.2. DEFINITIONS.***~~

~~*For purposes of this Article I:*~~

~~*"City" means the City and County of San Francisco.*~~

~~*"Contract" means an agreement between a Contracting Department and any person or entity that provides, at the expense of the City, for public works or public improvements to be purchased under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing, "Contract" shall not include:*~~

~~*(a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or*~~

~~*(b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or*~~

~~*(c) Agreements advertised, solicited, or initiated prior to the Operative Date of this Chapter 12X, including amendments to existing Contracts.*~~

~~*"Contracting Department" means the City department, office, board, commission, or other City agency that enters into a Contract on behalf of the City.*~~

~~*"Contractor" means any corporation, partnership, individual, sole proprietorship, joint venture, or other legal entity or combination thereof, which enters into a Contract with the City.*~~

~~*"Covered State" means any state that after June 26, 2015, has enacted a law that,*~~

~~*(a) voids or repeals existing state or local protections against discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, or*~~

~~*(b) authorizes or requires discrimination against same-sex couples or their families or that authorizes or requires discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, including any law that creates an exemption to antidiscrimination laws in order to permit discrimination against same-sex couples or their families or on the basis of Sexual Orientation, Gender Identity, or Gender Expression.*~~

~~*"Covered State List" means the list maintained by the City Administrator of all states that meet the definition of a Covered State, in accordance with Section 12X.3.*~~

~~*"Gender Expression" has the meaning set forth in Section 3304.1(c) of the Police Code.*~~

~~*"Gender Identity" has the meaning set forth in Section 3304.1(c) of the Police Code.*~~

~~*"Operative Date" means February 11, 2017.*~~

~~*"Sexual Orientation" has the meaning set forth in Section 12B.1(c) of the Administrative Code.*~~

~~***SEC. 12X.3. COVERED STATE LIST.***~~

~~*The City Administrator shall create and maintain the Covered State List. A state shall be added to the Covered State List when it meets the definition of a Covered State. A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed and updated by the City Administrator at least semiannually.*~~

~~***SEC. 12X.4. TRAVEL.***~~

~~*(a) The City shall not:*~~

~~*(1) Require any of its employees or officers to travel to a state on the Covered State List;*~~ ~~*or*~~

~~*(2) Approve a request for City-funded travel to a state on the Covered State List.*~~

~~*(b) Subsection (a) shall not apply to travel that is:*~~

~~*(1) necessary for the enforcement of any state or City law;*~~

~~*(2) necessary for the defense of any legal claim against the City;*~~

~~*(3) required by law;*~~

~~*(4) required to meet contractual obligations incurred by the City; or*~~

~~*(5) necessary for the protection of public health, welfare, or safety.*~~

~~*(c) For purposes of this Section 12X.4, "travel" does not include landing in a state by plane to make a connecting flight to a destination outside that state, or traversing a state by automobile, train, bus, or otherwise, to reach a destination outside that state.*~~

~~***SEC. 12X.5. CONTRACTING.***~~

~~*(a) The City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during the term of a Contract, the Contractor moves its headquarters, or the location from which it will provide services to the City, to a state on the Covered State List, such a move shall not constitute grounds to terminate the Contract.*~~

~~*(b) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to Contracts in the following circumstances:*~~

~~*(1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or*~~

~~*(2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or*~~

~~*(3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public; or*~~

~~*(4) The Contracting Department determines that the public interest warrants the granting of a waiver because application of this Section 12X.5 would have an adverse impact on services or a substantial adverse financial impact on the City; or*~~

~~*(5) The Contracting Department determines that the services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a group purchasing organization; purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and purchase under such an arrangement is in the best interest of the City; or*~~

~~*(6) The Contracting Department determines that the requirements of this Section 12X.5 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 Section; or*~~

~~*(7) The General Manager of the Public Utilities Commission may waive the requirements of this Section 12X.5 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 waiver provision shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.*~~

~~*(c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*~~

~~*(d) The requirements of this Section 12X.5 shall apply to Contracts first advertised, solicited, or initiated on or after the Operative Date.*~~

~~***SEC. 12X.6. RULES AND REGULATIONS.***~~

~~*The City Administrator may adopt rules, regulations, and guidelines to implement this Article I, Chapter 12X.*~~

~~***SEC. 12X.7. PREEMPTION.***~~

~~*Nothing in this Article I, Chapter 12X shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. In Contracts that involve the use of any funds furnished, given, or loaned by the Government of the United States or the State of California, all laws, rules, and regulations of the United States or California or of any federal or State departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Article I, Chapter 12X when such laws, rules, or regulations are in conflict.*~~

~~***SEC. 12X.8. UNDERTAKING FOR THE GENERAL WELFARE.***~~

~~*In enacting and implementing this Article I, Chapter 12X, the City 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. 12X.9. SEVERABILITY.***~~

~~*If any section, subsection, sentence, clause, phrase, or word of this Article I, Chapter 12X, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.*~~

~~***ARTICLE II: STATES WITH RESTRICTIVE ABORTION LAWS***~~

~~***SEC. 12X.11. FINDINGS AND PURPOSE.***~~

~~*The right to choose to have an abortion is protected by the Constitutional right to privacy under the Due Process clause of the 14th Amendment. In Roe v. Wade, 410 U.S. 113 (1973), the U.S. Supreme Court held that the U.S. Constitution protects a personal decision to end a pregnancy.*~~

~~*The right to control if and when to have a child is fundamental to gender equality, and protecting the right to comprehensive reproductive healthcare makes for healthier states with stronger economies. For instance, the ability to make this personal healthcare decision has enabled people to pursue educational and employment opportunities, including serving as a main driver increasing college enrollment and wage gains for women. In 1992, the Supreme Court noted that "the ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."*~~

~~*Restrictive abortion bans can impact anyone who is capable of becoming pregnant, including trans-men, non-binary, and intersex people. Further, roll backs on reproductive rights, including passing abortion bans or restricting funding for clinical healthcare facilities that provide reproductive healthcare services, including abortions, contraception, and other healthcare services, have a disproportionate impact on LGBTQI individuals. These individuals access healthcare services at*~~

~~*clinical healthcare facilities like Planned Parenthood – including abortions, contraception and other healthcare services such as HIV and AIDS related services, hormone therapy, and other LGBTQI related care.*~~

~~*– Abortion is a medically safe procedure and critical part of reproductive health care. Nearly 1 in 4 U.S. women will have an abortion by age 45. Abortion is safer than childbirth, with only 0.23% of all abortions resulting in a major complication compared to 1.3% for childbirth.*~~

~~*– San Francisco has a legacy of leadership on women's human rights. In 1998, San Francisco became the first city in the world to adopt the principles of the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women as a local ordinance committing the City to take proactive measures to eliminate discrimination and advance women's human rights including the right to sexual and reproductive health.*~~

~~*– San Francisco has always been a national leader in supporting reproductive freedom for all. According to the National Institute for Reproductive Health Local Reproductive Freedom Index, San Francisco received the highest scores of 4.5 stars and is listed as having the most reproductive health, rights, and justice policies in place, out of 40 cities across the United States.*~~

~~*– The City also has a history of protecting reproductive rights. In 2014, the City enacted an ordinance establishing "buffer-zones" to prohibit harassment of people attaining services at reproductive health clinics. The City also banned false and misleading claims by "Crisis Pregnancy Centers," and enacted multiple resolutions in support of continued state and federal funding for reproductive health services.*~~

~~*– Abortion access is increasingly restricted in many states across the country. Since 1995, states have enacted 1,041 anti-choice measures, and in 2018, 22 states enacted 50 anti-choice legislative measures. Given the risks that these measures pose to health and access, San Francisco must continue to support vital efforts to protect access to safe and legal abortion services at the local, state and federal levels.*~~

~~*The City has a strong interest in dissociating itself from states that enact laws that limit the legal right to abortion guaranteed by the United States Constitution. By prohibiting City-funded travel to such states and by prohibiting the City from entering into contracts with companies headquartered in such states, the City voices its opposition to these severe anti-choice policies by refusing to expend City funds that would support such states through the tax revenue that would result from such expenditures.*~~

~~***SEC. 12X.12. DEFINITIONS.***~~

~~*For purposes of this Article II:*~~

~~*"City" means the City and County of San Francisco.*~~

~~*"Contract" means an agreement between a Contracting Department and any person or entity that provides, at the expense of the City, for public works or public improvements to be purchased under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing, "Contract" shall not include:*~~

~~*(a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or*~~

~~*(b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or*~~

~~*(c) Agreements advertised, solicited, or initiated prior to the Operative Date of this Article II, Chapter 12X, including amendments to existing Contracts.*~~

~~*"Contracting Department" means the City department, office, board, commission, or other City agency that enters into a Contract on behalf of the City.*~~

~~*"Contractor" means any corporation, partnership, individual, sole proprietorship, joint venture, or other legal entity or combination thereof, which enters into a Contract with the City.*~~

~~*"Covered State" means a state that has enacted a law that prohibits abortion prior to the Viability of the fetus, regardless of whether there are exceptions to such prohibition. Examples of such restrictive laws include a law prohibiting abortion after fetal pole cardiac activity can be detected but before viability (so-called "fetal heartbeat" laws), and a law that prohibits abortion a set number of weeks after fertilization but before Viability.*~~

~~*"Covered State List" means the list maintained by the City Administrator of all states that meet the definition of a Covered State, in accordance with Section 12X.13.*~~

~~*"Operative Date" means January 1, 2020.*~~

~~*"Viability" has the meaning articulated by the United States Supreme Court in Roe v. Wade: "potentially able to live outside the mother's womb, albeit with artificial aid," and as further articulated in the California Reproductive Privacy Act, (Health & Safety Code Sec. 123464): "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."*~~

~~***SEC. 12X.13. COVERED STATE LIST.***~~

~~*(a) The City Administrator shall create and maintain the Covered State List. A state shall be added to the Covered State List when it meets the definition of a Covered State. A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed and updated by the City Administrator at least semiannually.*~~

~~*(b) Role of the Department on the Status of Women. The Department on the Status of Women shall analyze whether a state's law meets the definition of a Covered State. Within 30 days of the effective date of the ordinance in File No. 190658, creating this Article II of Chapter 12X, the Department on the Status of Women shall submit a recommendation to the City Administrator of states*~~

~~*that satisfy the definition of a Covered State. If the law that caused the state to meet the definition of a Covered State is enjoined by a court of competent jurisdiction, the Department on the Status of Women shall not recommend that state for inclusion on the Covered State List. The Department on the Status of Women shall thereafter review the Covered States that appear on the Covered State List on at least a semiannual basis and shall recommend to the City Administrator any states that should be added to or removed from the Covered State List.*~~

~~***SEC. 12X.14. TRAVEL.***~~

~~*(a) The City shall not:*~~

~~*(1) Require any of its employees or officers to travel to a state on the Covered State List; or*~~

~~*(2) Approve a request for City-funded travel to a state on the Covered State List.*~~

~~*(b) Subsection (a) shall not apply to travel that is:*~~

~~*(1) necessary for the enforcement of any state or City law;*~~

~~*(2) necessary for the defense of any legal claim against the City;*~~

~~*(3) required by law;*~~

~~*(4) required to meet contractual obligations incurred by the City; or*~~

~~*(5) necessary for the protection of public health, welfare, or safety.*~~

~~*(c) For purposes of this Section 12X.14, "travel" does not include landing in a state by plane to make a connecting flight to a destination outside that state, or traversing a state by automobile, train, bus, or otherwise, to reach a destination outside that state.*~~

~~***SEC. 12X.15. CONTRACTING.***~~

~~*(a) The City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during the term of a Contract, the Contractor moves its headquarters, or the location from which it will*~~

~~*provide services to the City, to a state on the Covered State List, such a move shall not constitute grounds to terminate the Contract.*~~

~~*(b) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to Contracts in the following circumstances:*~~

~~*(1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or*~~

~~*(2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or*~~

~~*(3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public; or*~~

~~*(4) The Contracting Department determines that the public interest warrants the granting of a waiver because application of this Section 12X.15 would have an adverse impact on services or a substantial adverse financial impact on the City; or*~~

~~*(5) The Contracting Department determines that the services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a group purchasing organization; purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and purchase under such an arrangement is in the best interest of the City; or*~~

~~*(6) The Contracting Department determines that the requirements of this Section 12X.15 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 Section; or*~~

~~*(7) The General Manager of the Public Utilities Commission may waive the requirements of this Section 12X.15 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 waiver provision shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.*~~

~~*(c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*~~

~~*(d) The requirements of this Section 12X.15 shall apply to Contracts first advertised, solicited, or initiated on or after the Operative Date.*~~

~~***SEC. 12X.16. RULES AND REGULATIONS; REPORTING.***~~

~~*(a) The City Administrator may adopt rules, regulations, and guidelines to implement this Article II, Chapter 12X.*~~

~~*(b) By December 31, 2023, the Controller shall conduct an evaluation and submit a report to the Board of Supervisors regarding the economic impact of this Article II of Chapter 12X on the City.*~~

~~***SEC. 12X.17. PREEMPTION.***~~

~~*Nothing in this Article II, Chapter 12X shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. In Contracts that involve the use of any funds furnished, given, or loaned by the Government of the United States or the State of California, all laws, rules, and regulations of the United States or California or of any federal or State departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Article II, Chapter 12X when such laws, rules, or regulations are in conflict.*~~

~~***SEC. 12X.18. UNDERTAKING FOR THE GENERAL WELFARE.***~~

~~*In enacting and implementing this Article II, Chapter 12X, the City 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. 12X.19. SEVERABILITY.***~~

~~*If any section, subsection, sentence, clause, phrase, or word of this Article II, Chapter 12X, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.*~~

~~***ARTICLE III: STATES WITH VOTER SUPRESSION LAWS***~~

~~***SEC. 12X.21. FINDINGS AND PURPOSE.***~~

~~*(a) San Francisco is committed to conducting fair and open elections. That commitment includes making elections as widely accessible as possible. For example, the City has instituted early*~~

~~*voting at City Hall, sent vote-by-mail ballots to all voters during the recent pandemic, and provided ballot drop-off boxes throughout the City, including in all precincts on Election Day.*~~

~~*(b) But the history of our nation has been marred by recurring efforts to restrict the voting rights of Black citizens and other citizens of color. After the 2020 presidential election, many states introduced, and several states have already enacted, new and oppressive voter restriction laws that disproportionately impact minority and low-income voters and that make it harder for Black people, other people of color, and voters from low-income communities to exercise their most fundamental of rights. Such voter suppression is a threat to our entire democratic system.*~~

~~*(c) San Francisco adopts this Chapter 12X, Article III, to prevent the expenditure of City funds on travel in states that have enacted voter suppression laws or on contracts with businesses headquartered or performing contractual services for the City in such states.*~~

~~***SEC. 12X.22. GENERAL DEFINITIONS.***~~

~~*For purposes of this Article III, Chapter 12X:*~~

~~*"City" means the City and County of San Francisco.*~~

~~*"Contract" means an agreement between a Contracting Department and any person or entity that provides, at the expense of the City, for public works or public improvements to be purchased under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing, "Contract" shall not include:*~~

~~*(a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or*~~

~~*(b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or*~~

~~*(c) Agreements advertised, solicited, or initiated prior to the operative date of this Article III, Chapter 12X, including amendments to existing Contracts.*~~

~~*"Contracting Department" means the City department, office, board, commission, or other City agency that enters into a Contract on behalf of the City.*~~

~~*"Contractor" means any corporation, partnership, individual, sole proprietorship, joint venture, or other legal entity or combination thereof, which enters into a Contract with the City.*~~

~~*"Covered State" means a state that has adopted a Voter Suppression Law, as defined in Section 12X.23, below, on or after January 1, 2021.*~~

~~*"Covered State List" means the list maintained by the City Administrator of all states that meet the definition of a Covered State, in accordance with Section 12X.24.*~~

~~***SEC. 12X.23. "VOTER SUPRESSION LAW" DEFINED.***~~

~~*"Voter Suppression Law" means a state law, adopted on or after January 1, 2021, that makes it, on balance, harder to register to vote, harder to stay on the voter registration rolls, or harder to vote, as compared to existing state law prior to the date of adoption, regardless of whether there are exceptions to such laws. In addition, "Voter Suppression Law" means a state law, adopted on or after January 1, 2021, that reallocates responsibility for the processing, tabulation, or determination of votes and/or election results in a manner that, on balance, presents a danger that the will of the voters as expressed in their votes will be overridden. By way of example but not limitation, the following laws are likely to be Voter Suppression Laws within the meaning of this Section 12X.23:*~~

~~*(a) **Laws Restricting Voter Registration:***~~

~~*(1) Laws that remove voters from voter rolls for not having voted in previous elections.*~~

~~*(2) Laws that require voters to re-register repeatedly in order to remain on voter rolls.*~~

~~*(3) Laws that expand voter roll purges or eliminate safeguards that prevent improper purges.*~~

~~*(b) **Laws Restricting General Voting:***~~

~~*(1) Laws that unduly limit or reduce the number of polling places.*~~

~~*(2) Laws that restrict or ban the use of ballot drop boxes, or that limit the number of drop boxes solely by county or other geographic or geopolitical area despite variances in population.*~~

~~*(3) Laws that do not allow same-day voting at a polling place if a voter goes to the wrong polling location.*~~

~~*(4) Laws that limit or ban same-day voter registration on election day.*~~

~~*(5) Laws that otherwise limit access to voting by reducing the times, places, or methods by which eligible persons may vote.*~~

~~*(6) Laws that prohibit extension of voting hours if election problems arise.*~~

~~*(c) **Laws Imposing Restrictive ID Requirements:***~~

~~*(1) Laws that impose strict photographic identification requirements, such as laws requiring state ID for in-person and/or absentee ballots but that do not accept student IDs issued by universities and colleges located in the state.*~~

~~*(2) Laws that prevent voters without photo IDs from satisfying an identification requirement in some other manner, such as by submitting a signed and sworn affidavit.*~~

~~*(3) Laws that require multiple forms of photo ID to vote.*~~

~~*(d) **Laws Restricting Absentee Voting:***~~

~~*(1) Laws that make it more difficult to obtain or cast an absentee ballot by narrowing eligibility for absentee voting.*~~

~~*(2) Laws that make the application process for absentee ballots unduly difficult by requiring multiple steps.*~~

~~*(3) Laws that unduly limit the time frame for requesting and/or returning absentee ballots.*~~

~~*(4) Laws limiting or prohibiting local election departments from mailing absentee ballots or absentee ballot applications to all voters.*~~

~~*(5) Laws that remove voters as absentee voters if they failed to vote absentee in two or more consecutive state or federal election cycles.*~~

~~*(6) Laws barring persons other than the individual voter or their families from turning in an absentee ballot.*~~

~~*(e) **Laws Restricting Elections by Mail:***~~

~~*(1) Laws that prevent mail-in ballots from being counted in a presidential election.*~~

~~*(2) Laws that ban pre-paid postage for mail-in ballots.*~~

~~*(f) **Laws Restricting Voting by Persons with Disabilities:***~~

~~*(1) Laws that require disabled persons to prove their disability when voting.*~~

~~*(g) **Laws Reallocating Responsibility for Processing, Tabulation, or Determination of Votes or Results:***~~

~~*(1) Laws that remove the secretary of state from the state election board, or otherwise take away the power of the state's chief elections officer to remedy election problems.*~~

~~*(2) Laws that undermine the power of local officials to conduct fair elections.*~~

~~*(3) Laws that allow the state legislature to override or disregard local voting returns and declare their own election results.*~~

~~***SEC. 12X.24. COVERED STATE LIST.***~~

~~*(a) The City Administrator shall create and maintain the Covered State List. A state shall be included in the Covered State List when, in the judgment of the City Administrator, in consultation with the Director of Elections and the City Attorney, it meets the definition of a Covered State.*~~

~~*(b) A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. A decision to remove a state from the Covered State List shall be made by the City Administrator, in consultation with the Director of Elections and the City Attorney.*~~

~~*(c) The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed, and updated as appropriate, by the City Administrator at least semiannually.*~~

~~***SEC. 12X.25. TRAVEL.***~~

~~*(a) The City shall not:*~~

~~*(1) Require any of its employees or officers to travel to a state on the Covered State List; or*~~

~~*(2) Approve a request for City-funded travel to a state on the Covered State List.*~~

~~*(b) Subsection (a) shall not apply to travel that is:*~~

~~*(1) necessary for the enforcement of any state or City law;*~~

~~*(2) necessary for the defense of any legal claim against the City;*~~

~~*(3) required by law;*~~

~~*(4) required to meet contractual obligations incurred by the City; or*~~

~~*(5) necessary for the protection of public health, welfare, or safety.*~~

~~*(c) For purposes of this Section 12X.25, "travel" does not include landing in a state by plane to make a connecting flight to a destination outside that state, or traversing a state by automobile, train, bus, or otherwise, to reach a destination outside that state.*~~

~~***SEC. 12X.26. CONTRACTING.***~~

~~*(a) The City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during the term of a Contract, the Contractor moves its headquarters, or the location from which it will provide services to the City, to a state on the Covered State List, such a move shall not constitute grounds to terminate the Contract.*~~

~~*(b) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to Contracts in the following circumstances:*~~

~~*(1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or*~~

~~*(2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or*~~

~~*(3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public; or*~~

~~*(4) The Contracting Department determines that the public interest warrants the granting of a waiver because application of this Section 112X.26 would have an adverse impact on services or a substantial adverse financial impact on the City; or*~~

~~*(5) The Contracting Department determines that the services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a group purchasing organization; purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and purchase under such an arrangement is in the best interest of the City; or*~~

~~*(6) The Contracting Department determines that the requirements of this Section 12X.26 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 Section; or*~~

~~*(7) The General Manager of the Public Utilities Commission may waive the requirements of this Section 12X.26 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 waiver provision shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.*~~

~~*(c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*~~

~~*(d) The requirements of this Section 12X.26 shall apply to Contracts first advertised, solicited, or initiated on or after the operative date.*~~

~~***SEC. 12X.27. RULES AND REGULATIONS; REPORTING.***~~

~~*(a) The City Administrator may adopt rules, regulations, and guidelines to implement this Article III of Chapter 12X.*~~

~~*(b) By January 1, 2023, the Controller shall conduct an evaluation and submit a report to the Board of Supervisors regarding the economic impact of this Article III of Chapter 12X on the City.*~~

~~***SEC. 12X.28. PREEMPTION.***~~

~~*Nothing in this Article III, Chapter 12X shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or State of California law. In Contracts that involve the use of any funds furnished, given, or loaned by the Government of the United States or the*~~

~~*State of California, all laws, rules, and regulations of the United States or California or of any federal or State departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Article III, Chapter 12X when such laws, rules, or regulations are in conflict.*~~

~~***SEC. 12X.29. UNDERTAKING FOR THE GENERAL WELFARE.***~~

~~*In enacting and implementing this Article III, Chapter 12X, the City 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. 12X.30. SEVERABILITY.***~~

~~*If any section, subsection, sentence, clause, phrase, or word of this Article III, Chapter 12X, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Article or Chapter. The Board of Supervisors hereby declares that it would have passed this Article and Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion this Article or Chapter or application thereof would be subsequently declared invalid or unconstitutional.*~~

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 3. Operative Date. The Operative Date of this Chapter 12X repeal is the same as the Effective Date. As of that date, all restrictions imposed by Chapter 12X relating to travel and contracting will cease to exist. Prior to the Operative Date, the restrictions will remain in place, and the City may not fund travel to, or award contracts to entities based in, states on the City Administrator's list, unless an exemption, waiver, or other applicable determination is made under Chapter 12X. This section does not create any new contracting requirements. Agreements awarded prior to the Operative Date and amendments of such agreements remain valid. Departments are not required to alter or rescind any procurements that are in process as of the Operative Date. The City Administrator may adopt guidance to implement this repeal ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ Gustin R. Guibert
GUSTIN R. GUIBERT
Deputy City Attorney

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FILE NO. 230213

LEGISLATIVE DIGEST

[Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]

Ordinance amending the Administrative Code to repeal Chapter 12X, and thereby repeal the prohibitions on City-funded travel to a state, and the City's entering into a contract with a contractor that has its United States headquarters in a state or where any or all of the contract would be performed in a state, that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws.

Existing Law

Chapter 12X of the Administrative Code is comprised of three articles, each of which restricts the ability of the City to i) travel to or ii) enter contracts with entities headquartered in or where any or all of the contract would be performed in states that have enacted: i) laws that allow discrimination against LGBT individuals, ii) restrictive abortion laws, or iii) voter suppression laws. The City Administrator maintains a list of states that have types of discriminatory laws listed above. The contracts affected by this restriction are let under Chapter 6 (construction or public works/improvement) and Chapter 21 (goods and services) of the Administrative Code.

Amendments to Current Law

The Chapter is being repealed in its entirety. After the effective date, the City may fund travel to all states, and may award contracts to entities headquartered in all states, without the restrictions of Chapter 12X. Any other contracting restriction impacting the travel or contract award remains in effect. Departments are not required to alter existing procurements, nor are existing contracts and amendments thereto impaired. The City Administrator is authorized to give guidance on the implementation of this transition.

Background Information

In 2016 the City enacted Chapter 12X, and restricted travel to and contracts awarded to initially 8 states that had laws that discriminated against LGBT individuals. In the following years, more discriminatory laws were targeted, and the list of states increased to 30. In 2022, the Board asked the City Administrator to review the legislation, its efficacy, and provide policy options in a report. The ensuing report found that the effect of 12X restrictions on states changing their policy was limited or uncertain, while the impact on the City was significant. Though Chapter 12X has waivers and exemptions, these do not fully address concerns raised over limitations imposed on the City and what it funds. Chapter 12X has increased administrative burdens and costs to the City in the form of smaller supplier pools. Further information is found in the City Administrator's Report of February 11, 2023 and the Supervisorial Letter of Inquiry of October 18, 2022.

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CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST
1390 Market Street, Suite 1150, San Francisco, CA 94102
PHONE (415) 552-9292 FAX (415) 252-0461

Policy Analysis Report

To: Supervisor Rafael Mandelman
From: Budget and Legislative Analyst's Office
Re: Impact of the Chapter 12X Contracting Ban
Date: October 18, 2022

Summary of Requested Action

Your office requested that the Budget and Legislative Analyst conduct an analysis of the impact of the implementation of the contracting prohibitions applicable to states on the Covered State List, pursuant to Chapter 12X of the Administrative Code. You also requested that we prepare an estimate of costs the City has incurred in implmenting this legislation and a report on the nature and impacts of a similar ban by the State of California.

For further information about this report, contact Fred Brousseau, Director of Policy Analysis, at the Budget and Legislative Analyst's Office.

Executive Summary

- In October 2016, the San Francisco Board of Supervisors approved an ordinance (later codified in the Administrative Code as Chapter 12X) prohibiting City-funded travel to states with laws that reduced protections for the LGBT community against discrimination. This ordinance also prohibits City contracting with companies headquartered in these states, or where work on the contract would be performed in these states. The ordinance has since been amended twice: in 2019 to expand the travel and contracting ban to include states with restrictive abortion laws; and in 2022 to include states with restrictive voting laws
- There are currently 30 "covered" states, as identified semiannually by the City Administrator, in consultation with the Office of Transgender Initiatives, Department on the Status of Women, and Department of Elections.
- The implementation guidelines promulgated by the City Administrator's Office related to Chapter 12X specify that contracting departments may only enter into new contracts with businesses headquartered in Chapter 12X covered states under six exceptions, which are listed in the Administrative Code. Prior to July 2021, all

contracting departments were required to report to the City Administrator annually on 12X waivers granted in the prior year based on the six allowed exceptions.

- Our review found poor compliance with this waiver reporting requirement between 2017 and 2021. However, since July 2021 and through the preparation of this report, departments have been required to enter waiver information into ServiceNow, an automated system through which the City Administrator's Office can generate a report that identifies waiver information for all departments.

- Between February 2017, when Chapter 12X became effective, and June 2022, City records show that 478,304 contracts and purchase orders with a value of $62.9 billion were issued by the City and County of San Francisco. However, in spite of the new law and the substantial value of the City's contracts and purchase orders, a system was not established to identify whether departments were complying with the Chapter 12X bans or whether they had issued waivers from the requirements when their contractors and vendors were headquartered in banned states.

- Due to limitations in readily available records, only a partial assessment can be made of Citywide compliance with Chapter 12X during its first years. It is not possible to tell how many contracts were issued to contractors and vendors in banned states, but it is certain that this did occur. But there is a secondary problem in not being able to systematically determine if waivers were granted to such contracts.

- Of all 478,304 contracts and purchase orders executed between February 2017 and June 2022, available records do show that at least 150,126 were issued to companies with headquarters in California and were therefore consistent with the terms of Chapter 12X. However, for another 246,644 contracts and purchase orders from that period, the companies were located outside California including some in banned states. However, it is not possible to determine if waivers for all such contracts and purchase orders were compliant with Chapter 12X because records of all such waivers are not readily available for those years.

- Of the 246,644 contracts and purchase orders with companies located out of state, limited City records show that at least 9,407 contracts and purchase orders, with a value of $4.1 billion, were issued to vendors with headquarters in banned states between 2017 and 2022. It is unknown how many of those contracts were waived from Chapter 12X requirements since that data was not recorded centrally until May 2021.

- Finally, there were 81,534 contracts and purchase orders for which headquarters locations were not recorded in the City's financial system at all, meaning these could also include some vendors in banned states. The number of these organizations that

received waivers from Chapter 12X requirements cannot be determined due to the lack of centrally collected waiver documentation prior to May 2021.

Exhibit A: All City Contracts and Purchase Orders Executed February 2017 – June 2022

Headquarters	# of Contracts	% of Total #	$ Value	% of Total Value
California	150,126	31.4%	$40,259,273,936	64.0%
Outside California	246,644	51.6%	16,880,020,806	26.8%
Not in records	81,534	17.0%	5,767,368,868	9.2%
Total	**478,304**	100.0%	**$62,906,663,610**	100.0%

- We analyzed the City's contracting records in two phases: Phase 1 covered the period between February 2017, when Chapter 12X was first enacted, through 2020. This was before contract companies' headquarters locations and Chapter 12X waivers granted began being systemically recorded in the City's financial system. Due to those limitations, we reviewed contracts and purchase orders for a sample of six City departments for our Phase 1 review.

- Phase 2 of our analysis covered July 2021 through July 2022, after the City Administrator had established new reporting requirements to ensure that City departments reported the headquarters locations of their contractors in the City's financial system to allow the contractors to be paid and that all waivers granted by contracting departments be centrally reported.

- **Phase 1 results (February 2017 – 2020)** In our Phase 1 analysis, we surveyed six City departments on the number of contracts issued to companies with headquarters in banned states or the number of waivers issued for such contracts. We found that between 2017 and 2020, these six sample departments granted a total of 47 waivers with a value of $75.8 million to allow for contracts with companies in banned states. Although one of the departments provided us with copies of its annual reports to the City Administrator's Office, the Office reports that none of these departments were compliant with the Chapter 12X requirement to report their waivers to the City Administrator's Office in FY 2019-20.

- **Phase 2 results (July 2021– July 2022)** In July 2021, based on a recommendation from our office, the Office of Contract Administration began collecting and tracking Chapter 12X waiver requests Citywide. From July 2021 to July 2022, 35 departments Citywide approved a total of 538 waivers from Chapter 12X requirements for

contracts and purchase orders with companies in banned states totaling over $791 million. Of just the six departments we reviewed in our Phase 2 work, four of them granted more waivers to the contracting ban in just the one year between July 2021 to July 2022 than they had in the three-year period we reviewed in our Phase 1 work.

- Though improvements have been made in montioring Chpater 12X compliance, an effective enforcement mechanism for Chapter 12X is not in place. The City Administrator's Office was not delegated authority in the Chapter 12X contracting ban ordinance to implement or enforce the program, including ensuring that waivers are sufficiently justified and documented. Instead, department heads for the contracting departments grant waivers to their own departments.

- The most common justification for Chapter 12X waivers between July 2021 and July 2022 was that application of the ban, "…would have an adverse impact on services or a substantial adverse financial impact on the City." Adverse impacts are not defined in the ordinance and, at least in our sample contracts reviewed from between 2017 and 2020, required written justifications for department exemptions that may have explained the adverse impacts were not prepared for 26 of the 47 contracts we reviewed.

- While it is difficult to measure how the City's contracting costs have been affected by the 12X legislation, researchers have found that full and open competition for contracts can result in savings up to 20 percent. Since the legislation reduces the number of companies that could potentially bid on City contracts, we have estimated the impact of a reduced number of bids on at least some City contracts.

- Based on this research, we applied a range of 10 to 20 percent savings to 13 low-bid contracts awarded in 2016, before the Chapter 12X ban was enacted, with a value of $234,605,460. This results in potential additional costs to the City if these same contracts had been bid after the Chapter 12X restrictions were in place of between $23,460,546 and $46,921,092. Losses could be greater in the ensuing years to the extent fewer contractors and vendors submitted bids due to the ban.

- Based on information provided by specific City departments and estimating department-level costs for submitted Chapter 12X waivers in ServiceNow, we estimate that the implementation of Chapter 12X has cost the City an additional $474,283 since FY 2017. While some of these were one-time startup costs, ongoing costs for interpreting and administering Chapter 12X can be expected.

- The State of California adopted a ban in 2016 on State employees travelling to states that have adopted anti-LGBT laws or have removed protections against discrimination against same-sex couples or their families or on the basis of sexual

orientation, gender identity, or gender expression. We did not find any documentation by the State or other organizations on the economic impact of this ban on other states. The State ban is on travel only; it does not apply to contracting like the City and County of San Francisco ban.

Policy Options

The Board of Supervisors should:

1. Request that the City Administrator continue to develop stronger internal controls to ensure the sufficient justification for waivers is provided by City departments related to Chapter 12X implementation and waivers, consistent with Chapter 12X. This might include hosting a virtual training with contracting officers within departments to review Chapter 12X protocols, forms and documentation, and reporting requirements.

2. Request that the City Administrator present an annual 12X waiver report to the Board of Supervisors, within 90 days of the end of the fiscal year, to allow for effective monitoring and oversight of trends and impacts.

3. With input from the City Attorney and City Administrator, consider amending the Administrative Code to give the City Administrator authority to approve Chapter 12X waivers so that department heads are not the ultimate authority for granting waivers on their own department contracts and purchase orders.

4. If the Board of Supervisors concludes that Chapter 12X's contracting provisions are not effective at achieving the original policy goals of the legislation, it could consider adopting an approach like the State of California which bans travel to states with anti-LGBQT laws, but not contracting with companies headquartered in those states. According to the authorizing bill's sponsor, this was intended to protect State workers from having to travel to states where they might be discriminated against.

Project Staff: Fred Brousseau, Amanda Guma, Karrie Tam, Reuben Holober

Chapter 12X of the Administrative Code

Folllowing the Supreme Court decision in 2015 recognizing the constitutional right of same-sex couples to marry, the states of North Carolina and Missisippi enacted laws aimed at reducing the legal protections for the lesbian/gay/bisexual/transgender (LGBT) community.

In response to these acts of discrimination, in October 2016 the San Francisco Board of Supervisors approved an ordinance prohibiting City-funded travel to states that enacted anti-LGBT laws after June 26, 2015; this ordinance (Article I) was added as Chapter 12X to the City's Administrative Code. Specifically, the prohibition refers to "any state that after June 26, 2015, has enacted a law that, (a) voids or repeals existing state or local protections against discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression; or (b) authorizes or requires discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, including any law that creates an exemption to antidiscrimination laws in order to permit discrimination against same-sex couples or their families on the basis of Sexual Orientation, Gender Identity, or Gender Expression."

The ordinace also prohibits City contracting with companies headquartered in these states, or where work on the contract would be performed in these states.

In July 2019, the Board of Supervisors approved an ordinance (Article II) amending Chapter 12X to expand the travel and contracting ban to include states with restrictive abortion laws. These are specifically defined as states that have enacted "a law that prohibits abortion prior to the viability of the fetus, regardless of whether there are exceptions to such prohibition." The respective travel and contracting bans became effective on January 1, 2020.

In October 2021, the Board of Supervisors approved another ordinance (Article III) amending Chapter 12X to expand the travel and contracting ban to include states that have adopted laws suppressing voting rights on or after January 1, 2021. This ban became effective on March 6, 2022.

Covered States List

According to Chapter 12X, the City Administrator will maintain the list of Covered States, which refers to any state that has enacted laws that reduce or eliminate protections against LGBT discrimination and/or restrict access to abortion and/or suppress voting rights. The ordinance requires that the list be posted on the City Administrator's website, and udpated at least semiannually.

As of April 2022, Chapter 12X covers the following 30 states: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma,

Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin and Wyoming.

Contracting Ban

Articles I, II and III of the ordinance detail the prohibitions relevant to City contracting, which apply to all contracts for goods and services procured by the City under Chapters 6 and 21 of the Administrative Code. Unless exempted, the ban applies to all City contracts that were first advertised, solicited, or initiated on or after the operative date on which the applicable Article went into effect. Pre-existing contracts were not impacted by this legislation. As shown in Appendix 1, states can gain or lose "Covered" status throughout the year, as a result of legislative action taken, so the operative date of each state's Covered status may vary.

Exceptions and Waivers

Granted the authority to adopt rules and guidelines to implement the ordinance, the City Administrator has published eight guidance memoranda[1] since February 2017 for City departments relative to Chapter 12X. These guidelines specify that contracting departments may enter into new contracts with businesses headquartered in Chapter 12X covered states under the following exceptions, as specified in the legislation:

1. Needed services are available from only one source;
2. Contract is necessary to respond to an emergency which endangers public health or safety and no compliant company is immediately available to perform required services;
3. There are no compliant/qualified responsive bidders and the contract is for a service, project, or property that is essential to the City or public;
4. Public interest warrants the granting of a waiver because application would have an adverse impact on services or a substantial adverse financial impact on the City;
5. Services to be purchased are available under a bulk purchasing agreement with a federal, state, or local government entity or a group purchasing organization, which will substantially reduce the City's cost; or
6. Not entering into the subject contract would violate or is inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency, provided

[1] The City Administrator published memoranda related to the implementation of Chapter 12X on February 10, 2017, June 30, 2017, August 31, 2017, June 4, 2018, April 17, 2019, September 18, 2019, October 16, 2019, November 27, 2019, and September 26, 2022.

> the contracting officer has made a good faith attempt to change the terms or conditions.

A waiver is not required under the following circumstances:

- Transactions for which "local preferences" are not permitted (e.g., Federally or State funded contracts).
- Transactions that do not meet the definition of Commodity, Service and/or Contract under Chapters 21 and 6.
- Transactions that fall under Chapter 21G (Grants).
- Transactions that fall under Chapter 83 (Property Contracts).

While the ordiance grants authority to the City Administrator to adopt rules and guidelines for the contracting ban program, it does not convey authority to the City Administrator to administer the program or to assume accountability for non-compliance.

Waiver/Exception Compliance Requirements

As stated in Chapter 12X:

> *For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*

Until July 2021, contracting departments were required to document their Chapter 12X waiver determinations using a form called "P-12X.5" or "P-12X.15", which they submitted to the Office of Contract Administration (OCA) for purchases requiring OCA review, or saved in the department's contract file if OCA review was not required. Per the City Administrator's implementation guidance, an annual report listing all Chapter 12X waivers granted for the fiscal year, including the reason for each waiver, was required to be submitted to OCA by all contracting departments. Waivers are granted by the contracting department's own department head, not OCA or the City Administrator. As discussed below, the waiver process was replaced in July 2021; since then, departments have been entering waiver information into the ServiceNow electronic system, through which OCA generates Citywide reports on Chapter 12X waivers.

Our office reviewed City compliance with Chapter 12X and related OCA administrative processes in late 2020 and early 2021. Based on that analysis, we developed draft findings and recommendations which we shared with OCA. Beginning in July 2021, and consistent with our

Phase 1 recommendations, OCA created a webpage on OCA's website regarding Chapter 12X waiver requirements and applicability, which includes an updated list of covered states, a 12X Waivers User Guide, and a link to submit online waiver requests. Previously, there was no website and waiver requests were submitted to OCA manually, if at all.

Analysis of Chapter 12X Implementation

To understand the impact of Chapter 12X on City contracting, we sought to answer the following questions:

1. How does the City implement the requirements?
    a. How are business headquarters identified and reported?
    b. How are waivers requested or authorized and reported?
2. How has the contracting process been impacted by the contracting ban?
    a. Has the pool of bidders been reduced?
    b. Have costs for services been affected?

Methodology

To answer the questions above, our office collected and reviewed data from the Office of Contract Administration for all contracts procured by City departments in calendar year 2016 (to establish contracting baselines from before the February 2017 effective date of Chapter 12X), as well as contract data from between July 2017 through July 2022. The analysis for this report was conducted in two phases: the first of which concluded in May 2021, covering contracts in place and awarded between July 2017 and December 2020 and a second phase, which concluded in July 2022 and covered pertinent contracts between May 2021 and July 2022.

We shared our recommendations with OCA for improving the collection and tracking of Chapter 12X waivers folllowing Phase 1 since, at that time, there was no centralized compilation and oversight of Citywide contracting ban compliance or contract waiver activity by OCA or any other City department. Some of our recommendations had been implemented by OCA by the beginning of our Phase 2 work in July 2022. We provide the results of our analysis for both phases in this report.

In Phase 1, because Citywide waiver data was unavailable at that time, we selected six departments for more in-depth review of the waiver determination process and contracting activities before and after the implementation of Chapter 12X to understand its impact on contracting for the larger City departments. We selected the departments based on the size and scope of their contracts, targeting the departments who typically procure higher valued contracts through a lowest-bidder process.

The selected departments were the Airport, Department of Technology, Municipal Transportation Agency, Port, Public Utilities Commission, and the Department of Public Works.

In Phase 2, we reviewed waiver data for all City departments, since it was then being centrally collected and could be reported by OCA.

City Contracts

According to data provided by the Controller's Office, since the Chapter 12X ordinance was enacted in February 2017 and through 2022, City departments have entered into 478,304 contracts and purchase orders for goods and services totaling nearly $63 billion.

Data Limitations

Until 2022, vendor headquarters information was self-reported, if at all, in the City's financial system. Reporting of headquarters locations in the financial system was not required for the contract to be executed, become active in the system, and for vendor payments to be made even if the vendor was headquartered in a banned state. Based on recommendations from our office as a part of this report, the Office of Contract Administration worked with the Controller's Office to adapt the financial system to begin requiring headquarters information. However, as of July 14, 2022, headquarters locations remained unspecified for 81,534 contracts and purchase orders that were procured by the City since July 2017, mostly before July 2021 when the Controller's Office added the control to require headquarters information in the financial system.

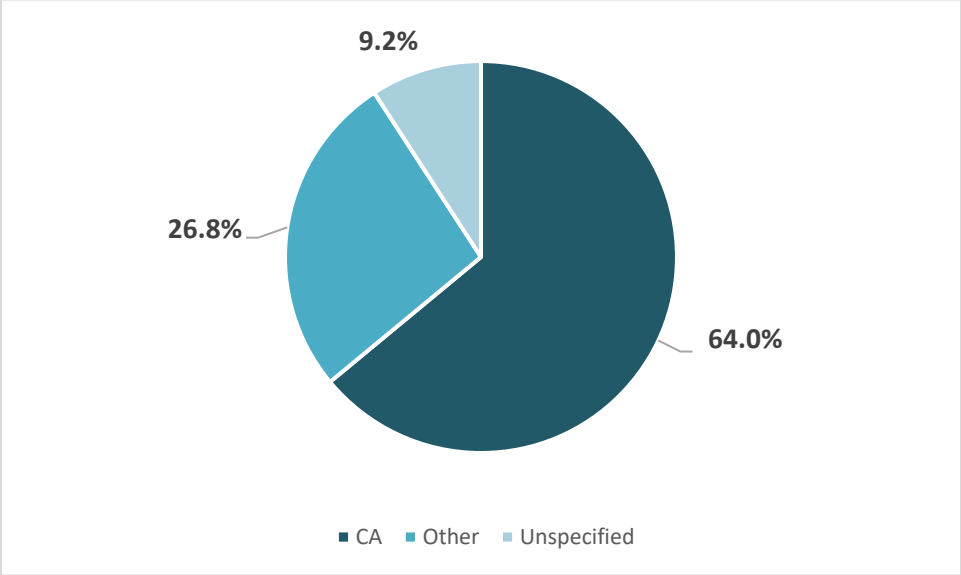
As Exhibit 1 shows, these contracts and purchase orders with headquarters locations not specified in the records represent 17.0 percent of the contracts and purchase orders executed since the Chapter 12X effective date. Another 31.4 percent of those contacts were awarded to companies with headquarters in California and 51.6 percent, or 246,644 of the contracts and purchase orders since February 2017, were made to suppliers located outside of California. This included contracts and purchase orders with companies headquartered in banned states since some of those were granted waivers by the contracting departments and others may not have been identified as such since contracting departments did not identify headquarters cities for their contracts and purchase orders in many cases between February 2017 and May 2021. These could also inlcude contracts and purchase orders exempted in Chapter 12X such as for grants and property, but these are not readily identifiable in records from that period. As of June 2021, new controls were established by the Controller requiring vendor company headquarters information to be entered in the City's financial system to enable payments.

Exhibit 1: All City Contracts and Purchase Orders Procured February 2017 – June 2022

Headquarters	# of Contracts	% of Total #	Value of Contracts	% of Total Value
California	150,126	31.4%	$40,259,273,936	64.0%
Outside California	246,644	51.6%	16,880,020,806	26.8%
Not in Records	81,534	17.0%	5,767,368,868	9.2%
Total	**478,304**	100.0%	**$62,906,663,610**	100.0%

Source: Controller's Office

Exhibit 2: Percentage of Total Contract Value for City Contracts Procured Between February 2017 and June 2022



Sources: BLA Analysis, Controller's Office Data

According to data from the Controller's Office in which vendor headquarters locations were identified, since the implementation[2] of Chapter 12X, the City procured at least 9,407 contracts for goods and services with a value totaling $4,125,661,691 from vendors with headquarters in banned states between July 2017 and July 2022. This includes those that were granted waivers

[2] Chapter 12X became effective in February 2017, but the data from the Controller's Office captures records beginning July 1, 2017.

by the contracting departments though the number with waivers cannot be readily determined prior to July 2021 because waiver records were not centrally collected before that time.

Exhibit 3: City Contracts with Vendors in Banned States, July 2017 to July 2022

HQ State	# of Contracts	Value of Contracts
Alabama	20	$13,557,523
Arkansas	2	8,700,000
Arizona	221	537,575,854
Florida	1,503	452,989,219
Georgia	162	127,714,309
Iowa	159	837,990
Idaho	62	2,050,021
Indiana	1,255	2,539,214
Kansas	57	122,598,680
Kentucky	218	22,313,577
Louisiana	30	9,878,130
Massachusetts	784	150,717,528
Montana	1	10,000
North Carolina	1,150	107,081,897
North Dakota	6	64,273
Nebraska	13	87,941,753
New Hampshire	48	3,802,170
Nevada	649	21,924,611
Ohio	542	97,984,031
Oklahoma	5	438,932
Pennsylvania	1,034	343,706,842
South Carolina	131	32,798,678
South Dakota	8	1,465,275
Tennessee	46	29,015,107
Texas	1,111	1,613,507,663
Wisconsin	190	334,448,414
Total	**9,407**	**$4,125,661,691**

Sources: BLA Analysis, Controller's Office Data

Use of Waivers

As discussed above, contracting departments seeking to enter into a contract or make a purchase otherwise prohibited by Chapter 12X can make a determination of non-applicability, exception or waiver as authorized by subsection Chapter 12X.5(b). If a department makes such a determination, it previously was required to document the basis for this determination using Form P-12X.5/12X.15. All contracting departments were required to submit an annual report on

their Chapter 12X waivers issued to the City Administrator, within 30 days of the end of the fiscal year.

Since our office began this report in 2021, the City Administrator's Office has adopted new practices for tracking waivers, based on recommendations made by our office in the first phase of this analysis. Note that waivers related to Chapter 12X only apply to contracting; 12X restrictions on travel can never be waived. Travel to a 12X covered state is only permitted when it is first deemed "exempt" by the department head of the requesting department. In such instances, the requesting department must (A) determine how it will document its department head's determination that the travel was exempt and (B) internally track the expenses incurred for that exempt travel. These 12X travel exemptions are not tracked by OCA or by the City Administrator's Office.

For contracting with vendors headquartered in a 12X covered state, OCA implemented new procedures in July 2021 for waivers. If the contract is not "exempt", a waiver is required, and departments must document the waiver request in ServiceNow.[3] This waiver request must include the department's justification for the waiver request. After the request is reviewed and approved by the relevant department head, the department uploads a copy of the waiver to PeopleSoft. Neither the City Administrator's Office nor OCA approves the waivers, but OCA does receive a copy of the waiver when it is approved by the department head and, according to staff, will request additional information if there is anything out of the ordinary. Because 12X Contracting Waivers are now managed in ServiceNow, the City Administrator's Office and OCA can now collect and report on 12X waivers Citywide.

Phase 1 Waiver Data Review and Results (covering February 2017 through 2020)

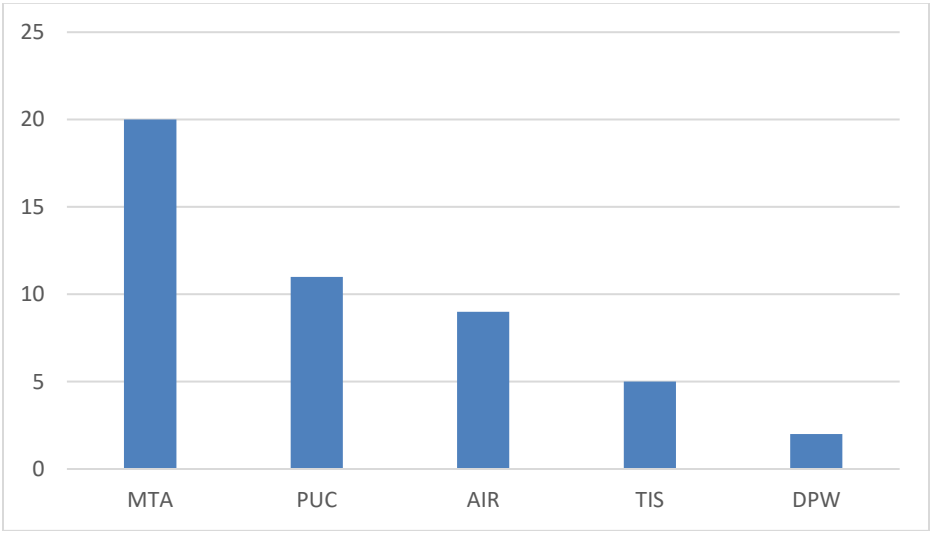
During Phase 1 of this report, our office requested copies of the annual waiver reports required by the ordinance to be prepared by each department, as well as copies of submitted P-12X.5 and P-12X.15 forms, from the City Administrator for the fiscal year ending 2020. At that time, according to the City Administrator's Office, only two departments had submitted the required reports: the Mayor's Office (which authorized three waivers for contracts totaling over $700,000) and the Health Services System (which reported that they did not authorize any Chapter 12X

3 ServiceNow is an online application used by various City departments for different purposes. The City Administrator's Office uses it to track departments' requests received to waive the requirements of programs that fall under the City Administrator's Office: 12B, 12X, 12T, 14B, HCAO, MCO and OCA Solicitation Waivers. ServiceNow enables departments to share information, without manually exchanging documents through email. Changes in City Administrator's Chapter 12X guidance in September 2022 dropped the requirement that exempted contracts submit waiver data in ServiceNow though these were then required to be denoted in PeopleSoft.

waivers in FY 2020). Note that the Airport provided our office with the waiver reports that were sent to the City Administrator's Office, for FYs 2017-18 and 2019-20.

As shown in Exhibit 4 below, since the Chapter 12X ordinance was enacted in February 2017 through 2020, a total of 47 waivers were granted across our six sample departments reviewed as of December 2020, ranging from 20 waivers at the Municipal Transportation Agency to zero at the Port as depicted in Exhibit 4.[4]

Exhibit 4: Total Chapter 12X Waivers Granted by Six Selected Departments 2017 through 2020



Source: Budget and Legislative Analyst analysis of department data.
Note: the data collected from the six departments is for calendar, not fiscal, years. The Port is not included in this chart since it did not grant any waivers during this period.

Between February 2017 and May 2020, the total number of annual waivers, as provided to our office by the six departments, increased from 4 to 28 waivers per year, or by 600 percent, for a grand total of 47 waivers over the four-year period.

[4] The Port issued a waiver in January 2021 for a contract valued at $1,508. We did not include this in our Phase 1 analysis since it is outside of the scope of our review.

Exhibit 5: Annual Chapter 12X Waivers Granted by Six Selected Departments 2017 through 2020

Department	2017	2018	2019	2020	Total
Airport	3		4	2	9
Public Works			1	1	2
MTA		5	5	10	20
Port					0
Public Utilities Commission				11	11
Technology	1			4	5
Total	**4**	**5**	**10**	**28**	**47**

Source: Budget and Legislative Analyst analysis of department data

As shown in Exhibit 6 below, since the Chapter 12X ordinance was enacted in February 2017, the contract value of the granted waivers for the Municipal Transportation Agency, Public Utilities Commission, Airport, Department of Technology, Public Works, and the Port totaled $75,774,809 as of May 2020. The average contract value of waivers granted for the six departments during this same period was $12,629,386 per department. Between 2017 and 2020, the total annual contract value of waivers granted for these departments increased by $33,105,987, or 241.7 percent—from $13,697,606 in 2017 to $46,805,101 in 2020.

Exhibit 6: Contract Value of Chapter 12X Waivers Granted by Six Selected Department 2017 to 2020

Department	2017	2018	2019	2020	Total
MTA		$11,333,000	$1,869,657	$23,406,375	$36,609,032
Technology	300,000			19,020,087	19,320,087
Airport	13,397,606		1,640,311	739,900	15,777,817
Port					0
Public Utilities Commission				3,447,652	3,447,652
Public Works			430,642	189,579	620,221
Total	**$13,697,606**	**$11,333,000**	**$3,940,610**	**$46,805,101**	**$75,774,809**

Source: Budget and Legislative Analyst analysis of department data

Waiver Form and Exceptions

In accordance with Administrative Code Chapter 12X, the Form P-12X.5/12X.15 was required for every transaction, contract, or contract modification requiring the waiver during the review period. In addition, the contracting department was required to attach a written memo/justification to the form with supporting documentation. Among the 47 waivers reviewed

across the six selected departments, only two[5] did not include the Form P-12X.5/12X.15. However, as shown in Exhibit 7 below, for the waivers that included the form, 26 waivers, or more than half submitted (58.7 percent), did not include the additional required supporting documentation.

Exhibit 7: Number of Waivers Granted Without Supporting Documentation by Department 2017 to 2020

Department	Number of Waivers Submitted with Form P-12X.5/12X.15 but without Supporting Documentation	% Total
Municipal Transportation Agency	14	54%
Public Utilities Commission	6	23%
Technology	4	15%
Public Works	2	8%
Total	**26**	**100.0%**

Source: Budget and Legislative Analyst analysis of waiver forms P-12X.5/12X.15 submitted by department

As described above, the exceptions to the contracting ban listed within the Chapter 12X ordinance for which contracting departments may enter into new contracts with businesses otherwise headquartered in the covered states are:

1. Needed services are available only from one source.
2. Contract is necessary to respond to an emergency which endangers public health or safety and no compliant company is immediately able to perform required services.
3. There are no compliant/qualified responsive bidders and the contract is for a service, project or property that is essential to the City or public (only one responsive bidder from a banned state)
4. Public interest warrants the granting of a waiver because application would have an adverse impact on services or a substantial adverse financial impact on the City.
5. Services to be purchased are available under a bulk purchasing agreement with a federal, state or local government entity or a group purchasing organization, which will substantially reduce the City's cost.

[5] This includes one each from the Municipal Transportation Agency and the Airport. Note that the waivers approved by the Mayor's Office of Housing (which we received through the City Administrator's Office) also did not include the Form P-12X.5/12X.15.

6. Violates or is inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency, provided that the contracting officer has made a good faith attempt to change the terms or conditions.

Exhibit 8 below shows the exceptions used by department and type, according to the waiver documentation provided from our six selected departments for the period between 2017 and 2020. Of the six types of exceptions, the "needed services are available only from one source" (30.9 percent) and "there are no compliant/qualified responsive bidders and the contract is for a service, project or property that is essential to the City or public", or the only responsive bidder is in a banned state (27.3 percent) were used most frequently by the selected departments.[6] The least used exception was "violates or inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency, provided that the contracting officer has made a good faith attempt to change the terms or conditions" (1.8 percent).

Exhibit 8: Justifications Used in Waivers Granted by Selected Departments 2017 to 2020

Waiver Justification	Airport	Public Works	SFMTA	Public Utilities Commission	Technology	Total	% of Total
12X.5(b)(1) (Sole Source)	5	0	7	3	2	**17**	30.9%
12X.5(b)(2) (Declared Emergency)	0	0	1	1	0	**2**	3.6%
12X.5(b)(3) (Only Responsive Bidder(s) from Banned State(s))	3	1	8	2	1	**15**	27.3%
12X.5(b)(4) (Adverse Impact)	0	1	9	3	0	**13**	23.6%
12X.5(b)(5) (Bulk Purchasing)	0	0	1	0	2	**3**	5.5%
12X.5(b)(6) (Conflicting Grant Terms)	0	0	1	0	0	**1**	1.8%
Other (Travel/Training)	1	0	0	0	0	**1**	1.8%
N/A or Not Listed	0	0	1	2	0	**3**	5.5%
Total	**9**	**2**	**28**	**11**	**5**	**55**	100.0%

Source: Budget and Legislative Analyst analysis of waiver forms P-12X.5/12X.15 submitted by department

As shown in Exhibit 8 above, four waivers were allowed by departments for reasons other than the six provided in the Administrative Code—"N/A or not listed", and "travel/training". It was unclear at the time of our Phase 1 analysis if anyone outside of the contracting department reviews or approves waiver forms for contracts with vendors in banned states to confirm sufficient justification. In addition, only one of the selected departments provided an annual report to the City Administrator as required.

[6] Some waivers included more than one exception; consequently, the number of exceptions does not equal the number of waivers granted and submitted with a Form P-12X.5/12X.15.

Interviews with department staff indicate inconsistent interpretations of the implementation requirements, with some departments appearing to utilize the waiver option more liberally than others.

Phase 2 Waiver Data Review and Results (covering July 2021 through July 2022)

As noted, OCA adopted new practices to track waiver requests in July 2021 consistent with our Phase 1 work recommendations. These include an online waiver request form, a dedicated website with links to eligibility information and a User Guide.

According to data provided by OCA, between July 2021 and July 2022, 538 waivers were requested and approved by 33 departments Citywide for contracts and purchase orders totaling over $791 million. Exhibit 9 below shows the number and value of all waivers requested during this period, by department.

Exhibit 9: 12X Waivers and Value of Contracts by Department July 2021 to July 2022 (Phase 2 analysis)

Dept	Number of 12X Waivers	Total Value of Contracts/POs
ADM	49	$89,952,647
ADP	3	154,285
AIR	12	161,500,260
ASR	1	1,200
BOS	1	2,000
CAT	1	207,761
CII	2	57,493
CON	6	176,764
CPC	1	261
CSS	1	400
DAT	3	46,500
DBI	1	130
DEM	9	1,862,095
DPA	1	58
DPH	247	310,272,700
DPW	11	315,498
FAM	4	44,460
FIR	4	1,750,000
HOM	4	1,069,197
HSA	31	25,936,765
JUV	1	2,700
LIB	54	45,261,239
MTA	9	8,997,855
MYR	1	25,000
POL	22	12,439,597
PRT	9	30,650
PUC	16	48,388,924
REC	17	5,439,967
REG	1	22,056
SHF	5	21,673,364
TIS	7	16,518,680
TTX	3	39,067,252
WAR	1	3,150
Total	**538**	**$791,220,908**

Source: OCA and SFMTA data

As shown, the Department of Public Health (DPH) issued the most waivers during this time—247, or 45.9 percent of all waivers issued. The value of the contracts and purchase orders for which DPH issued waivers also represented the largest amount—$310.3 million, or 39.2 percent of all contracts and purchase orders granted 12X waivers from July 2021 to July 2022.

As discussed above, the ordinance establishes six justifications to waive Chapter 12X requirements. According to the data provided by OCA, between July 2021 and July 2022, more than half of the waivers issued (281 out of 538) were justified by the adverse impact that application of Chapter 12X would have on services or City finances. This was a change from our Phase 1 review of waivers for 2017 – 2020 when adverse impact was the explanation for only 13 of the 55 waivers we reviewed, or 23.6 percent.

Exhibit 10: 12X Waivers by Justification, July 2021 to July 2022 (Phase 2 analysis)

Waiver Justification	Number Contracts/ PO's	% of Total	Value of Contracts/ PO's	% of Total
12X.5(b)(1) Sole Source	109	20.3%	$52,296,605	6.6%
12X.5(b)(2) Declared Emergency	10	1.9%	10,343,548	1.3%
12X.5(b)(3) Only Responsive Bidder(s) from Banned State(s)	48	8.9%	18,210,538	2.3%
12X.5(b)(4) Adverse Impact	281	52.2%	162,975,432	20.6%
12X.5(b)(5) Bulk Purchasing	2	0.4%	1,550,000	0.2%
12X.5(b)(6) Conflicting Grant Terms	8	1.5%	8,849,839	1.1%
Exemption - Pre 12X Operative Date	80	14.9%	536,994,943	67.9%
Total	**538**	100.0%	**$791,220,906**	100.0%

Source: OCA data

Of the six departments we reviewed in our Phase 1 work, all except for the Municipal Transportation Agency granted themselves more waivers in just the one-year period between July 2021 and July 2022 than they had in the three-year period between 2017 and 2020 that we reviewed in Phase 1. For at least these five large departments, the use of Chapter 12X waivers has increased over the years since Chapter 12X was adopted.

In addition to an apparent increase in the use of waivers to the contract ban by City departments after 2021, it is unclear what standards are used to establish the adverse impact, or to verify any of the waiver justifications identified by departments. While the submission of 12X waivers is referred to as a "request", OCA does not actually approve them or otherwise review the applications to confirm the validity of the justification. Waivers are approved by department heads of the same departments that are "requesting" the waiver.

To ensure consistent implementation and effective oversight of Chapter 12X, the Board of Supervisors should request that the City Administrator develop stronger internal controls to ensure the sufficient justification for waivers from City departments. This might include hosting a virtual training with contracting officers within departments to review Chapter 12X protocols, forms and documentation, and reporting requirements. The Board of Supervisors should request that the City Administrator present an annual Chapter 12X waiver report, within 90 days of the end of the fiscal year, to allow for effective monitoring and oversight of trends and impacts.

Estimating Cost Impact

It is difficult to measure the actual cost impact to the City resulting from the implementation of Chapter 12X. There are a significant number of complicating variables: the type of services being solicited, the state of the national economy, the contracting opportunities in other jurisdictions, etc. However, City department officials do report that certain vendors who previously won contracts through the competitive bidding process but are no longer eligible (absent a waiver) due to the location of their headquarters simply do not bid on City contracts. In these cases, it could mean a reduction in the eligible pool of vendors for those services, which would possibly result in increased costs to the City.

Studies show that competitive bidding in the public sector results in cost savings. A 2014 study[7] titled "The Value of Competitive Contracting", conducted by the Naval Postgraduate School, analyzed over 50 competitive contract actions at the U.S. Department of Defense (DOD) to determine actual cost savings achieved from competition. The DOD study found an average cost savings of 20 percent for contracts that were competitively bid in a full and open solicitation.

To establish a framework to estimate the potential costs to the City from implementing Chapter 12X, we assume that the contracting ban has resulted in some reduction in the size of the competitive pool of prospective bidders. We reviewed citywide contract data from 2016, the year preceding the effective date of the Chapter 12X ban, to identify the contracts that were awarded in that year to vendors headquartered[8] in states that were subsequently banned. As shown in Exhibit 9 below, the City entered into 31 contracts with vendors from states in 2016 that were subsequently banned in the Chapter 12X legislation adopted by the Board of Supervisors in 2017.

[7] "The Value of Competitive Contracting", Healy, Sok and Ramirez, Naval Postgraduate School, September 2014.

[8] The original data set included 173 contracts with unidentified headquarters. Our team researched these locations online. We acknowledge possible inaccuracies in our findings, as well as the possibility that vendors' headquarters may have changed between 2016 and April 2021 (when we conducted this research).

Exhibit 11: City Contracts Awarded in 2016 to Vendors in States Subsequently Banned

Headquarters	# of Contracts	Value of Contracts
FL	2	$5,200,000
GA	3	16,040,631
IN	1	138,116,759
KS	1	7,319,502
KY	3	16,375,000
LA	1	1,200,000
NC	1	8,087,000
OH	5	14,285,355
PA	4	74,616,384
TN	1	5,000,000
TX	7	76,531,159
WI	2	9,100,000
Total	**31**	**$371,871,790**

Sources: BLA Analysis, OCA Contract Data

Because we did not have access to the full solicitation and bid evaluation documents, it was not possible for us to determine what the exact cost impact would have been to the City, had these procurements occurred after the implementation of Chapter 12X. Professional service contracts are often evaluated using several criteria, of which cost accounts for a smaller percentage of evaluation points. However, based on the description of the type of goods/services procured through each of these contracts, we can identify those contracts that were likely "lowest bidder" contracts—meaning that the bids are evaluated primarily on cost factors (as in most construction contracts). We can then assume that in those cases, the next lowest bidder (headquartered in an eligible state) would have proposed a more expensive contract cost.

While the DOD study found an average of a 20 percent cost increase resulting from a reduced competitive pool, we also included a more conservative cost impact to the City of 10 percent of the final bid price selected as the result of the Chapter 12X, in order to allow for the unknown and potential variables noted above.

Of those 31 contracts, we identified 13 that were likely lowest bid contracts, based on the type of goods/services procured (primarily those identified as construction or maintenance services). The total value of those contracts was $234,605,460. Based on those total contract costs, we estimate a possible cost increase to the City to procure these same goods and services under Chapter 12X restrictions as:

Exhibit 12: Estimated Range of Additional Costs due to Chapter 12X for 13 "Low Bid" Contracts Awarded, 2016

10% cost increase:	$23,460,546
20% cost increase:	$46,921,092

It should be noted that these estimated additional costs could be incurred over multiple years as some City contacts span more than one year. However, each year, a new set of contracts would be awarded and the additional costs would assumedly repeat at a greater or lesser amount depending on the total value of contracts for each particular year. In some cases, when large one-time capital project contracts such as for the Central Subway or the Van Ness Avenue Bus Rapid Transit project (BRT) are awarded, the additional costs could be substantially higher than the estimated amounts above. Losses could be greater in the ensuing years to the extent fewer contractors and vendors submitted bids due to the ban.

City Staff Costs to Implement Chapter 12X

Besides the additional costs associated with contracts awarded with reduced or no competition from other bidders, multiple City departments regularly incur costs or have incurred one-time costs from staff time spent ensuring proper implementation of Chapter 12X. These include:

- Office of City Administrator/Office of Contract Administrator: regularly communicating with departments on 12X matters.
- City Attorney: regularly communicating with OCA and departments on 12X matters.
- Controller's Office: enhancing PeopleSoft to improve tracking of vendor information to ensure compliance with Chapter 12X, and enhancing Citywide reporting capacity related to Chapter 12X.
- Department of Technology: one-time contract costs for configuration of ServiceNow to track the waiver submissions.
- All City Departments: Chapter 12X waiver submissions.

Based on information provided by the specific City departments identified above and estimating department-level costs for submitted Chapter 12X waivers in ServiceNow, we estimate that the implementation of Chapter 12X has cost the City an additional $474,283 since FY 2016-17. These costs are shown in the table below. Ongoing administrative costs for staff time in the City Attorney's Office, the City Administrator's Office, the Office of Contract Administration, and contracting City departments will continue to be incurred in succeeding years and could increase if more states are banned.

Exhibit 13: Estimated Costs for City Staff Time on Chapter 12X Matters since FY 2016-17

Department	Number of Hours	Estimated Average Hourly Wage	Contract Costs	Total Costs
City Attorney	900	$141.70		$127,530
Controller	1,932	99.20		191,655
Technology			$82,000	82,000
Contract Administrator	208	83.12		17,289
Contract Administrator	208	96.24		20,017
City Administrator	208	96.24		20,017
All City Departments[99]	269	58.64		15,774
Total Estimated Costs				**$474,283**

Source: Data from City departments

California State-Funded Travel Ban

For comparison, we reviewed the history and impact of California's travel ban, Assembly Bill 1887, codified as California Government Code 11139.8 in 2016, which prohibits state-funded travel to states that after June 26, 2015 enacted laws that: (1) have the effect of voiding or repealing existing state or local protections against discrimination on the basis of sexual orientation, gender identity, or gender expression; (2) authorize or require discrimination against same-sex couples or their families on the basis of sexual orientation, gender identity, or gender expression; or (3) create an exemption to antidiscrimination laws in order to permit discrimination against same-sex couples or their families or on the basis of sexual orientation, gender identity, or gender expression. California's law tasks the Attorney General with developing, maintaining, and posting the list of states subject to the travel ban.[10] According to Assemblyman Low, the bill's sponsor, the intention of the law was to protect state workers from having to travel to states where they may experience discrimination.[11]

It does not appear that a ban on contracting was ever considered by the State. Currently, the City and County of San Francisco appears to be the only government entity that bans contracting with companies headquartered in certain states based on those states' laws. The State travel ban predates the San Francisco travel and contracting bans.

[9] To estimate these costs, we used the hourly rate for an 1823 Senior Administrative Analyst at Step 3 and multiplied that by the total number of waivers (538), with 30 minutes estimated for entering the waiver information for each waiver into ServiceNow.

[10] https://oag.ca.gov/ab1887

[11] https://www.nytimes.com/2022/07/19/us/california-state-funded-travel-bans.html

Effectiveness of State Ban

While the state travel ban appears to represent a statement of the legislature's values, it has not stopped other states from passing laws objectionable to the California legislature. This is evident in the fact that the list of banned states has grown from four in 2016 to 22 in 2022.[12] The travel ban does not appear to be a significant deterrent in preventing states from enacting laws that would be subject to the ban.

However, California's travel ban, as part of a much larger effort, was effective in persuading North Carolina to repeal HB 2, the law passed in 2016 that prohibited local jurisdictions in that state from adopting anti-discrimination ordinances and required schools and local and state facilities to only allow individuals to use public bathrooms corresponding to the gender on their birth certificates. Six states, as well as several cities and counties, approved bans on travel to North Carolina in response to the law. Several major corporations halted plans to move into or expand in North Carolina. Many conventions, sporting events, concerts, and film productions in the state were cancelled. The Associated Press estimated that the cumulative economic impact to North Carolina would be at least $3.76 billion over 12 years.[13] In March 2017, the portion of the law pertaining to restroom use was repealed,[14] and in December 2020, the remainder of the law was repealed through a sunset provision.[15]

Fiscal Impact of California State Ban

We could not identify any estimates of the impact of the travel ban on the California state budget or local economy. In January 2020, Oklahoma Governor Kevin Stitt issued a retaliatory executive order banning state-funded travel to California, which could have a modest negative economic impact.[16] This impact could be heightened if other states also enact retaliatory measures.

Most economic impact would likely be felt by other states and cities due to a modest reduction in tourism from California state employees. California does not track the amount of state funding withheld due to the travel ban.[17] The states of Oklahoma, Alabama, Kentucky, and Tennessee report that they are unaware of any impact from the ban.[18] However, the cities of Louisville and

[12] https://www.latimes.com/opinion/story/2022-07-10/repeal-california-ban-boycott-state-funded-travel-lgbtq-discrimination

[13] https://www.cnbc.com/2017/03/27/bathroom-bill-to-cost-north-carolina-376-billion.html

[14] https://www.cnn.com/2017/03/30/politics/north-carolina-hb2-agreement/index.html

[15] https://abc11.com/house-bill-142-north-carolina-hb2-nc-2/8418288/

[16] https://www.usnews.com/news/best-states/articles/2020-02-12/texas-sues-california-for-interstate-travel-ban

[17] https://www.nytimes.com/2022/07/19/us/california-state-funded-travel-bans.html

[18] https://www.usnews.com/news/best-states/articles/2020-02-12/texas-sues-california-for-interstate-travel-ban

Nashville report that a few conventions, which were not organized by California-based groups, were cancelled due to the California travel ban.[19]

As noted, there are several exemptions to the ban, which largely impact non-essential travel such as attending conventions. Furthermore, public college athletic programs may still travel to banned states using non-state funds.[20] This reduces the economic impact to banned states.

Policy Options

The Board of Supervisors should:

1. Request that the City Administrator continue to develop stronger internal controls to ensure the sufficient justification for waivers is provided by City departments related to Chapter 12X implementation and waivers, consistent with Chapter 12X. This might include hosting a virtual training with contracting officers within departments to review Chapter 12X protocols, forms and documentation, and reporting requirements.

2. Request that the City Administrator present an annual 12X waiver report to the Board of Supervisors, within 90 days of the end of the fiscal year, to allow for effective monitoring and oversight of trends and impacts.

3. With input from the City Attorney and City Administrator, consider amending the Administrative Code to give the City Administrator authority to approve Chapter 12X waivers so that department heads are not the ultimate authority for granting waivers on their own department contracts and purchase orders.

4. If the Board of Supervisors concludes that Chapter 12X's contracting provisions are not effective at achieving the original policy goals of the legislation, it could consider adopting an approach like the State of California which bans travel to states with anti-LGBQT laws, but not contracting with companies headquartered in those states. According to the authorizing bill's sponsor, this was intended to protect State workers from having to travel to states where they might be discriminated against.

[19] https://www.governing.com/archive/sl-state-employee-travel-bans-lgbt-california.html

[20] https://www.latimes.com/opinion/story/2022-07-10/repeal-california-ban-boycott-state-funded-travel-lgbtq-discrimination

Appendix 1: Chapter 12X Covered States

The list below presents all the states on the Covered State List based on the City Administrator's memo dated September 26, 2022.

	State	12X Article I: Restrictive LGBTQ Laws Operative Date: 2/11/2017	12X Article II: Restrictive Abortion Laws Operative Date: 1/1/2020	12X Article III: Restrictive Voting Laws Operative Date: 3/6/2022	Operative Date for Determining Exemption from 12X
1	Alabama	Yes	Yes	Yes	2/11/2017
2	Arizona	Yes	Yes	Yes	2/11/2017
3	Arkansas	No	Yes	Yes	1/1/2020
4	Florida	Yes	Yes	Yes	2/11/2017
5	Georgia	Yes	Yes	Yes	2/11/2017
6	Idaho	Yes	Yes	Yes	2/11/2017
7	Indiana	Yes	Yes	Yes	2/11/2017
8	Iowa	Yes	Yes	Yes	2/11/2017
9	Kansas	Yes	Yes	Yes	2/11/2017
10	Kentucky	Yes	Yes	Yes	2/11/2017
11	Louisiana	Yes	Yes	Yes	2/11/2017
12	Mississippi	Yes	Yes	No	2/11/2017
13	Missouri	No	Yes	No	1/1/2020
14	Montana	Yes	Yes	Yes	2/11/2017
15	Nebraska	No	Yes	No	1/1/2020
16	Nevada	No	Yes	Yes	1/1/2020
17	New Hampshire	No	Yes	Yes	1/1/2020
18	North Carolina	Yes	Yes	No	2/11/2017
19	North Dakota	Yes	Yes	No	2/11/2017
20	Ohio	Yes	Yes	No	2/11/2017
21	Oklahoma	Yes	Yes	Yes	2/11/2017
22	Pennsylvania	No	Yes	No	1/1/2020
23	South Carolina	Yes	Yes	No	2/11/2017
24	South Dakota	Yes	Yes	No	2/11/2017
25	Tennessee	Yes	Yes	No	2/11/2017
26	Texas	Yes	Yes	Yes	2/11/2017
27	Utah	No	Yes	No	1/1/2020
28	West Virginia	Yes	Yes	No	2/11/2017
29	Wisconsin	No	Yes	No	1/1/2020
30	Wyoming	No	No	Yes	2/11/2017

Member, Board of Supervisors
District 8

City and County of San Francisco

RAFAEL MANDELMAN

October 18, 2022

City Administrator Carmen Chu
1 Dr. Carlton B. Goodlett Place
City Hall Room 362
San Francisco, CA 94102

Dear Administrator Chu,

Following the U.S. Supreme Court's landmark 2015 decision that recognized the constitutional right of same-sex couples to marry, a number of states responded by enacting laws to discriminate against the LGBT community. The Board of Supervisors responded in October 2016 by approving an ordinance that prohibited City-funded travel to states that enact anti-LGBT laws. The newly adopted Chapter 12X of the Administrative Code also prohibited the City from contracting with companies headquartered in these states, or where work on the contract would be performed in these states. The Board expanded Chapter 12X in July 2019 to include states with restrictive abortion laws, and in October 2021 amended Chapter 12X a third time to expand the travel and contracting bans to states that suppress voting rights.

As of September 2022, Chapter 12X prohibits City staff from traveling to and contracting with companies headquartered in 30 states. By prohibiting the City from doing business with half the nation, this policy has resulted in significant administrative costs and potentially far more significant contracting costs by limiting bidder competition. It is also unclear if this policy has been effective in changing the policymaking choices of states subject to San Francisco's 12X Covered State List. We believe now is the time to revisit this legislation, analyze its efficacy, and explore potential policy alternatives to advance our shared social policy goals.

Pursuant to the unlimited power of inquiry assigned to the Board of Supervisors in the San Francisco City Charter, we hereby ask the City Administrator to develop a recommendation on policy options to amend Chapter 12X of the Administrative Code. The recommendation should include a review of the efficacy of the current 12X legislation, the impact of 12X on City operations, an analysis of whether other jurisdictions have enacted similar policies that could serve as best practices, and a range of policy alternatives for the Board's considerations.

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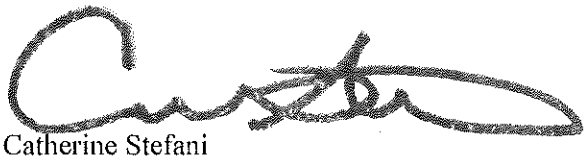
We look forward to your response to this letter of inquiry and request that your office draft the recommendation by May 31, 2023.

Sincerely,

Rafael Mandelman
Member, San Francisco Board of Supervisors



Catherine Stefani
Member, San Francisco Board of Supervisors

Aaron Peskin
Member, San Francisco Board of Supervisors

Hillary Ronen
Member, San Francisco Board of Supervisors

Ahsha Safai
Member, San Francisco Board of Supervisors

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Chapter 12X of the Administrative Code

Policy Alternatives

CITY & COUNTY OF SAN FRANCISCO

February 10, 2023

City Administrator's Office

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Executive Summary

In October 2022, Supervisors Mandelman, Stefani, Peskin, Ronen, and Safai submitted a letter of inquiry to the City Administrator's Office (CAO), asking the CAO to draft a memo on Chapter 12X of the Administrative Code, including:

- a review of the efficacy of current 12X legislation;
- the impact of 12X legislation on City operations;
- an analysis of whether other jurisdictions have enacted similar policies that could serve as best practices; and
- a range of policy alternatives for the Board's consideration.

In response to this inquiry, this report finds that:

- **12X's policy impacts are not clear**; the CAO was not able to find concrete evidence suggesting 12X has influenced other states' economies or LGBTQ, reproductive, or voting rights.
- **12X has created additional administrative burden for City staff and vendors and unintended consequences for San Francisco citizens**, such as limiting enrichment and developmental opportunities.
- **Few, if any, other jurisdictions implement travel or contracting bans as expansive as the City's**.
- Potential alternatives to 12X range from administrative revisions of the existing legislation to repealing the entirety of 12X.

The purpose of this report is to provide policy options for the Board's consideration. The five policy alternatives are listed on the following slide.

Executive Summary

The following are alternatives to the current 12X legislation for the Board of Supervisors' consideration.

Alternative 1: Repeal the Entirety of 12X

This alternative would likely reduce administrative complexities, increase competition for City contracts, thereby possibly lowering costs, and create more opportunities for engagement with communities impacted by restrictive LGBTQ, abortion, and voting right policies.

Alternative 2: Repeal the Contracting Ban, Retain the Travel Ban

This alternative may help reduce the City's contracting costs. SF City staff and residents would still face hurdles in traveling to and accessing many developmental and enrichment opportunities, as many banned states are home to events and sites of cultural significance.

Alternative 3: Exempt Chapter 6 Contracts from 12X

This alternative would potentially increase competition, and thereby possibly lowering costs, for construction and construction-related services. It may also increase the cost of administration due to confusion in contracting business processes and additional system configurations that would be need to be implemented. It does not solve all underlying challenges related to 12X.

Alternative 4: Conduct an Administrative Clean-up of 12X

This alternative could make the 12X ordinance easier to administer. It does not solve all underlying challenges related to 12X.

Alternative 5: Create "Off-ramps" for 12X

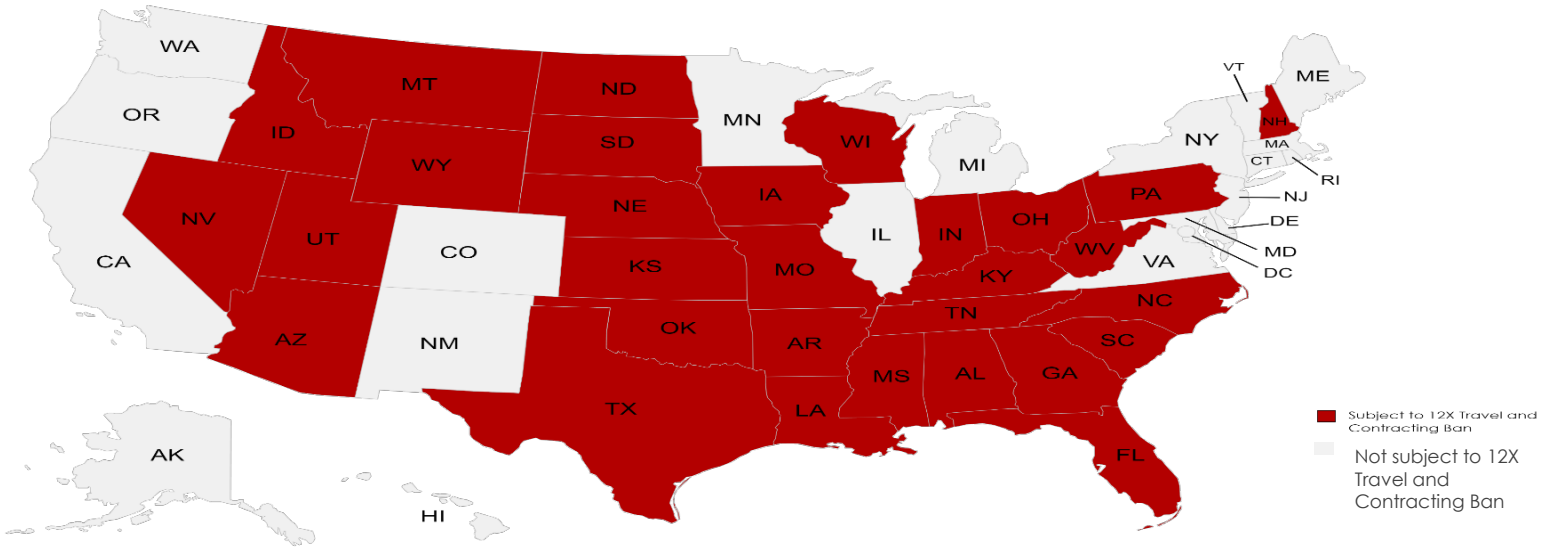
This alternative would allow the City to contract with businesses in banned states if they achieve individual, firm-level compliance. This alternative is likely to create the highest level of administrative cost and burden because of the new requirements that would need to be developed to implement it. It would more likely benefit large firms.

Summary of 12X Legislation

- **The current 12X legislation contains three articles**: Article I was passed in 2016 to dissociate the City from states that restrict LGBTQ rights. Articles II and III were added in 2019 and 2021, respectively, to dissociate the City from states that restrict abortion access and voting rights.

- More specifically, **12X has two separately administered components**: It bans nearly all City-funded travel to states with restrictive rights, identified through a list that the City Administrator compiles and updates semiannually; and it bans construction (Chapter 6), commodity and services (Chapter 21) contracting with companies headquartered in those states. Under limited circumstances, City staff can seek waivers for contracting, but they must provide proper justification and receive approval from their departmental leadership. (See Appendix 2 for a brief explanation of 12X exemptions, waivers, and applicability).

12X now restricts activities with over half of the states in this country. States highlighted in red are subject to 12X travel and contracting bans.



Efficacy of 12X

On a policy level, it is unclear how much the City's prohibition on City-funded travel and boycott of businesses headquartered in banned states can influence another jurisdiction's policies.

- **No states with restrictive LGBTQ rights, voting rights, or abortion policies have cited the City's travel and contract bans as motivation for reforming their laws.**
- Since 12X became operative, the number of banned states has grown from 8 states in 2017 to 30 in 2022. This increase suggests that the City's threat of boycott may not serve as a compelling deterrent to states considering restrictive policies. Only 1 state has ever been removed from the list.
- Few, if any, other cities or states are known to implement boycotts as far reaching as the City's, and many that have instituted travel or contracting bans in the past have since lifted them (see Appendix 2: Other Jurisdictions' Policies for examples).

Impact on City Operations

The policy impact of 12X is unclear. Conversely, 12X is associated with high levels of administrative burden and likely imposes significant opportunity costs to the City.

- Because **traveling to or contracting with companies located in banned states is at times necessary to maintain City operations and/or further the City's mission,** City spending continues to flow to businesses and institutions headquartered in banned states, but City staff and suppliers must complete additional administrative requirements.
- **There are unintended consequences to 12X.** For example, a department might distribute City-funded grants to nonprofit organizations. As part of the program, the nonprofit runs a sports program for children and the children must travel to tournaments, some of which are in banned states. This travel may be banned or require additional administrative steps due to 12X restrictions.
- While it is difficult to quantify the exact cost of 12X to the City, the Budget and Legislative Analyst notes that **a loss in competition is likely to increase the City's contracting costs by 10 – 20% annually.** These costs could continue to increase and compound overtime as the City's potential contractor pool shrinks if the list of banned states grows.
- **On an administrative level, 12X compliance is complicated and confusing.** There are different rules governing the travel ban and the contracting ban, making it very complicated for staff to administer. The Administrative Code allows departments the flexibility to develop their own protocols for administering 12X, which can lead to a high level of variation in how individual departments interpret and document waiver justifications, monitor implementation, and conduct reporting. Finally, due to the nature of corporate structures, determining where a business is headquartered is complex and can require legal analysis.
- **There is a cost associated with administering 12X.** The Budget and Legislative Analyst's report confirms that there are one-time implementation and on-going administrative costs associated with 12X.

Alternative 1: Repeal the Entirety of 12X

What Would This Look Like?

- Under this approach, City departments can work with suppliers headquartered in banned states without needing a 12X waiver, as long as the supplier meets the City's other supplier requirements, such as local hire, nondiscrimination requirements, prevailing wage, and local business requirements, depending on the type of procurement.
- City staff can travel to banned states to conduct City business where this travel was previously not allowed.
- The Board of Supervisors would need to pass legislation fully repealing Administrative Code Section 12X.

Considerations

- 12X has increased administrative complexity for City staff while reducing competition and increasing the price for the goods and services that the City purchases. Repealing the entire law would **remove complexity, allow for greater competition, and potentially reduce prices.**
- Without the contracting ban, the City opens itself up to new possibilities in resource savings and value generation when procuring goods and services.
- An increase in bidders may result in greater competition for businesses located in non-banned states, including local businesses.
- Without the travel ban, the City opens up **new developmental and enrichment possibilities for staff and San Francisco residents**.

Alternative 2: Repeal the Contracting Ban, Retain the Travel Ban

What Would This Look Like?

- Under this approach, City departments can work with suppliers headquartered in banned states without needing a 12X waiver, as long as the supplier meets the City's other supplier requirements.
- Staff would not be allowed to travel to a banned state on City business unless explicitly exempted under 12X.
- This approach would mean that the Board of Supervisors passes legislation repealing Administrative Code Sections 12X.5, 12X.15, and 12X.26 related to the Contracting Ban. Other sections of 12X would remain in place.
- This approach was included in the Budget and Legislative Analyst's report on 12X.

Considerations

- Repealing the contracting ban would allow the City to broaden its pool of potential contractors, which would **likely increase competition, lower costs, and bring and resource savings to the City**.
- Repealing the contracting ban and aligning the City's travel ban to the State of California's travel ban would **create a more cohesive policy environment for City staff**. Instead of navigating multiple policy frameworks that can at times conflict, staff would only have to understand one, overarching travel policy framework. California's AB 1887* prohibits state-sponsored travel to certain states, but it does not include a contracting ban.
- Currently, the list of banned states with restrictive LBGTQ policies differs slightly between the State and the City. As part of this approach, the City could adopt the State's list, which would simplify the policymaking process moving forward.
- The travel ban can extend to contractors conducting work on behalf of the City, so City staff must continue to interpret and navigate some administrative complexities for travel.
- **The State's travel ban has also been critiqued**. Editorials and opinion pieces in the LA Times and New York Times have both pointed out that the State's policy has led to more bureaucracy and administrative workarounds.
- **Many of the banned states are also home to sites of historical or cultural significance to the populations that 12X is supposed to defend.** This can lead to instances where SF residents face increased barriers to accessing enrichment opportunities. For example, a program supporting youth travel to Historically Black Colleges and Universities (HBCUs) had to complete several additional administrative requirements before the travel could be approved because many HBCUs are located in banned states.

*AB 1887 only pertains to states with restrictive LGBTQ policies; it does not include abortion or voting rights.

Alternative 3: Exempt Chapter 6 Contracts from 12X

What Would This Look Like?

- This approach would exempt Chapter 6 contracts for construction and construction professional services from 12X. Chapter 6 departments could work with suppliers headquartered in banned states without needing a 12X waiver, as long as the supplier meets the City's other supplier requirements.
- Chapter 21 commodities and services contracts would remain subject to 12X.
- Ordinance 221147 has already been introduced to exempt Chapter 6 contracts (construction & related services) from 12X.
- This legislation would need to be passed by the Board of Supervisors.

Considerations

- Exempting Chapter 6 contracts from 12X would increase competition and potentially reduce prices for Chapter 6 contracts.
- Removing Chapter 6 contracts from 12X would reduce some of the administrative complexities when procuring goods and services critical to our infrastructure and maintenance projects.
- This will not remove the administrative complexity or allow for greater competition – and potentially reduce prices – for the City's commodity or service contracts. In the last 5 years, the City spent approximately $12B on Chapter 21 commodities and services. Key commodities that the City purchases – such as medical supplies, crime lab equipment, and water treatment chemicals – will still be subject to 12X.
- Exempting Chapter 6 contracts while continuing to subject Chapter 21 contracts to 12X creates a different set of administrative rules and system configurations that are based on the type of procurement (construction, services or commodities) a department is conducting. **This can lead to additional administrative costs and confusion over time.**

Alternative 4: Conduct an Administrative Clean-up of 12X

What Would This Look Like?

- This approach will keep the policy framework of 12X in place but amend Administrative Code Section 12X to make 12X simpler to administer.
- This could include merging the three Articles that cover the different aspects of the law into one to ensure consistent terminology and applicability, aligning and/or clarifying the operative dates between the different Articles, and updating the applicability of the contracting and travel bans so they match.
- Legislation implementing administrative amendments to 12X would need to be passed by the Board of Supervisors.

Considerations

- Currently, the 12X ordinance is written in a way that makes it difficult to administer. For example, different articles have different operative dates, and the travel and contract bans require different analyses to determine applicability and waiver eligibility.
- Re-writing the ordinance so that operative dates, terminology, travel and contract exemption requirements, and other administrative aspects align would improve 12X oversight.
- Administrative clean-up alone is **will not increase competition or reduce administrative burdens.**
- Though an administrative clean-up could make the procurement and contracting process easier for City staff to conduct, it **would not reduce the burden of compliance for suppliers or increase competition for City procurement**.

Alternative 5: Create "Off-ramps" for 12X

What Would This Look Like?

- An off-ramp is a mechanism by which a supplier in a banned state could still do business with the City by demonstrating that their organization aligns with and represents the City's stated values.
- This approach would implement ways that suppliers could demonstrate their alignment with City values and therefore be allowed to enter into contracts with City departments without obtaining a 12X waiver.
- Legislation allowing for these off-ramps and providing funding for staff to oversee this work would need to be passed by the Board of Supervisors.

Considerations

- Creating off-ramps would allow the City to do business with compliant suppliers in banned states, which could possibly increase competition. However, suppliers in banned states may not fully understand the nuance of the City's off-ramps and chose not to bid.
- Off-ramps would not apply to the travel ban (i.e. the travel ban would remain in place.)
- **3 different sets of offramps that the City can clearly define and verify would need to be created** for each of 12X's articles. Given that many states are banned by multiple articles, a business may need to comply with up to 3 different sets of criteria before it would be considered 12X compliant.
- This will **likely lead to a higher level of administrative burden and costs than currently exists**. Specifically, the City would need to develop and administer entirely new processes for ensuring compliance with the new supplier compliance requirements.
- Off-ramps are **more likely to benefit bigger, more-resourced businesses**. The burden and cost of meeting 3 separate off-ramp criteria would likely overwhelm small businesses.
- **This would likely slow down the process of executing a contractual agreement** if a supplier is not compliant at the time of award.

Appendix 1: Currently Banned States List

Restrictive LGBTQ Laws	Restrictive Abortion Laws	Restrictive Voting Laws
1. Alabama	1. Alabama	1. Alabama
2. Arizona	2. Arizona	2. Arizona
3. Florida	3. Arkansas	3. Arkansas
4. Georgia	4. Florida	4. Florida
5. Idaho	5. Georgia	5. Georgia
6. Indiana	6. Idaho	6. Idaho
7. Iowa	7. Indiana	7. Indiana
8. Kansas	8. Iowa	8. Iowa
9. Kentucky	9. Kansas	9. Kansas
10. Louisiana	10. Kentucky	10. Kentucky
11. Mississippi	11. Louisiana	11. Louisiana
12. Montana	12. Mississippi	12. Montana
13. North Carolina	13. Missouri	13. Nevada
14. North Dakota	14. Montana	14. New Hampshire
15. Ohio	15. Nebraska	15. Oklahoma
16. Oklahoma	16. Nevada	16. Texas
17. South Carolina	17. New Hampshire	17. Wyoming
18. South Dakota	18. North Carolina	
19. Tennessee	19. North Dakota	
20. Texas	20. Ohio	
21. West Virgina	21. Oklahoma	
	22. Pennsylvania	
	23. South Carolina	
	24. South Dakota	
	25. Tennessee	
	26. Texas	
	27. Utah	
	28. West Virginia	
	29. Wisconsin	
	30. Wyoming	

Current as of September 15, 2022. Note: The State of California's list currently restricts travel to 23 states and only pertains to states with restrictive LGBTQ laws.

Appendix 2: 12X applicability vs. exemptions vs. waivers

Note: **The travel ban and the contracting ban require two separate analyses** (i.e., in cases where the travel ban is exempt, the contracting ban may still apply. In cases where the contracting ban is exempt or waived, the travel ban may still apply.)

	Travel Ban	Contracting Ban
Applicability	The 12X Travel Ban applies to <u>any</u> expense paid by City funds with respect to travel to a 12X State by City employees, contractors or grantees, unless the travel purpose falls into one of 7 exemption categories.	The 12X Contracting Ban applies solely to Contracts, Purchase Orders and Direct Vouchers that fall under Administrative Code Chapter 6 or Chapter 21.
Exemptions	City-funded travel to a banned state is exempt if it falls into one of the seven categories below: 1. Travel is necessary for the enforcement of any state or City law; 2. Travel is necessary for the defense of any legal claim against the City; 3. Travel is required by law. 4. Travel is required to meet contractual obligations incurred by the City. 5. Travel is necessary for the protection of public health, welfare, or safety. 6. Where the funding source of the Employee, Contractor or Grantee travel prohibits City from applying the 12X Travel Ban (e.g., Federal Funds). 7. Employee, Contractor or Grantee travel that requires landing in or going through a 12X State to complete the travel.	• Chapter 21G Agreements • Chapter 23 Agreements • Employee Expenses and Reimbursements • Contracts for the Investment of Trust Money • Contracts for Underwriting Services • Contracts Advertised, Solicited or Initiated prior to the Applicable Article's Operative Date
Waiver Eligibility (documentation required)	The travel ban <u>cannot be waived</u>. Travel to a banned state may only occur if it is considered exempt.	If a contract is not exempt, it can still be waived under the following circumstances: • Sole Source • Declared Emergency • Only One Responsive Contractor • Adverse Impact/Substantial Interest • Bulk Purchasing (i.e., Piggybacking) • Conflicting Grant Terms • SFPUC Bulk Water, Power and Gas

Appendix 3: Other Jurisdictions' Policies

What other jurisdictions have tried travel or business boycotts?

It is difficult to quantify the number of jurisdictions that have enacted travel and/or contracting bans, as this would require a detailed analysis of governing codes and executive orders for 50 states and over 300 municipalities.[1] However, a recent Wall Street Journal article[2] noted, "Other Democratic-controlled state and local governments including New York City and state, Seattle, Salt Lake City, Los Angeles County and California have implemented similar bans on publicly funded travel, though San Francisco remains the most expansive" (Oct 2022).

Below are examples of jurisdictions that have restricted activities with other states at some point in time and why those restrictions were put in place. Note: These examples are not comprehensive and are for illustrative purposes only.

Jurisdiction	Example
City of Seattle	Executive Orders in 2016 restriction travel to Indiana, Mississippi, North Carolina over LGBTQ rights; travel restriction to Indiana lifted within a year. Status of restrictions on Mississippi and North Carolina unclear.
State of New York	Executive Order in 2016 restriction travel to North Carolina over LGBTQ rights. Current status unclear.
City of Los Angeles	Ordinance in 2010 restricting travel and contracting with the state of Arizona over immigration policies. Restrictions dropped in 2018. (See legislative analysis.)

[1]If the analysis were limited to cities with population size >100,000.
[2]Mai-Duc, Christine (2022). "San Francisco Reconsiders Business Ban that Targets States' Social Values." *Wall Street Journal*. Retrieved at: https://www.wsj.com/articles/san-francisco-reconsiders-business-ban-that-targets-states-social-values-11666789223

BOARD of SUPERVISORS

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M E M O R A N D U M

TO: Tom Paulino, All City Departments via the Mayor's Office

FROM: Victor Young, Assistant Clerk

DATE: March 6, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 230213

Ordinance amending the Administrative Code to repeal Chapter 12X, and thereby repeal the prohibitions on City-funded travel to a state, and the City's entering into a contract with a contractor that has its United States headquarters in a state or where any or all of the contract would be performed in a state, that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

cc: Andres Power, Mayor's Office

City and County of San Francisco
Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 230213 **File Type:** Ordinance **Status:** 30 Day Rule

Enacted: **Effective:**

Version: 1 **In Control:** Rules Committee

File Name: Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws **Date Introduced:** 02/28/2023

Requester: **Cost:** **Final Action:**

Comment: **Title:** Ordinance amending the Administrative Code to repeal Chapter 12X, and thereby repeal the prohibitions on City-funded travel to a state, and the City's entering into a contract with a contractor that has its United States headquarters in a state or where any or all of the contract would be performed in a state, that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws.

Sponsors: Mandelman; Stefani, Peskin, Ronen and Safai

History of Legislative File 230213

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	02/28/2023	ASSIGNED UNDER 30 DAY RULE	Rules Committee	03/30/2023	

[Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]

Ordinance amending the Administrative Code to repeal Chapter 12X, and thereby repeal the prohibitions on City-funded travel to a state, and the City's entering into a contract with a contractor that has its United States headquarters in a state or where any or all of the contract would be performed in a state, that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws.

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

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

Section 1. The Administrative Code is hereby amended by repealing Chapter 12X in its entirety, as follows:

~~***CHAPTER 12X:***~~

~~***PROHIBITING CITY TRAVEL AND CONTRACTING***~~

~~***IN STATES THAT ALLOW DISCRIMINATION***~~

~~***ARTICLE I: STATES THAT ALLOW DISCRIMINATION AGAINST LGBT INDIVIDUALS***~~

~~***SEC. 12X.1. FINDINGS AND PURPOSE.***~~

~~*LGBT individuals are entitled to live free from discrimination on the basis of sexual orientation, gender identity, and gender expression. San Francisco has a long history of protecting and promoting the rights of LGBT individuals. San Francisco is also a city open to the free expression and protection of religious views of all kinds.*~~

~~*Since the U.S. Supreme Court's landmark decision in Obergefell v. Hodges on June 26, 2015, recognizing the constitutional right of same-sex couples to marry, states have enacted laws aimed at reducing the legal protections for the LGBT community. In March 2016, North Carolina passed a law nullifying municipal anti-discrimination protections for LGBT individuals in the state. Under the North Carolina law, any existing local LGBT anti-discrimination measure is unenforceable, as would be any future measure adopted by a local government. The law also discriminates against transgender people by requiring them to use public bathrooms that correspond to their biological sex rather than their gender identity. Other states, are considering similar laws. In April 2016, Mississippi enacted a law that would permit discrimination against LGBT individuals if the person choosing to treat LGBT individuals differently claims that the disparate treatment is based on "sincerely held religious beliefs." Such laws have been proposed in other states. The City and County of San Francisco does not support discrimination against LGBT individuals under any circumstances, including when such discrimination is based on religion.*~~

~~*The Board of Supervisors finds that the City should not require its employees, many of whom are LGBT individuals, to be subjected to these discriminatory laws while traveling on City business. No individual, and certainly no employee of the City while conducting City business, should suffer the indignity of being denied services on the basis of being lesbian, gay, bisexual, or transgender. The City and the country have moved in the direction of granting more rights and more protections to LGBT individuals. These new laws represent an affront to progress and to the recognition that the LGBT community is entitled to equal treatment under the law.*~~

~~*Further, the City has a strong interest in dissociating itself from the discriminatory practices of states that have enacted or in the future might enact such laws, and from companies that choose to have their headquarters therein. City funds should not be expended, directly or indirectly, in states that perpetuate unequal treatment of the LGBT community. The Board finds that supporting such states*~~

~~*through the tax revenue that would result from the expenditure of City funds therein is inconsistent with the principles of equality that San Francisco strives to promote.*~~

~~***SEC. 12X.2. DEFINITIONS.***~~

~~*For purposes of this Article I:*~~

~~*"City" means the City and County of San Francisco.*~~

~~*"Contract" means an agreement between a Contracting Department and any person or entity that provides, at the expense of the City, for public works or public improvements to be purchased under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing, "Contract" shall not include:*~~

~~*(a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or*~~

~~*(b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or*~~

~~*(c) Agreements advertised, solicited, or initiated prior to the Operative Date of this Chapter 12X, including amendments to existing Contracts.*~~

~~*"Contracting Department" means the City department, office, board, commission, or other City agency that enters into a Contract on behalf of the City.*~~

~~*"Contractor" means any corporation, partnership, individual, sole proprietorship, joint venture, or other legal entity or combination thereof, which enters into a Contract with the City.*~~

~~*"Covered State" means any state that after June 26, 2015, has enacted a law that,*~~

~~*(a) voids or repeals existing state or local protections against discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, or*~~

~~*(b) authorizes or requires discrimination against same-sex couples or their families or that authorizes or requires discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, including any law that creates an exemption to antidiscrimination laws in order to permit discrimination against same-sex couples or their families or on the basis of Sexual Orientation, Gender Identity, or Gender Expression.*~~

~~*"Covered State List" means the list maintained by the City Administrator of all states that meet the definition of a Covered State, in accordance with Section 12X.3.*~~

~~*"Gender Expression" has the meaning set forth in Section 3304.1(c) of the Police Code.*~~

~~*"Gender Identity" has the meaning set forth in Section 3304.1(c) of the Police Code.*~~

~~*"Operative Date" means February 11, 2017.*~~

~~*"Sexual Orientation" has the meaning set forth in Section 12B.1(c) of the Administrative Code.*~~

~~***SEC. 12X.3. COVERED STATE LIST.***~~

~~*The City Administrator shall create and maintain the Covered State List. A state shall be added to the Covered State List when it meets the definition of a Covered State. A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed and updated by the City Administrator at least semiannually.*~~

~~***SEC. 12X.4. TRAVEL.***~~

~~*(a) The City shall not:*~~

~~*(1) Require any of its employees or officers to travel to a state on the Covered State List; or*~~

~~*(2) Approve a request for City-funded travel to a state on the Covered State List.*~~

~~*(b) Subsection (a) shall not apply to travel that is:*~~

~~*(1) necessary for the enforcement of any state or City law;*~~

~~*(2) necessary for the defense of any legal claim against the City;*~~

~~*(3) required by law;*~~

~~*(4) required to meet contractual obligations incurred by the City; or*~~

~~*(5) necessary for the protection of public health, welfare, or safety.*~~

~~*(c) For purposes of this Section 12X.4, "travel" does not include landing in a state by plane to make a connecting flight to a destination outside that state, or traversing a state by automobile, train, bus, or otherwise, to reach a destination outside that state.*~~

~~***SEC. 12X.5. CONTRACTING.***~~

~~*(a) The City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during the term of a Contract, the Contractor moves its headquarters, or the location from which it will provide services to the City, to a state on the Covered State List, such a move shall not constitute grounds to terminate the Contract.*~~

~~*(b) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to Contracts in the following circumstances:*~~

~~*(1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or*~~

~~*(2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or*~~

~~*(3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public; or*~~

~~*(4) The Contracting Department determines that the public interest warrants the granting of a waiver because application of this Section 12X.5 would have an adverse impact on services or a substantial adverse financial impact on the City; or*~~

~~*(5) The Contracting Department determines that the services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a group purchasing organization; purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and purchase under such an arrangement is in the best interest of the City; or*~~

~~*(6) The Contracting Department determines that the requirements of this Section 12X.5 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 Section; or*~~

~~*(7) The General Manager of the Public Utilities Commission may waive the requirements of this Section 12X.5 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 waiver provision shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.*~~

~~*(c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*~~

~~*(d) The requirements of this Section 12X.5 shall apply to Contracts first advertised, solicited, or initiated on or after the Operative Date.*~~

~~***SEC. 12X.6. RULES AND REGULATIONS.***~~

~~*The City Administrator may adopt rules, regulations, and guidelines to implement this Article I, Chapter 12X.*~~

~~***SEC. 12X.7. PREEMPTION.***~~

~~*Nothing in this Article I, Chapter 12X shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. In Contracts that involve the use of any funds furnished, given, or loaned by the Government of the United States or the State of California, all laws, rules, and regulations of the United States or California or of any federal or State departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Article I, Chapter 12X when such laws, rules, or regulations are in conflict.*~~

~~***SEC. 12X.8. UNDERTAKING FOR THE GENERAL WELFARE.***~~

~~*In enacting and implementing this Article I, Chapter 12X, the City 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. 12X.9. SEVERABILITY.***~~

~~*If any section, subsection, sentence, clause, phrase, or word of this Article I, Chapter 12X, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.*~~

~~***ARTICLE II: STATES WITH RESTRICTIVE ABORTION LAWS***~~

~~***SEC. 12X.11. FINDINGS AND PURPOSE.***~~

~~*The right to choose to have an abortion is protected by the Constitutional right to privacy under the Due Process clause of the 14th Amendment. In Roe v. Wade, 410 U.S. 113 (1973), the U.S. Supreme Court held that the U.S. Constitution protects a personal decision to end a pregnancy.*~~

~~*The right to control if and when to have a child is fundamental to gender equality, and protecting the right to comprehensive reproductive healthcare makes for healthier states with stronger economies. For instance, the ability to make this personal healthcare decision has enabled people to pursue educational and employment opportunities, including serving as a main driver increasing college enrollment and wage gains for women. In 1992, the Supreme Court noted that "the ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."*~~

~~*Restrictive abortion bans can impact anyone who is capable of becoming pregnant, including trans-men, non-binary, and intersex people. Further, roll backs on reproductive rights, including passing abortion bans or restricting funding for clinical healthcare facilities that provide reproductive healthcare services, including abortions, contraception, and other healthcare services, have a disproportionate impact on LGBTQI individuals. These individuals access healthcare services at*~~

~~*clinical healthcare facilities like Planned Parenthood – including abortions, contraception and other healthcare services such as HIV and AIDS related services, hormone therapy, and other LGBTQI related care.*~~

~~*– Abortion is a medically safe procedure and critical part of reproductive health care. Nearly 1 in 4 U.S. women will have an abortion by age 45. Abortion is safer than childbirth, with only 0.23% of all abortions resulting in a major complication compared to 1.3% for childbirth.*~~

~~*– San Francisco has a legacy of leadership on women's human rights. In 1998, San Francisco became the first city in the world to adopt the principles of the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women as a local ordinance committing the City to take proactive measures to eliminate discrimination and advance women's human rights including the right to sexual and reproductive health.*~~

~~*– San Francisco has always been a national leader in supporting reproductive freedom for all. According to the National Institute for Reproductive Health Local Reproductive Freedom Index, San Francisco received the highest scores of 4.5 stars and is listed as having the most reproductive health, rights, and justice policies in place, out of 40 cities across the United States.*~~

~~*– The City also has a history of protecting reproductive rights. In 2014, the City enacted an ordinance establishing "buffer-zones" to prohibit harassment of people attaining services at reproductive health clinics. The City also banned false and misleading claims by "Crisis Pregnancy Centers," and enacted multiple resolutions in support of continued state and federal funding for reproductive health services.*~~

~~*– Abortion access is increasingly restricted in many states across the country. Since 1995, states have enacted 1,041 anti-choice measures, and in 2018, 22 states enacted 50 anti-choice legislative measures. Given the risks that these measures pose to health and access, San Francisco must continue to support vital efforts to protect access to safe and legal abortion services at the local, state and federal levels.*~~

~~*The City has a strong interest in dissociating itself from states that enact laws that limit the legal right to abortion guaranteed by the United States Constitution. By prohibiting City-funded travel to such states and by prohibiting the City from entering into contracts with companies headquartered in such states, the City voices its opposition to these severe anti-choice policies by refusing to expend City funds that would support such states through the tax revenue that would result from such expenditures.*~~

~~***SEC. 12X.12. DEFINITIONS.***~~

~~*For purposes of this Article II:*~~

~~*"City" means the City and County of San Francisco.*~~

~~*"Contract" means an agreement between a Contracting Department and any person or entity that provides, at the expense of the City, for public works or public improvements to be purchased under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing, "Contract" shall not include:*~~

~~*(a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or*~~

~~*(b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or*~~

~~*(c) Agreements advertised, solicited, or initiated prior to the Operative Date of this Article II, Chapter 12X, including amendments to existing Contracts.*~~

~~*"Contracting Department" means the City department, office, board, commission, or other City agency that enters into a Contract on behalf of the City.*~~

~~*"Contractor" means any corporation, partnership, individual, sole proprietorship, joint venture, or other legal entity or combination thereof, which enters into a Contract with the City.*~~

~~*"Covered State" means a state that has enacted a law that prohibits abortion prior to the Viability of the fetus, regardless of whether there are exceptions to such prohibition. Examples of such restrictive laws include a law prohibiting abortion after fetal pole cardiac activity can be detected but before viability (so-called "fetal heartbeat" laws), and a law that prohibits abortion a set number of weeks after fertilization but before Viability.*~~

~~*"Covered State List" means the list maintained by the City Administrator of all states that meet the definition of a Covered State, in accordance with Section 12X.13.*~~

~~*"Operative Date" means January 1, 2020.*~~

~~*"Viability" has the meaning articulated by the United States Supreme Court in Roe v. Wade: "potentially able to live outside the mother's womb, albeit with artificial aid," and as further articulated in the California Reproductive Privacy Act, (Health & Safety Code Sec. 123464): "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."*~~

~~***SEC. 12X.13. COVERED STATE LIST.***~~

~~*(a) The City Administrator shall create and maintain the Covered State List. A state shall be added to the Covered State List when it meets the definition of a Covered State. A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed and updated by the City Administrator at least semiannually.*~~

~~*(b) Role of the Department on the Status of Women. The Department on the Status of Women shall analyze whether a state's law meets the definition of a Covered State. Within 30 days of the effective date of the ordinance in File No. 190658, creating this Article II of Chapter 12X, the Department on the Status of Women shall submit a recommendation to the City Administrator of states*~~

~~*that satisfy the definition of a Covered State. If the law that caused the state to meet the definition of a Covered State is enjoined by a court of competent jurisdiction, the Department on the Status of Women shall not recommend that state for inclusion on the Covered State List. The Department on the Status of Women shall thereafter review the Covered States that appear on the Covered State List on at least a semiannual basis and shall recommend to the City Administrator any states that should be added to or removed from the Covered State List.*~~

~~***SEC. 12X.14. TRAVEL.***~~

~~*(a) The City shall not:*~~

~~*(1) Require any of its employees or officers to travel to a state on the Covered State List; or*~~

~~*(2) Approve a request for City-funded travel to a state on the Covered State List.*~~

~~*(b) Subsection (a) shall not apply to travel that is:*~~

~~*(1) necessary for the enforcement of any state or City law;*~~

~~*(2) necessary for the defense of any legal claim against the City;*~~

~~*(3) required by law;*~~

~~*(4) required to meet contractual obligations incurred by the City; or*~~

~~*(5) necessary for the protection of public health, welfare, or safety.*~~

~~*(c) For purposes of this Section 12X.14, "travel" does not include landing in a state by plane to make a connecting flight to a destination outside that state, or traversing a state by automobile, train, bus, or otherwise, to reach a destination outside that state.*~~

~~***SEC. 12X.15. CONTRACTING.***~~

~~*(a) The City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during the term of a Contract, the Contractor moves its headquarters, or the location from which it will*~~

~~*provide services to the City, to a state on the Covered State List, such a move shall not constitute grounds to terminate the Contract.*~~

~~*(b) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to Contracts in the following circumstances:*~~

~~*(1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or*~~

~~*(2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or*~~

~~*(3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public; or*~~

~~*(4) The Contracting Department determines that the public interest warrants the granting of a waiver because application of this Section 12X.15 would have an adverse impact on services or a substantial adverse financial impact on the City; or*~~

~~*(5) The Contracting Department determines that the services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a group purchasing organization; purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and purchase under such an arrangement is in the best interest of the City; or*~~

~~*(6) The Contracting Department determines that the requirements of this Section 12X.15 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 Section; or*~~

~~*(7) The General Manager of the Public Utilities Commission may waive the requirements of this Section 12X.15 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 waiver provision shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.*~~

~~*(c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*~~

~~*(d) The requirements of this Section 12X.15 shall apply to Contracts first advertised, solicited, or initiated on or after the Operative Date.*~~

~~***SEC. 12X.16. RULES AND REGULATIONS; REPORTING.***~~

~~*(a) The City Administrator may adopt rules, regulations, and guidelines to implement this Article II, Chapter 12X.*~~

~~*(b) By December 31, 2023, the Controller shall conduct an evaluation and submit a report to the Board of Supervisors regarding the economic impact of this Article II of Chapter 12X on the City.*~~

~~***SEC. 12X.17. PREEMPTION.***~~

~~*Nothing in this Article II, Chapter 12X shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. In Contracts that involve the use of any funds furnished, given, or loaned by the Government of the United States or the State of California, all laws, rules, and regulations of the United States or California or of any federal or State departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Article II, Chapter 12X when such laws, rules, or regulations are in conflict.*~~

~~***SEC. 12X.18. UNDERTAKING FOR THE GENERAL WELFARE.***~~

~~*In enacting and implementing this Article II, Chapter 12X, the City 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. 12X.19. SEVERABILITY.***~~

~~*If any section, subsection, sentence, clause, phrase, or word of this Article II, Chapter 12X, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.*~~

~~***ARTICLE III: STATES WITH VOTER SUPRESSION LAWS***~~

~~***SEC. 12X.21. FINDINGS AND PURPOSE.***~~

~~*(a) San Francisco is committed to conducting fair and open elections. That commitment includes making elections as widely accessible as possible. For example, the City has instituted early*~~

~~*voting at City Hall, sent vote-by-mail ballots to all voters during the recent pandemic, and provided ballot drop-off boxes throughout the City, including in all precincts on Election Day.*~~

~~*(b) But the history of our nation has been marred by recurring efforts to restrict the voting rights of Black citizens and other citizens of color. After the 2020 presidential election, many states introduced, and several states have already enacted, new and oppressive voter restriction laws that disproportionately impact minority and low-income voters and that make it harder for Black people, other people of color, and voters from low-income communities to exercise their most fundamental of rights. Such voter suppression is a threat to our entire democratic system.*~~

~~*(c) San Francisco adopts this Chapter 12X, Article III, to prevent the expenditure of City funds on travel in states that have enacted voter suppression laws or on contracts with businesses headquartered or performing contractual services for the City in such states.*~~

~~***SEC. 12X.22. GENERAL DEFINITIONS.***~~

~~*For purposes of this Article III, Chapter 12X:*~~

~~*"City" means the City and County of San Francisco.*~~

~~*"Contract" means an agreement between a Contracting Department and any person or entity that provides, at the expense of the City, for public works or public improvements to be purchased under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing, "Contract" shall not include:*~~

~~*(a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or*~~

~~*(b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or*~~

~~*(c) Agreements advertised, solicited, or initiated prior to the operative date of this Article III, Chapter 12X, including amendments to existing Contracts.*~~

~~*"Contracting Department" means the City department, office, board, commission, or other City agency that enters into a Contract on behalf of the City.*~~

~~*"Contractor" means any corporation, partnership, individual, sole proprietorship, joint venture, or other legal entity or combination thereof, which enters into a Contract with the City.*~~

~~*"Covered State" means a state that has adopted a Voter Suppression Law, as defined in Section 12X.23, below, on or after January 1, 2021.*~~

~~*"Covered State List" means the list maintained by the City Administrator of all states that meet the definition of a Covered State, in accordance with Section 12X.24.*~~

~~***SEC. 12X.23. "VOTER SUPRESSION LAW" DEFINED.***~~

~~*"Voter Suppression Law" means a state law, adopted on or after January 1, 2021, that makes it, on balance, harder to register to vote, harder to stay on the voter registration rolls, or harder to vote, as compared to existing state law prior to the date of adoption, regardless of whether there are exceptions to such laws. In addition, "Voter Suppression Law" means a state law, adopted on or after January 1, 2021, that reallocates responsibility for the processing, tabulation, or determination of votes and/or election results in a manner that, on balance, presents a danger that the will of the voters as expressed in their votes will be overridden. By way of example but not limitation, the following laws are likely to be Voter Suppression Laws within the meaning of this Section 12X.23:*~~

~~*(a) **Laws Restricting Voter Registration:***~~

~~*(1) Laws that remove voters from voter rolls for not having voted in previous elections.*~~

~~*(2) Laws that require voters to re-register repeatedly in order to remain on voter rolls.*~~

~~*(3) Laws that expand voter roll purges or eliminate safeguards that prevent improper purges.*~~

~~*(b) **Laws Restricting General Voting:***~~

~~*(1) Laws that unduly limit or reduce the number of polling places.*~~

~~*(2) Laws that restrict or ban the use of ballot drop boxes, or that limit the number of drop boxes solely by county or other geographic or geopolitical area despite variances in population.*~~

~~*(3) Laws that do not allow same-day voting at a polling place if a voter goes to the wrong polling location.*~~

~~*(4) Laws that limit or ban same-day voter registration on election day.*~~

~~*(5) Laws that otherwise limit access to voting by reducing the times, places, or methods by which eligible persons may vote.*~~

~~*(6) Laws that prohibit extension of voting hours if election problems arise.*~~

~~*(c) **Laws Imposing Restrictive ID Requirements:***~~

~~*(1) Laws that impose strict photographic identification requirements, such as laws requiring state ID for in-person and/or absentee ballots but that do not accept student IDs issued by universities and colleges located in the state.*~~

~~*(2) Laws that prevent voters without photo IDs from satisfying an identification requirement in some other manner, such as by submitting a signed and sworn affidavit.*~~

~~*(3) Laws that require multiple forms of photo ID to vote.*~~

~~*(d) **Laws Restricting Absentee Voting:***~~

~~*(1) Laws that make it more difficult to obtain or cast an absentee ballot by narrowing eligibility for absentee voting.*~~

~~*(2) Laws that make the application process for absentee ballots unduly difficult by requiring multiple steps.*~~

~~*(3) Laws that unduly limit the time frame for requesting and/or returning absentee ballots.*~~

~~*(4) Laws limiting or prohibiting local election departments from mailing absentee ballots or absentee ballot applications to all voters.*~~

~~*(5) Laws that remove voters as absentee voters if they failed to vote absentee in two or more consecutive state or federal election cycles.*~~

~~*(6) Laws barring persons other than the individual voter or their families from turning in an absentee ballot.*~~

~~*(e) **Laws Restricting Elections by Mail:***~~

~~*(1) Laws that prevent mail-in ballots from being counted in a presidential election.*~~

~~*(2) Laws that ban pre-paid postage for mail-in ballots.*~~

~~*(f) **Laws Restricting Voting by Persons with Disabilities:***~~

~~*(1) Laws that require disabled persons to prove their disability when voting.*~~

~~*(g) **Laws Reallocating Responsibility for Processing, Tabulation, or Determination of Votes or Results:***~~

~~*(1) Laws that remove the secretary of state from the state election board, or otherwise take away the power of the state's chief elections officer to remedy election problems.*~~

~~*(2) Laws that undermine the power of local officials to conduct fair elections.*~~

~~*(3) Laws that allow the state legislature to override or disregard local voting returns and declare their own election results.*~~

~~***SEC. 12X.24. COVERED STATE LIST.***~~

~~*(a) The City Administrator shall create and maintain the Covered State List. A state shall be included in the Covered State List when, in the judgment of the City Administrator, in consultation with the Director of Elections and the City Attorney, it meets the definition of a Covered State.*~~

~~*(b) A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. A decision to remove a state from the Covered State List shall be made by the City Administrator, in consultation with the Director of Elections and the City Attorney.*~~

~~*(c) The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed, and updated as appropriate, by the City Administrator at least semiannually.*~~

~~***SEC. 12X.25. TRAVEL.***~~

~~*(a) The City shall not:*~~

~~*(1) Require any of its employees or officers to travel to a state on the Covered State List; or*~~

~~*(2) Approve a request for City-funded travel to a state on the Covered State List.*~~

~~*(b) Subsection (a) shall not apply to travel that is:*~~

~~*(1) necessary for the enforcement of any state or City law;*~~

~~*(2) necessary for the defense of any legal claim against the City;*~~

~~*(3) required by law;*~~

~~*(4) required to meet contractual obligations incurred by the City; or*~~

~~*(5) necessary for the protection of public health, welfare, or safety.*~~

~~*(c) For purposes of this Section 12X.25, "travel" does not include landing in a state by plane to make a connecting flight to a destination outside that state, or traversing a state by automobile, train, bus, or otherwise, to reach a destination outside that state.*~~

~~***SEC. 12X.26. CONTRACTING.***~~

~~*(a) The City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during the term of a Contract, the Contractor moves its headquarters, or the location from which it will provide services to the City, to a state on the Covered State List, such a move shall not constitute grounds to terminate the Contract.*~~

~~*(b) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to Contracts in the following circumstances:*~~

~~*(1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or*~~

~~*(2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or*~~

~~*(3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public; or*~~

~~*(4) The Contracting Department determines that the public interest warrants the granting of a waiver because application of this Section 112X.26 would have an adverse impact on services or a substantial adverse financial impact on the City; or*~~

~~*(5) The Contracting Department determines that the services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a group purchasing organization; purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and purchase under such an arrangement is in the best interest of the City; or*~~

~~*(6) The Contracting Department determines that the requirements of this Section 12X.26 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 Section; or*~~

~~*(7) The General Manager of the Public Utilities Commission may waive the requirements of this Section 12X.26 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 waiver provision shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.*~~

~~*(c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*~~

~~*(d) The requirements of this Section 12X.26 shall apply to Contracts first advertised, solicited, or initiated on or after the operative date.*~~

~~***SEC. 12X.27. RULES AND REGULATIONS; REPORTING.***~~

~~*(a) The City Administrator may adopt rules, regulations, and guidelines to implement this Article III of Chapter 12X.*~~

~~*(b) By January 1, 2023, the Controller shall conduct an evaluation and submit a report to the Board of Supervisors regarding the economic impact of this Article III of Chapter 12X on the City.*~~

~~***SEC. 12X.28. PREEMPTION.***~~

~~*Nothing in this Article III, Chapter 12X shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or State of California law. In Contracts that involve the use of any funds furnished, given, or loaned by the Government of the United States or the*~~

~~*State of California, all laws, rules, and regulations of the United States or California or of any federal or State departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Article III, Chapter 12X when such laws, rules, or regulations are in conflict.*~~

~~***SEC. 12X.29. UNDERTAKING FOR THE GENERAL WELFARE.***~~

~~*In enacting and implementing this Article III, Chapter 12X, the City 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. 12X.30. SEVERABILITY.***~~

~~*If any section, subsection, sentence, clause, phrase, or word of this Article III, Chapter 12X, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Article or Chapter. The Board of Supervisors hereby declares that it would have passed this Article and Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion this Article or Chapter or application thereof would be subsequently declared invalid or unconstitutional.*~~

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 3. Operative Date. The Operative Date of this Chapter 12X repeal is the same as the Effective Date. As of that date, all restrictions imposed by Chapter 12X relating to travel and contracting will cease to exist. Prior to the Operative Date, the restrictions will remain in place, and the City may not fund travel to, or award contracts to entities based in, states on the City Administrator's list, unless an exemption, waiver, or other applicable determination is made under Chapter 12X. This section does not create any new contracting requirements. Agreements awarded prior to the Operative Date and amendments of such agreements remain valid. Departments are not required to alter or rescind any procurements that are in process as of the Operative Date. The City Administrator may adopt guidance to implement this repeal ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ Gustin R. Guibert
GUSTIN R. GUIBERT
Deputy City Attorney

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FILE NO. 230213

LEGISLATIVE DIGEST

[Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]

Ordinance amending the Administrative Code to repeal Chapter 12X, and thereby repeal the prohibitions on City-funded travel to a state, and the City's entering into a contract with a contractor that has its United States headquarters in a state or where any or all of the contract would be performed in a state, that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws.

Existing Law

Chapter 12X of the Administrative Code is comprised of three articles, each of which restricts the ability of the City to i) travel to or ii) enter contracts with entities headquartered in or where any or all of the contract would be performed in states that have enacted: i) laws that allow discrimination against LGBT individuals, ii) restrictive abortion laws, or iii) voter suppression laws. The City Administrator maintains a list of states that have types of discriminatory laws listed above. The contracts affected by this restriction are let under Chapter 6 (construction or public works/improvement) and Chapter 21 (goods and services) of the Administrative Code.

Amendments to Current Law

The Chapter is being repealed in its entirety. After the effective date, the City may fund travel to all states, and may award contracts to entities headquartered in all states, without the restrictions of Chapter 12X. Any other contracting restriction impacting the travel or contract award remains in effect. Departments are not required to alter existing procurements, nor are existing contracts and amendments thereto impaired. The City Administrator is authorized to give guidance on the implementation of this transition.

Background Information

In 2016 the City enacted Chapter 12X, and restricted travel to and contracts awarded to initially 8 states that had laws that discriminated against LGBT individuals. In the following years, more discriminatory laws were targeted, and the list of states increased to 30. In 2022, the Board asked the City Administrator to review the legislation, its efficacy, and provide policy options in a report. The ensuing report found that the effect of 12X restrictions on states changing their policy was limited or uncertain, while the impact on the City was significant. Though Chapter 12X has waivers and exemptions, these do not fully address concerns raised over limitations imposed on the City and what it funds. Chapter 12X has increased administrative burdens and costs to the City in the form of smaller supplier pools. Further information is found in the City Administrator's Report of February 11, 2023 and the Supervisorial Letter of Inquiry of October 18, 2022.

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CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST
1390 Market Street, Suite 1150, San Francisco, CA 94102
PHONE (415) 552-9292 FAX (415) 252-0461

Policy Analysis Report

To: Supervisor Rafael Mandelman
From: Budget and Legislative Analyst's Office
Re: Impact of the Chapter 12X Contracting Ban
Date: October 18, 2022

Summary of Requested Action

Your office requested that the Budget and Legislative Analyst conduct an analysis of the impact of the implementation of the contracting prohibitions applicable to states on the Covered State List, pursuant to Chapter 12X of the Administrative Code. You also requested that we prepare an estimate of costs the City has incurred in implmenting this legislation and a report on the nature and impacts of a similar ban by the State of California.

For further information about this report, contact Fred Brousseau, Director of Policy Analysis, at the Budget and Legislative Analyst's Office.

Executive Summary

- In October 2016, the San Francisco Board of Supervisors approved an ordinance (later codified in the Administrative Code as Chapter 12X) prohibiting City-funded travel to states with laws that reduced protections for the LGBT community against discrimination. This ordinance also prohibits City contracting with companies headquartered in these states, or where work on the contract would be performed in these states. The ordinance has since been amended twice: in 2019 to expand the travel and contracting ban to include states with restrictive abortion laws; and in 2022 to include states with restrictive voting laws
- There are currently 30 "covered" states, as identified semiannually by the City Administrator, in consultation with the Office of Transgender Initiatives, Department on the Status of Women, and Department of Elections.
- The implementation guidelines promulgated by the City Administrator's Office related to Chapter 12X specify that contracting departments may only enter into new contracts with businesses headquartered in Chapter 12X covered states under six exceptions, which are listed in the Administrative Code. Prior to July 2021, all

contracting departments were required to report to the City Administrator annually on 12X waivers granted in the prior year based on the six allowed exceptions.

- Our review found poor compliance with this waiver reporting requirement between 2017 and 2021. However, since July 2021 and through the preparation of this report, departments have been required to enter waiver information into ServiceNow, an automated system through which the City Administrator's Office can generate a report that identifies waiver information for all departments.

- Between February 2017, when Chapter 12X became effective, and June 2022, City records show that 478,304 contracts and purchase orders with a value of $62.9 billion were issued by the City and County of San Francisco. However, in spite of the new law and the substantial value of the City's contracts and purchase orders, a system was not established to identify whether departments were complying with the Chapter 12X bans or whether they had issued waivers from the requirements when their contractors and vendors were headquartered in banned states.

- Due to limitations in readily available records, only a partial assessment can be made of Citywide compliance with Chapter 12X during its first years. It is not possible to tell how many contracts were issued to contractors and vendors in banned states, but it is certain that this did occur. But there is a secondary problem in not being able to systematically determine if waivers were granted to such contracts.

- Of all 478,304 contracts and purchase orders executed between February 2017 and June 2022, available records do show that at least 150,126 were issued to companies with headquarters in California and were therefore consistent with the terms of Chapter 12X. However, for another 246,644 contracts and purchase orders from that period, the companies were located outside California including some in banned states. However, it is not possible to determine if waivers for all such contracts and purchase orders were compliant with Chapter 12X because records of all such waivers are not readily available for those years.

- Of the 246,644 contracts and purchase orders with companies located out of state, limited City records show that at least 9,407 contracts and purchase orders, with a value of $4.1 billion, were issued to vendors with headquarters in banned states between 2017 and 2022. It is unknown how many of those contracts were waived from Chapter 12X requirements since that data was not recorded centrally until May 2021.

- Finally, there were 81,534 contracts and purchase orders for which headquarters locations were not recorded in the City's financial system at all, meaning these could also include some vendors in banned states. The number of these organizations that

received waivers from Chapter 12X requirements cannot be determined due to the lack of centrally collected waiver documentation prior to May 2021.

Exhibit A: All City Contracts and Purchase Orders Executed February 2017 – June 2022

Headquarters	# of Contracts	% of Total #	$ Value	% of Total Value
California	150,126	31.4%	$40,259,273,936	64.0%
Outside California	246,644	51.6%	16,880,020,806	26.8%
Not in records	81,534	17.0%	5,767,368,868	9.2%
Total	**478,304**	100.0%	**$62,906,663,610**	100.0%

- We analyzed the City's contracting records in two phases: Phase 1 covered the period between February 2017, when Chapter 12X was first enacted, through 2020. This was before contract companies' headquarters locations and Chapter 12X waivers granted began being systemically recorded in the City's financial system. Due to those limitations, we reviewed contracts and purchase orders for a sample of six City departments for our Phase 1 review.

- Phase 2 of our analysis covered July 2021 through July 2022, after the City Administrator had established new reporting requirements to ensure that City departments reported the headquarters locations of their contractors in the City's financial system to allow the contractors to be paid and that all waivers granted by contracting departments be centrally reported.

- **Phase 1 results (February 2017 – 2020)** In our Phase 1 analysis, we surveyed six City departments on the number of contracts issued to companies with headquarters in banned states or the number of waivers issued for such contracts. We found that between 2017 and 2020, these six sample departments granted a total of 47 waivers with a value of $75.8 million to allow for contracts with companies in banned states. Although one of the departments provided us with copies of its annual reports to the City Administrator's Office, the Office reports that none of these departments were compliant with the Chapter 12X requirement to report their waivers to the City Administrator's Office in FY 2019-20.

- **Phase 2 results (July 2021– July 2022)** In July 2021, based on a recommendation from our office, the Office of Contract Administration began collecting and tracking Chapter 12X waiver requests Citywide. From July 2021 to July 2022, 35 departments Citywide approved a total of 538 waivers from Chapter 12X requirements for

contracts and purchase orders with companies in banned states totaling over $791 million. Of just the six departments we reviewed in our Phase 2 work, four of them granted more waivers to the contracting ban in just the one year between July 2021 to July 2022 than they had in the three-year period we reviewed in our Phase 1 work.

- Though improvements have been made in montioring Chpater 12X compliance, an effective enforcement mechanism for Chapter 12X is not in place. The City Administrator's Office was not delegated authority in the Chapter 12X contracting ban ordinance to implement or enforce the program, including ensuring that waivers are sufficiently justified and documented. Instead, department heads for the contracting departments grant waivers to their own departments.

- The most common justification for Chapter 12X waivers between July 2021 and July 2022 was that application of the ban, "…would have an adverse impact on services or a substantial adverse financial impact on the City." Adverse impacts are not defined in the ordinance and, at least in our sample contracts reviewed from between 2017 and 2020, required written justifications for department exemptions that may have explained the adverse impacts were not prepared for 26 of the 47 contracts we reviewed.

- While it is difficult to measure how the City's contracting costs have been affected by the 12X legislation, researchers have found that full and open competition for contracts can result in savings up to 20 percent. Since the legislation reduces the number of companies that could potentially bid on City contracts, we have estimated the impact of a reduced number of bids on at least some City contracts.

- Based on this research, we applied a range of 10 to 20 percent savings to 13 low-bid contracts awarded in 2016, before the Chapter 12X ban was enacted, with a value of $234,605,460. This results in potential additional costs to the City if these same contracts had been bid after the Chapter 12X restrictions were in place of between $23,460,546 and $46,921,092. Losses could be greater in the ensuing years to the extent fewer contractors and vendors submitted bids due to the ban.

- Based on information provided by specific City departments and estimating department-level costs for submitted Chapter 12X waivers in ServiceNow, we estimate that the implementation of Chapter 12X has cost the City an additional $474,283 since FY 2017. While some of these were one-time startup costs, ongoing costs for interpreting and administering Chapter 12X can be expected.

- The State of California adopted a ban in 2016 on State employees travelling to states that have adopted anti-LGBT laws or have removed protections against discrimination against same-sex couples or their families or on the basis of sexual

orientation, gender identity, or gender expression. We did not find any documentation by the State or other organizations on the economic impact of this ban on other states. The State ban is on travel only; it does not apply to contracting like the City and County of San Francisco ban.

Policy Options

The Board of Supervisors should:

1. Request that the City Administrator continue to develop stronger internal controls to ensure the sufficient justification for waivers is provided by City departments related to Chapter 12X implementation and waivers, consistent with Chapter 12X. This might include hosting a virtual training with contracting officers within departments to review Chapter 12X protocols, forms and documentation, and reporting requirements.

2. Request that the City Administrator present an annual 12X waiver report to the Board of Supervisors, within 90 days of the end of the fiscal year, to allow for effective monitoring and oversight of trends and impacts.

3. With input from the City Attorney and City Administrator, consider amending the Administrative Code to give the City Administrator authority to approve Chapter 12X waivers so that department heads are not the ultimate authority for granting waivers on their own department contracts and purchase orders.

4. If the Board of Supervisors concludes that Chapter 12X's contracting provisions are not effective at achieving the original policy goals of the legislation, it could consider adopting an approach like the State of California which bans travel to states with anti-LGBQT laws, but not contracting with companies headquartered in those states. According to the authorizing bill's sponsor, this was intended to protect State workers from having to travel to states where they might be discriminated against.

Project Staff: Fred Brousseau, Amanda Guma, Karrie Tam, Reuben Holober

Chapter 12X of the Administrative Code

Folllowing the Supreme Court decision in 2015 recognizing the constitutional right of same-sex couples to marry, the states of North Carolina and Missisippi enacted laws aimed at reducing the legal protections for the lesbian/gay/bisexual/transgender (LGBT) community.

In response to these acts of discrimination, in October 2016 the San Francisco Board of Supervisors approved an ordinance prohibiting City-funded travel to states that enacted anti-LGBT laws after June 26, 2015; this ordinance (Article I) was added as Chapter 12X to the City's Administrative Code. Specifically, the prohibition refers to "any state that after June 26, 2015, has enacted a law that, (a) voids or repeals existing state or local protections against discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression; or (b) authorizes or requires discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, including any law that creates an exemption to antidiscrimination laws in order to permit discrimination against same-sex couples or their families on the basis of Sexual Orientation, Gender Identity, or Gender Expression."

The ordinace also prohibits City contracting with companies headquartered in these states, or where work on the contract would be performed in these states.

In July 2019, the Board of Supervisors approved an ordinance (Article II) amending Chapter 12X to expand the travel and contracting ban to include states with restrictive abortion laws. These are specifically defined as states that have enacted "a law that prohibits abortion prior to the viability of the fetus, regardless of whether there are exceptions to such prohibition." The respective travel and contracting bans became effective on January 1, 2020.

In October 2021, the Board of Supervisors approved another ordinance (Article III) amending Chapter 12X to expand the travel and contracting ban to include states that have adopted laws suppressing voting rights on or after January 1, 2021. This ban became effective on March 6, 2022.

Covered States List

According to Chapter 12X, the City Administrator will maintain the list of Covered States, which refers to any state that has enacted laws that reduce or eliminate protections against LGBT discrimination and/or restrict access to abortion and/or suppress voting rights. The ordinance requires that the list be posted on the City Administrator's website, and udpated at least semiannually.

As of April 2022, Chapter 12X covers the following 30 states: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma,

Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin and Wyoming.

Contracting Ban

Articles I, II and III of the ordinance detail the prohibitions relevant to City contracting, which apply to all contracts for goods and services procured by the City under Chapters 6 and 21 of the Administrative Code. Unless exempted, the ban applies to all City contracts that were first advertised, solicited, or initiated on or after the operative date on which the applicable Article went into effect. Pre-existing contracts were not impacted by this legislation. As shown in Appendix 1, states can gain or lose "Covered" status throughout the year, as a result of legislative action taken, so the operative date of each state's Covered status may vary.

Exceptions and Waivers

Granted the authority to adopt rules and guidelines to implement the ordinance, the City Administrator has published eight guidance memoranda[1] since February 2017 for City departments relative to Chapter 12X. These guidelines specify that contracting departments may enter into new contracts with businesses headquartered in Chapter 12X covered states under the following exceptions, as specified in the legislation:

1. Needed services are available from only one source;
2. Contract is necessary to respond to an emergency which endangers public health or safety and no compliant company is immediately available to perform required services;
3. There are no compliant/qualified responsive bidders and the contract is for a service, project, or property that is essential to the City or public;
4. Public interest warrants the granting of a waiver because application would have an adverse impact on services or a substantial adverse financial impact on the City;
5. Services to be purchased are available under a bulk purchasing agreement with a federal, state, or local government entity or a group purchasing organization, which will substantially reduce the City's cost; or
6. Not entering into the subject contract would violate or is inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency, provided

[1] The City Administrator published memoranda related to the implementation of Chapter 12X on February 10, 2017, June 30, 2017, August 31, 2017, June 4, 2018, April 17, 2019, September 18, 2019, October 16, 2019, November 27, 2019, and September 26, 2022.

> the contracting officer has made a good faith attempt to change the terms or conditions.

A waiver is not required under the following circumstances:

- Transactions for which "local preferences" are not permitted (e.g., Federally or State funded contracts).
- Transactions that do not meet the definition of Commodity, Service and/or Contract under Chapters 21 and 6.
- Transactions that fall under Chapter 21G (Grants).
- Transactions that fall under Chapter 83 (Property Contracts).

While the ordiance grants authority to the City Administrator to adopt rules and guidelines for the contracting ban program, it does not convey authority to the City Administrator to administer the program or to assume accountability for non-compliance.

Waiver/Exception Compliance Requirements

As stated in Chapter 12X:

> *For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*

Until July 2021, contracting departments were required to document their Chapter 12X waiver determinations using a form called "P-12X.5" or "P-12X.15", which they submitted to the Office of Contract Administration (OCA) for purchases requiring OCA review, or saved in the department's contract file if OCA review was not required. Per the City Administrator's implementation guidance, an annual report listing all Chapter 12X waivers granted for the fiscal year, including the reason for each waiver, was required to be submitted to OCA by all contracting departments. Waivers are granted by the contracting department's own department head, not OCA or the City Administrator. As discussed below, the waiver process was replaced in July 2021; since then, departments have been entering waiver information into the ServiceNow electronic system, through which OCA generates Citywide reports on Chapter 12X waivers.

Our office reviewed City compliance with Chapter 12X and related OCA administrative processes in late 2020 and early 2021. Based on that analysis, we developed draft findings and recommendations which we shared with OCA. Beginning in July 2021, and consistent with our

Phase 1 recommendations, OCA created a webpage on OCA's website regarding Chapter 12X waiver requirements and applicability, which includes an updated list of covered states, a 12X Waivers User Guide, and a link to submit online waiver requests. Previously, there was no website and waiver requests were submitted to OCA manually, if at all.

Analysis of Chapter 12X Implementation

To understand the impact of Chapter 12X on City contracting, we sought to answer the following questions:

1. How does the City implement the requirements?
    a. How are business headquarters identified and reported?
    b. How are waivers requested or authorized and reported?
2. How has the contracting process been impacted by the contracting ban?
    a. Has the pool of bidders been reduced?
    b. Have costs for services been affected?

Methodology

To answer the questions above, our office collected and reviewed data from the Office of Contract Administration for all contracts procured by City departments in calendar year 2016 (to establish contracting baselines from before the February 2017 effective date of Chapter 12X), as well as contract data from between July 2017 through July 2022. The analysis for this report was conducted in two phases: the first of which concluded in May 2021, covering contracts in place and awarded between July 2017 and December 2020 and a second phase, which concluded in July 2022 and covered pertinent contracts between May 2021 and July 2022.

We shared our recommendations with OCA for improving the collection and tracking of Chapter 12X waivers folllowing Phase 1 since, at that time, there was no centralized compilation and oversight of Citywide contracting ban compliance or contract waiver activity by OCA or any other City department. Some of our recommendations had been implemented by OCA by the beginning of our Phase 2 work in July 2022. We provide the results of our analysis for both phases in this report.

In Phase 1, because Citywide waiver data was unavailable at that time, we selected six departments for more in-depth review of the waiver determination process and contracting activities before and after the implementation of Chapter 12X to understand its impact on contracting for the larger City departments. We selected the departments based on the size and scope of their contracts, targeting the departments who typically procure higher valued contracts through a lowest-bidder process.

The selected departments were the Airport, Department of Technology, Municipal Transportation Agency, Port, Public Utilities Commission, and the Department of Public Works.

In Phase 2, we reviewed waiver data for all City departments, since it was then being centrally collected and could be reported by OCA.

City Contracts

According to data provided by the Controller's Office, since the Chapter 12X ordinance was enacted in February 2017 and through 2022, City departments have entered into 478,304 contracts and purchase orders for goods and services totaling nearly $63 billion.

Data Limitations

Until 2022, vendor headquarters information was self-reported, if at all, in the City's financial system. Reporting of headquarters locations in the financial system was not required for the contract to be executed, become active in the system, and for vendor payments to be made even if the vendor was headquartered in a banned state. Based on recommendations from our office as a part of this report, the Office of Contract Administration worked with the Controller's Office to adapt the financial system to begin requiring headquarters information. However, as of July 14, 2022, headquarters locations remained unspecified for 81,534 contracts and purchase orders that were procured by the City since July 2017, mostly before July 2021 when the Controller's Office added the control to require headquarters information in the financial system.

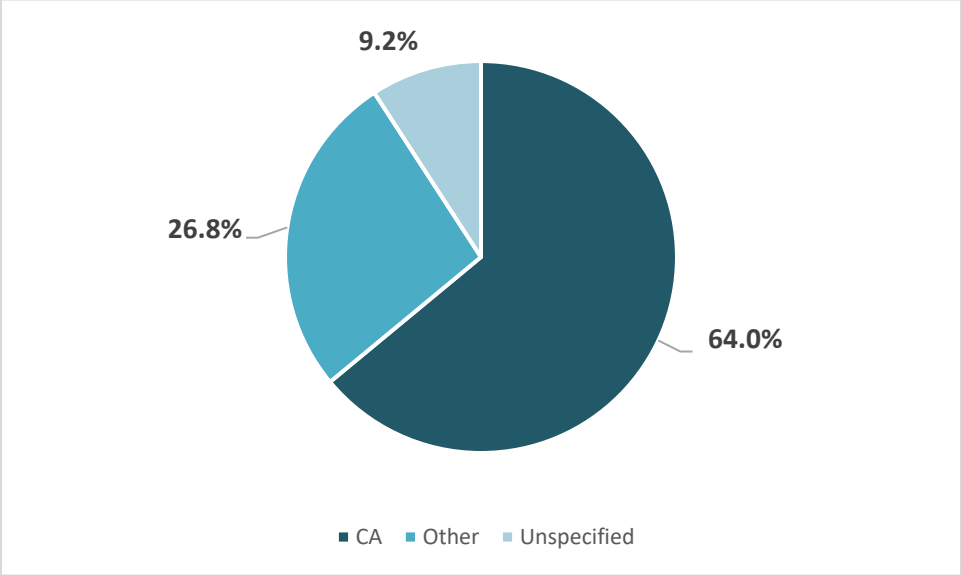
As Exhibit 1 shows, these contracts and purchase orders with headquarters locations not specified in the records represent 17.0 percent of the contracts and purchase orders executed since the Chapter 12X effective date. Another 31.4 percent of those contacts were awarded to companies with headquarters in California and 51.6 percent, or 246,644 of the contracts and purchase orders since February 2017, were made to suppliers located outside of California. This included contracts and purchase orders with companies headquartered in banned states since some of those were granted waivers by the contracting departments and others may not have been identified as such since contracting departments did not identify headquarters cities for their contracts and purchase orders in many cases between February 2017 and May 2021. These could also inlcude contracts and purchase orders exempted in Chapter 12X such as for grants and property, but these are not readily identifiable in records from that period. As of June 2021, new controls were established by the Controller requiring vendor company headquarters information to be entered in the City's financial system to enable payments.

Exhibit 1: All City Contracts and Purchase Orders Procured February 2017 – June 2022

Headquarters	# of Contracts	% of Total #	Value of Contracts	% of Total Value
California	150,126	31.4%	$40,259,273,936	64.0%
Outside California	246,644	51.6%	16,880,020,806	26.8%
Not in Records	81,534	17.0%	5,767,368,868	9.2%
Total	**478,304**	100.0%	**$62,906,663,610**	100.0%

Source: Controller's Office

Exhibit 2: Percentage of Total Contract Value for City Contracts Procured Between February 2017 and June 2022



Sources: BLA Analysis, Controller's Office Data

According to data from the Controller's Office in which vendor headquarters locations were identified, since the implementation[2] of Chapter 12X, the City procured at least 9,407 contracts for goods and services with a value totaling $4,125,661,691 from vendors with headquarters in banned states between July 2017 and July 2022. This includes those that were granted waivers

[2] Chapter 12X became effective in February 2017, but the data from the Controller's Office captures records beginning July 1, 2017.

by the contracting departments though the number with waivers cannot be readily determined prior to July 2021 because waiver records were not centrally collected before that time.

Exhibit 3: City Contracts with Vendors in Banned States, July 2017 to July 2022

HQ State	# of Contracts	Value of Contracts
Alabama	20	$13,557,523
Arkansas	2	8,700,000
Arizona	221	537,575,854
Florida	1,503	452,989,219
Georgia	162	127,714,309
Iowa	159	837,990
Idaho	62	2,050,021
Indiana	1,255	2,539,214
Kansas	57	122,598,680
Kentucky	218	22,313,577
Louisiana	30	9,878,130
Massachusetts	784	150,717,528
Montana	1	10,000
North Carolina	1,150	107,081,897
North Dakota	6	64,273
Nebraska	13	87,941,753
New Hampshire	48	3,802,170
Nevada	649	21,924,611
Ohio	542	97,984,031
Oklahoma	5	438,932
Pennsylvania	1,034	343,706,842
South Carolina	131	32,798,678
South Dakota	8	1,465,275
Tennessee	46	29,015,107
Texas	1,111	1,613,507,663
Wisconsin	190	334,448,414
Total	**9,407**	**$4,125,661,691**

Sources: BLA Analysis, Controller's Office Data

Use of Waivers

As discussed above, contracting departments seeking to enter into a contract or make a purchase otherwise prohibited by Chapter 12X can make a determination of non-applicability, exception or waiver as authorized by subsection Chapter 12X.5(b). If a department makes such a determination, it previously was required to document the basis for this determination using Form P-12X.5/12X.15. All contracting departments were required to submit an annual report on

their Chapter 12X waivers issued to the City Administrator, within 30 days of the end of the fiscal year.

Since our office began this report in 2021, the City Administrator's Office has adopted new practices for tracking waivers, based on recommendations made by our office in the first phase of this analysis. Note that waivers related to Chapter 12X only apply to contracting; 12X restrictions on travel can never be waived. Travel to a 12X covered state is only permitted when it is first deemed "exempt" by the department head of the requesting department. In such instances, the requesting department must (A) determine how it will document its department head's determination that the travel was exempt and (B) internally track the expenses incurred for that exempt travel. These 12X travel exemptions are not tracked by OCA or by the City Administrator's Office.

For contracting with vendors headquartered in a 12X covered state, OCA implemented new procedures in July 2021 for waivers. If the contract is not "exempt", a waiver is required, and departments must document the waiver request in ServiceNow.[3] This waiver request must include the department's justification for the waiver request. After the request is reviewed and approved by the relevant department head, the department uploads a copy of the waiver to PeopleSoft. Neither the City Administrator's Office nor OCA approves the waivers, but OCA does receive a copy of the waiver when it is approved by the department head and, according to staff, will request additional information if there is anything out of the ordinary. Because 12X Contracting Waivers are now managed in ServiceNow, the City Administrator's Office and OCA can now collect and report on 12X waivers Citywide.

Phase 1 Waiver Data Review and Results (covering February 2017 through 2020)

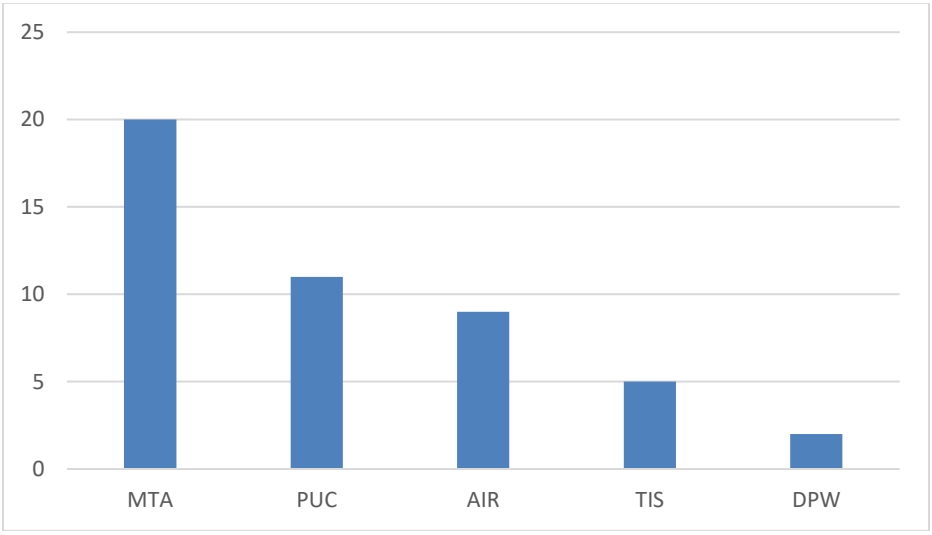
During Phase 1 of this report, our office requested copies of the annual waiver reports required by the ordinance to be prepared by each department, as well as copies of submitted P-12X.5 and P-12X.15 forms, from the City Administrator for the fiscal year ending 2020. At that time, according to the City Administrator's Office, only two departments had submitted the required reports: the Mayor's Office (which authorized three waivers for contracts totaling over $700,000) and the Health Services System (which reported that they did not authorize any Chapter 12X

3 ServiceNow is an online application used by various City departments for different purposes. The City Administrator's Office uses it to track departments' requests received to waive the requirements of programs that fall under the City Administrator's Office: 12B, 12X, 12T, 14B, HCAO, MCO and OCA Solicitation Waivers. ServiceNow enables departments to share information, without manually exchanging documents through email. Changes in City Administrator's Chapter 12X guidance in September 2022 dropped the requirement that exempted contracts submit waiver data in ServiceNow though these were then required to be denoted in PeopleSoft.

waivers in FY 2020). Note that the Airport provided our office with the waiver reports that were sent to the City Administrator's Office, for FYs 2017-18 and 2019-20.

As shown in Exhibit 4 below, since the Chapter 12X ordinance was enacted in February 2017 through 2020, a total of 47 waivers were granted across our six sample departments reviewed as of December 2020, ranging from 20 waivers at the Municipal Transportation Agency to zero at the Port as depicted in Exhibit 4.[4]

Exhibit 4: Total Chapter 12X Waivers Granted by Six Selected Departments 2017 through 2020



Source: Budget and Legislative Analyst analysis of department data.
Note: the data collected from the six departments is for calendar, not fiscal, years. The Port is not included in this chart since it did not grant any waivers during this period.

Between February 2017 and May 2020, the total number of annual waivers, as provided to our office by the six departments, increased from 4 to 28 waivers per year, or by 600 percent, for a grand total of 47 waivers over the four-year period.

[4] The Port issued a waiver in January 2021 for a contract valued at $1,508. We did not include this in our Phase 1 analysis since it is outside of the scope of our review.

Exhibit 5: Annual Chapter 12X Waivers Granted by Six Selected Departments 2017 through 2020

Department	2017	2018	2019	2020	Total
Airport	3		4	2	9
Public Works			1	1	2
MTA		5	5	10	20
Port					0
Public Utilities Commission				11	11
Technology	1			4	5
Total	**4**	**5**	**10**	**28**	**47**

Source: Budget and Legislative Analyst analysis of department data

As shown in Exhibit 6 below, since the Chapter 12X ordinance was enacted in February 2017, the contract value of the granted waivers for the Municipal Transportation Agency, Public Utilities Commission, Airport, Department of Technology, Public Works, and the Port totaled $75,774,809 as of May 2020. The average contract value of waivers granted for the six departments during this same period was $12,629,386 per department. Between 2017 and 2020, the total annual contract value of waivers granted for these departments increased by $33,105,987, or 241.7 percent—from $13,697,606 in 2017 to $46,805,101 in 2020.

Exhibit 6: Contract Value of Chapter 12X Waivers Granted by Six Selected Department 2017 to 2020

Department	2017	2018	2019	2020	Total
MTA		$11,333,000	$1,869,657	$23,406,375	$36,609,032
Technology	300,000			19,020,087	19,320,087
Airport	13,397,606		1,640,311	739,900	15,777,817
Port					0
Public Utilities Commission				3,447,652	3,447,652
Public Works			430,642	189,579	620,221
Total	**$13,697,606**	**$11,333,000**	**$3,940,610**	**$46,805,101**	**$75,774,809**

Source: Budget and Legislative Analyst analysis of department data

Waiver Form and Exceptions

In accordance with Administrative Code Chapter 12X, the Form P-12X.5/12X.15 was required for every transaction, contract, or contract modification requiring the waiver during the review period. In addition, the contracting department was required to attach a written memo/justification to the form with supporting documentation. Among the 47 waivers reviewed

across the six selected departments, only two[5] did not include the Form P-12X.5/12X.15. However, as shown in Exhibit 7 below, for the waivers that included the form, 26 waivers, or more than half submitted (58.7 percent), did not include the additional required supporting documentation.

Exhibit 7: Number of Waivers Granted Without Supporting Documentation by Department 2017 to 2020

Department	Number of Waivers Submitted with Form P-12X.5/12X.15 but without Supporting Documentation	% Total
Municipal Transportation Agency	14	54%
Public Utilities Commission	6	23%
Technology	4	15%
Public Works	2	8%
Total	**26**	**100.0%**

Source: Budget and Legislative Analyst analysis of waiver forms P-12X.5/12X.15 submitted by department

As described above, the exceptions to the contracting ban listed within the Chapter 12X ordinance for which contracting departments may enter into new contracts with businesses otherwise headquartered in the covered states are:

1. Needed services are available only from one source.
2. Contract is necessary to respond to an emergency which endangers public health or safety and no compliant company is immediately able to perform required services.
3. There are no compliant/qualified responsive bidders and the contract is for a service, project or property that is essential to the City or public (only one responsive bidder from a banned state)
4. Public interest warrants the granting of a waiver because application would have an adverse impact on services or a substantial adverse financial impact on the City.
5. Services to be purchased are available under a bulk purchasing agreement with a federal, state or local government entity or a group purchasing organization, which will substantially reduce the City's cost.

[5] This includes one each from the Municipal Transportation Agency and the Airport. Note that the waivers approved by the Mayor's Office of Housing (which we received through the City Administrator's Office) also did not include the Form P-12X.5/12X.15.

6. Violates or is inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency, provided that the contracting officer has made a good faith attempt to change the terms or conditions.

Exhibit 8 below shows the exceptions used by department and type, according to the waiver documentation provided from our six selected departments for the period between 2017 and 2020. Of the six types of exceptions, the "needed services are available only from one source" (30.9 percent) and "there are no compliant/qualified responsive bidders and the contract is for a service, project or property that is essential to the City or public", or the only responsive bidder is in a banned state (27.3 percent) were used most frequently by the selected departments.[6] The least used exception was "violates or inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency, provided that the contracting officer has made a good faith attempt to change the terms or conditions" (1.8 percent).

Exhibit 8: Justifications Used in Waivers Granted by Selected Departments 2017 to 2020

Waiver Justification	Airport	Public Works	SFMTA	Public Utilities Commission	Technology	Total	% of Total
12X.5(b)(1) (Sole Source)	5	0	7	3	2	**17**	30.9%
12X.5(b)(2) (Declared Emergency)	0	0	1	1	0	**2**	3.6%
12X.5(b)(3) (Only Responsive Bidder(s) from Banned State(s))	3	1	8	2	1	**15**	27.3%
12X.5(b)(4) (Adverse Impact)	0	1	9	3	0	**13**	23.6%
12X.5(b)(5) (Bulk Purchasing)	0	0	1	0	2	**3**	5.5%
12X.5(b)(6) (Conflicting Grant Terms)	0	0	1	0	0	**1**	1.8%
Other (Travel/Training)	1	0	0	0	0	**1**	1.8%
N/A or Not Listed	0	0	1	2	0	**3**	5.5%
Total	**9**	**2**	**28**	**11**	**5**	**55**	100.0%

Source: Budget and Legislative Analyst analysis of waiver forms P-12X.5/12X.15 submitted by department

As shown in Exhibit 8 above, four waivers were allowed by departments for reasons other than the six provided in the Administrative Code—"N/A or not listed", and "travel/training". It was unclear at the time of our Phase 1 analysis if anyone outside of the contracting department reviews or approves waiver forms for contracts with vendors in banned states to confirm sufficient justification. In addition, only one of the selected departments provided an annual report to the City Administrator as required.

[6] Some waivers included more than one exception; consequently, the number of exceptions does not equal the number of waivers granted and submitted with a Form P-12X.5/12X.15.

Interviews with department staff indicate inconsistent interpretations of the implementation requirements, with some departments appearing to utilize the waiver option more liberally than others.

Phase 2 Waiver Data Review and Results (covering July 2021 through July 2022)

As noted, OCA adopted new practices to track waiver requests in July 2021 consistent with our Phase 1 work recommendations. These include an online waiver request form, a dedicated website with links to eligibility information and a User Guide.

According to data provided by OCA, between July 2021 and July 2022, 538 waivers were requested and approved by 33 departments Citywide for contracts and purchase orders totaling over $791 million. Exhibit 9 below shows the number and value of all waivers requested during this period, by department.

Exhibit 9: 12X Waivers and Value of Contracts by Department July 2021 to July 2022 (Phase 2 analysis)

Dept	Number of 12X Waivers	Total Value of Contracts/POs
ADM	49	$89,952,647
ADP	3	154,285
AIR	12	161,500,260
ASR	1	1,200
BOS	1	2,000
CAT	1	207,761
CII	2	57,493
CON	6	176,764
CPC	1	261
CSS	1	400
DAT	3	46,500
DBI	1	130
DEM	9	1,862,095
DPA	1	58
DPH	247	310,272,700
DPW	11	315,498
FAM	4	44,460
FIR	4	1,750,000
HOM	4	1,069,197
HSA	31	25,936,765
JUV	1	2,700
LIB	54	45,261,239
MTA	9	8,997,855
MYR	1	25,000
POL	22	12,439,597
PRT	9	30,650
PUC	16	48,388,924
REC	17	5,439,967
REG	1	22,056
SHF	5	21,673,364
TIS	7	16,518,680
TTX	3	39,067,252
WAR	1	3,150
Total	**538**	**$791,220,908**

Source: OCA and SFMTA data

As shown, the Department of Public Health (DPH) issued the most waivers during this time—247, or 45.9 percent of all waivers issued. The value of the contracts and purchase orders for which DPH issued waivers also represented the largest amount—$310.3 million, or 39.2 percent of all contracts and purchase orders granted 12X waivers from July 2021 to July 2022.

As discussed above, the ordinance establishes six justifications to waive Chapter 12X requirements. According to the data provided by OCA, between July 2021 and July 2022, more than half of the waivers issued (281 out of 538) were justified by the adverse impact that application of Chapter 12X would have on services or City finances. This was a change from our Phase 1 review of waivers for 2017 – 2020 when adverse impact was the explanation for only 13 of the 55 waivers we reviewed, or 23.6 percent.

Exhibit 10: 12X Waivers by Justification, July 2021 to July 2022 (Phase 2 analysis)

Waiver Justification	Number Contracts/ PO's	% of Total	Value of Contracts/ PO's	% of Total
12X.5(b)(1) Sole Source	109	20.3%	$52,296,605	6.6%
12X.5(b)(2) Declared Emergency	10	1.9%	10,343,548	1.3%
12X.5(b)(3) Only Responsive Bidder(s) from Banned State(s)	48	8.9%	18,210,538	2.3%
12X.5(b)(4) Adverse Impact	281	52.2%	162,975,432	20.6%
12X.5(b)(5) Bulk Purchasing	2	0.4%	1,550,000	0.2%
12X.5(b)(6) Conflicting Grant Terms	8	1.5%	8,849,839	1.1%
Exemption - Pre 12X Operative Date	80	14.9%	536,994,943	67.9%
Total	**538**	100.0%	**$791,220,906**	100.0%

Source: OCA data

Of the six departments we reviewed in our Phase 1 work, all except for the Municipal Transportation Agency granted themselves more waivers in just the one-year period between July 2021 and July 2022 than they had in the three-year period between 2017 and 2020 that we reviewed in Phase 1. For at least these five large departments, the use of Chapter 12X waivers has increased over the years since Chapter 12X was adopted.

In addition to an apparent increase in the use of waivers to the contract ban by City departments after 2021, it is unclear what standards are used to establish the adverse impact, or to verify any of the waiver justifications identified by departments. While the submission of 12X waivers is referred to as a "request", OCA does not actually approve them or otherwise review the applications to confirm the validity of the justification. Waivers are approved by department heads of the same departments that are "requesting" the waiver.

To ensure consistent implementation and effective oversight of Chapter 12X, the Board of Supervisors should request that the City Administrator develop stronger internal controls to ensure the sufficient justification for waivers from City departments. This might include hosting a virtual training with contracting officers within departments to review Chapter 12X protocols, forms and documentation, and reporting requirements. The Board of Supervisors should request that the City Administrator present an annual Chapter 12X waiver report, within 90 days of the end of the fiscal year, to allow for effective monitoring and oversight of trends and impacts.

Estimating Cost Impact

It is difficult to measure the actual cost impact to the City resulting from the implementation of Chapter 12X. There are a significant number of complicating variables: the type of services being solicited, the state of the national economy, the contracting opportunities in other jurisdictions, etc. However, City department officials do report that certain vendors who previously won contracts through the competitive bidding process but are no longer eligible (absent a waiver) due to the location of their headquarters simply do not bid on City contracts. In these cases, it could mean a reduction in the eligible pool of vendors for those services, which would possibly result in increased costs to the City.

Studies show that competitive bidding in the public sector results in cost savings. A 2014 study[7] titled "The Value of Competitive Contracting", conducted by the Naval Postgraduate School, analyzed over 50 competitive contract actions at the U.S. Department of Defense (DOD) to determine actual cost savings achieved from competition. The DOD study found an average cost savings of 20 percent for contracts that were competitively bid in a full and open solicitation.

To establish a framework to estimate the potential costs to the City from implementing Chapter 12X, we assume that the contracting ban has resulted in some reduction in the size of the competitive pool of prospective bidders. We reviewed citywide contract data from 2016, the year preceding the effective date of the Chapter 12X ban, to identify the contracts that were awarded in that year to vendors headquartered[8] in states that were subsequently banned. As shown in Exhibit 9 below, the City entered into 31 contracts with vendors from states in 2016 that were subsequently banned in the Chapter 12X legislation adopted by the Board of Supervisors in 2017.

[7] "The Value of Competitive Contracting", Healy, Sok and Ramirez, Naval Postgraduate School, September 2014.

[8] The original data set included 173 contracts with unidentified headquarters. Our team researched these locations online. We acknowledge possible inaccuracies in our findings, as well as the possibility that vendors' headquarters may have changed between 2016 and April 2021 (when we conducted this research).

Exhibit 11: City Contracts Awarded in 2016 to Vendors in States Subsequently Banned

Headquarters	# of Contracts	Value of Contracts
FL	2	$5,200,000
GA	3	16,040,631
IN	1	138,116,759
KS	1	7,319,502
KY	3	16,375,000
LA	1	1,200,000
NC	1	8,087,000
OH	5	14,285,355
PA	4	74,616,384
TN	1	5,000,000
TX	7	76,531,159
WI	2	9,100,000
Total	**31**	**$371,871,790**

Sources: BLA Analysis, OCA Contract Data

Because we did not have access to the full solicitation and bid evaluation documents, it was not possible for us to determine what the exact cost impact would have been to the City, had these procurements occurred after the implementation of Chapter 12X. Professional service contracts are often evaluated using several criteria, of which cost accounts for a smaller percentage of evaluation points. However, based on the description of the type of goods/services procured through each of these contracts, we can identify those contracts that were likely "lowest bidder" contracts—meaning that the bids are evaluated primarily on cost factors (as in most construction contracts). We can then assume that in those cases, the next lowest bidder (headquartered in an eligible state) would have proposed a more expensive contract cost.

While the DOD study found an average of a 20 percent cost increase resulting from a reduced competitive pool, we also included a more conservative cost impact to the City of 10 percent of the final bid price selected as the result of the Chapter 12X, in order to allow for the unknown and potential variables noted above.

Of those 31 contracts, we identified 13 that were likely lowest bid contracts, based on the type of goods/services procured (primarily those identified as construction or maintenance services). The total value of those contracts was $234,605,460. Based on those total contract costs, we estimate a possible cost increase to the City to procure these same goods and services under Chapter 12X restrictions as:

Exhibit 12: Estimated Range of Additional Costs due to Chapter 12X for 13 "Low Bid" Contracts Awarded, 2016

10% cost increase:	$23,460,546
20% cost increase:	$46,921,092

It should be noted that these estimated additional costs could be incurred over multiple years as some City contacts span more than one year. However, each year, a new set of contracts would be awarded and the additional costs would assumedly repeat at a greater or lesser amount depending on the total value of contracts for each particular year. In some cases, when large one-time capital project contracts such as for the Central Subway or the Van Ness Avenue Bus Rapid Transit project (BRT) are awarded, the additional costs could be substantially higher than the estimated amounts above. Losses could be greater in the ensuing years to the extent fewer contractors and vendors submitted bids due to the ban.

City Staff Costs to Implement Chapter 12X

Besides the additional costs associated with contracts awarded with reduced or no competition from other bidders, multiple City departments regularly incur costs or have incurred one-time costs from staff time spent ensuring proper implementation of Chapter 12X. These include:

- Office of City Administrator/Office of Contract Administrator: regularly communicating with departments on 12X matters.
- City Attorney: regularly communicating with OCA and departments on 12X matters.
- Controller's Office: enhancing PeopleSoft to improve tracking of vendor information to ensure compliance with Chapter 12X, and enhancing Citywide reporting capacity related to Chapter 12X.
- Department of Technology: one-time contract costs for configuration of ServiceNow to track the waiver submissions.
- All City Departments: Chapter 12X waiver submissions.

Based on information provided by the specific City departments identified above and estimating department-level costs for submitted Chapter 12X waivers in ServiceNow, we estimate that the implementation of Chapter 12X has cost the City an additional $474,283 since FY 2016-17. These costs are shown in the table below. Ongoing administrative costs for staff time in the City Attorney's Office, the City Administrator's Office, the Office of Contract Administration, and contracting City departments will continue to be incurred in succeeding years and could increase if more states are banned.

Exhibit 13: Estimated Costs for City Staff Time on Chapter 12X Matters since FY 2016-17

Department	Number of Hours	Estimated Average Hourly Wage	Contract Costs	Total Costs
City Attorney	900	$141.70		$127,530
Controller	1,932	99.20		191,655
Technology			$82,000	82,000
Contract Administrator	208	83.12		17,289
Contract Administrator	208	96.24		20,017
City Administrator	208	96.24		20,017
All City Departments[99]	269	58.64		15,774
Total Estimated Costs				**$474,283**

Source: Data from City departments

California State-Funded Travel Ban

For comparison, we reviewed the history and impact of California's travel ban, Assembly Bill 1887, codified as California Government Code 11139.8 in 2016, which prohibits state-funded travel to states that after June 26, 2015 enacted laws that: (1) have the effect of voiding or repealing existing state or local protections against discrimination on the basis of sexual orientation, gender identity, or gender expression; (2) authorize or require discrimination against same-sex couples or their families on the basis of sexual orientation, gender identity, or gender expression; or (3) create an exemption to antidiscrimination laws in order to permit discrimination against same-sex couples or their families or on the basis of sexual orientation, gender identity, or gender expression. California's law tasks the Attorney General with developing, maintaining, and posting the list of states subject to the travel ban.[10] According to Assemblyman Low, the bill's sponsor, the intention of the law was to protect state workers from having to travel to states where they may experience discrimination.[11]

It does not appear that a ban on contracting was ever considered by the State. Currently, the City and County of San Francisco appears to be the only government entity that bans contracting with companies headquartered in certain states based on those states' laws. The State travel ban predates the San Francisco travel and contracting bans.

[9] To estimate these costs, we used the hourly rate for an 1823 Senior Administrative Analyst at Step 3 and multiplied that by the total number of waivers (538), with 30 minutes estimated for entering the waiver information for each waiver into ServiceNow.

[10] https://oag.ca.gov/ab1887

[11] https://www.nytimes.com/2022/07/19/us/california-state-funded-travel-bans.html

Effectiveness of State Ban

While the state travel ban appears to represent a statement of the legislature's values, it has not stopped other states from passing laws objectionable to the California legislature. This is evident in the fact that the list of banned states has grown from four in 2016 to 22 in 2022.[12] The travel ban does not appear to be a significant deterrent in preventing states from enacting laws that would be subject to the ban.

However, California's travel ban, as part of a much larger effort, was effective in persuading North Carolina to repeal HB 2, the law passed in 2016 that prohibited local jurisdictions in that state from adopting anti-discrimination ordinances and required schools and local and state facilities to only allow individuals to use public bathrooms corresponding to the gender on their birth certificates. Six states, as well as several cities and counties, approved bans on travel to North Carolina in response to the law. Several major corporations halted plans to move into or expand in North Carolina. Many conventions, sporting events, concerts, and film productions in the state were cancelled. The Associated Press estimated that the cumulative economic impact to North Carolina would be at least $3.76 billion over 12 years.[13] In March 2017, the portion of the law pertaining to restroom use was repealed,[14] and in December 2020, the remainder of the law was repealed through a sunset provision.[15]

Fiscal Impact of California State Ban

We could not identify any estimates of the impact of the travel ban on the California state budget or local economy. In January 2020, Oklahoma Governor Kevin Stitt issued a retaliatory executive order banning state-funded travel to California, which could have a modest negative economic impact.[16] This impact could be heightened if other states also enact retaliatory measures.

Most economic impact would likely be felt by other states and cities due to a modest reduction in tourism from California state employees. California does not track the amount of state funding withheld due to the travel ban.[17] The states of Oklahoma, Alabama, Kentucky, and Tennessee report that they are unaware of any impact from the ban.[18] However, the cities of Louisville and

[12] https://www.latimes.com/opinion/story/2022-07-10/repeal-california-ban-boycott-state-funded-travel-lgbtq-discrimination

[13] https://www.cnbc.com/2017/03/27/bathroom-bill-to-cost-north-carolina-376-billion.html

[14] https://www.cnn.com/2017/03/30/politics/north-carolina-hb2-agreement/index.html

[15] https://abc11.com/house-bill-142-north-carolina-hb2-nc-2/8418288/

[16] https://www.usnews.com/news/best-states/articles/2020-02-12/texas-sues-california-for-interstate-travel-ban

[17] https://www.nytimes.com/2022/07/19/us/california-state-funded-travel-bans.html

[18] https://www.usnews.com/news/best-states/articles/2020-02-12/texas-sues-california-for-interstate-travel-ban

Nashville report that a few conventions, which were not organized by California-based groups, were cancelled due to the California travel ban.[19]

As noted, there are several exemptions to the ban, which largely impact non-essential travel such as attending conventions. Furthermore, public college athletic programs may still travel to banned states using non-state funds.[20] This reduces the economic impact to banned states.

Policy Options

The Board of Supervisors should:

1. Request that the City Administrator continue to develop stronger internal controls to ensure the sufficient justification for waivers is provided by City departments related to Chapter 12X implementation and waivers, consistent with Chapter 12X. This might include hosting a virtual training with contracting officers within departments to review Chapter 12X protocols, forms and documentation, and reporting requirements.

2. Request that the City Administrator present an annual 12X waiver report to the Board of Supervisors, within 90 days of the end of the fiscal year, to allow for effective monitoring and oversight of trends and impacts.

3. With input from the City Attorney and City Administrator, consider amending the Administrative Code to give the City Administrator authority to approve Chapter 12X waivers so that department heads are not the ultimate authority for granting waivers on their own department contracts and purchase orders.

4. If the Board of Supervisors concludes that Chapter 12X's contracting provisions are not effective at achieving the original policy goals of the legislation, it could consider adopting an approach like the State of California which bans travel to states with anti-LGBQT laws, but not contracting with companies headquartered in those states. According to the authorizing bill's sponsor, this was intended to protect State workers from having to travel to states where they might be discriminated against.

[19] https://www.governing.com/archive/sl-state-employee-travel-bans-lgbt-california.html

[20] https://www.latimes.com/opinion/story/2022-07-10/repeal-california-ban-boycott-state-funded-travel-lgbtq-discrimination

Appendix 1: Chapter 12X Covered States

The list below presents all the states on the Covered State List based on the City Administrator's memo dated September 26, 2022.

	State	12X Article I: Restrictive LGBTQ Laws Operative Date: 2/11/2017	12X Article II: Restrictive Abortion Laws Operative Date: 1/1/2020	12X Article III: Restrictive Voting Laws Operative Date: 3/6/2022	Operative Date for Determining Exemption from 12X
1	Alabama	Yes	Yes	Yes	2/11/2017
2	Arizona	Yes	Yes	Yes	2/11/2017
3	Arkansas	No	Yes	Yes	1/1/2020
4	Florida	Yes	Yes	Yes	2/11/2017
5	Georgia	Yes	Yes	Yes	2/11/2017
6	Idaho	Yes	Yes	Yes	2/11/2017
7	Indiana	Yes	Yes	Yes	2/11/2017
8	Iowa	Yes	Yes	Yes	2/11/2017
9	Kansas	Yes	Yes	Yes	2/11/2017
10	Kentucky	Yes	Yes	Yes	2/11/2017
11	Louisiana	Yes	Yes	Yes	2/11/2017
12	Mississippi	Yes	Yes	No	2/11/2017
13	Missouri	No	Yes	No	1/1/2020
14	Montana	Yes	Yes	Yes	2/11/2017
15	Nebraska	No	Yes	No	1/1/2020
16	Nevada	No	Yes	Yes	1/1/2020
17	New Hampshire	No	Yes	Yes	1/1/2020
18	North Carolina	Yes	Yes	No	2/11/2017
19	North Dakota	Yes	Yes	No	2/11/2017
20	Ohio	Yes	Yes	No	2/11/2017
21	Oklahoma	Yes	Yes	Yes	2/11/2017
22	Pennsylvania	No	Yes	No	1/1/2020
23	South Carolina	Yes	Yes	No	2/11/2017
24	South Dakota	Yes	Yes	No	2/11/2017
25	Tennessee	Yes	Yes	No	2/11/2017
26	Texas	Yes	Yes	Yes	2/11/2017
27	Utah	No	Yes	No	1/1/2020
28	West Virginia	Yes	Yes	No	2/11/2017
29	Wisconsin	No	Yes	No	1/1/2020
30	Wyoming	No	No	Yes	2/11/2017

Chapter 12X of the Administrative Code

Policy Alternatives

CITY & COUNTY OF SAN FRANCISCO

February 10, 2023

City Administrator's Office

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Executive Summary

In October 2022, Supervisors Mandelman, Stefani, Peskin, Ronen, and Safai submitted a letter of inquiry to the City Administrator's Office (CAO), asking the CAO to draft a memo on Chapter 12X of the Administrative Code, including:

- a review of the efficacy of current 12X legislation;
- the impact of 12X legislation on City operations;
- an analysis of whether other jurisdictions have enacted similar policies that could serve as best practices; and
- a range of policy alternatives for the Board's consideration.

In response to this inquiry, this report finds that:

- **12X's policy impacts are not clear**; the CAO was not able to find concrete evidence suggesting 12X has influenced other states' economies or LGBTQ, reproductive, or voting rights.
- **12X has created additional administrative burden for City staff and vendors and unintended consequences for San Francisco citizens**, such as limiting enrichment and developmental opportunities.
- **Few, if any, other jurisdictions implement travel or contracting bans as expansive as the City's**.
- Potential alternatives to 12X range from administrative revisions of the existing legislation to repealing the entirety of 12X.

The purpose of this report is to provide policy options for the Board's consideration. The five policy alternatives are listed on the following slide.

Executive Summary

The following are alternatives to the current 12X legislation for the Board of Supervisors' consideration.

Alternative 1: Repeal the Entirety of 12X

This alternative would likely reduce administrative complexities, increase competition for City contracts, thereby possibly lowering costs, and create more opportunities for engagement with communities impacted by restrictive LGBTQ, abortion, and voting right policies.

Alternative 2: Repeal the Contracting Ban, Retain the Travel Ban

This alternative may help reduce the City's contracting costs. SF City staff and residents would still face hurdles in traveling to and accessing many developmental and enrichment opportunities, as many banned states are home to events and sites of cultural significance.

Alternative 3: Exempt Chapter 6 Contracts from 12X

This alternative would potentially increase competition, and thereby possibly lowering costs, for construction and construction-related services. It may also increase the cost of administration due to confusion in contracting business processes and additional system configurations that would be need to be implemented. It does not solve all underlying challenges related to 12X.

Alternative 4: Conduct an Administrative Clean-up of 12X

This alternative could make the 12X ordinance easier to administer. It does not solve all underlying challenges related to 12X.

Alternative 5: Create "Off-ramps" for 12X

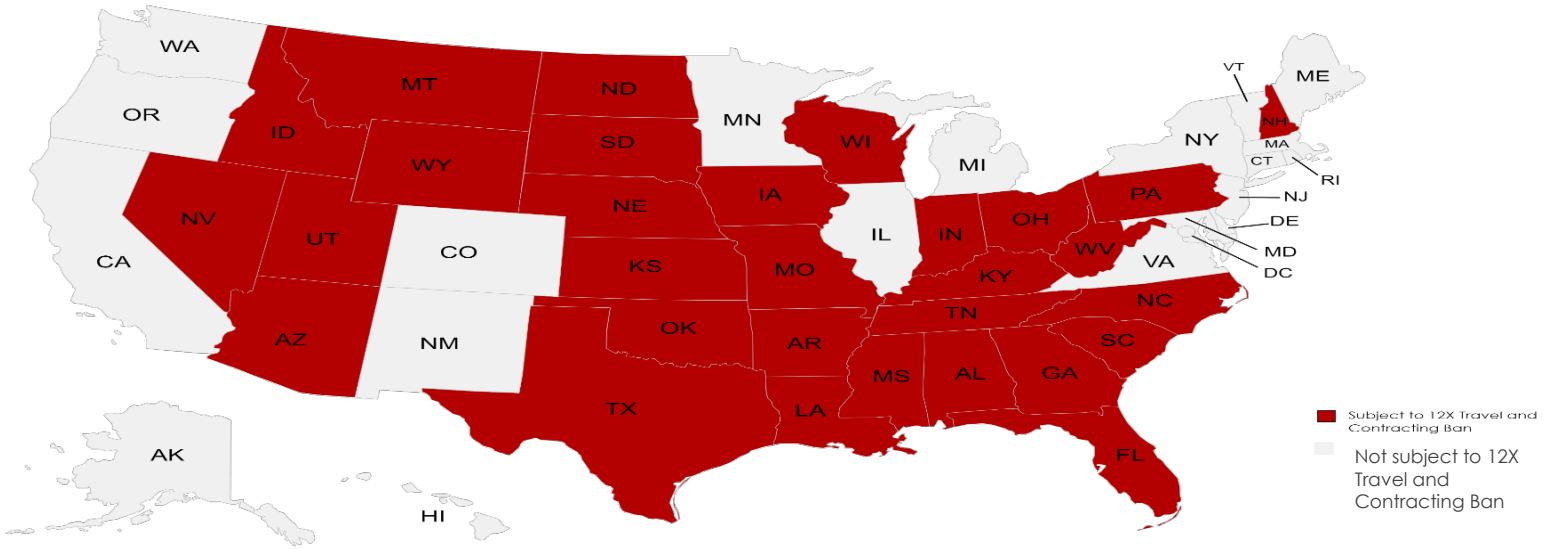
This alternative would allow the City to contract with businesses in banned states if they achieve individual, firm-level compliance. This alternative is likely to create the highest level of administrative cost and burden because of the new requirements that would need to be developed to implement it. It would more likely benefit large firms.

Summary of 12X Legislation

- **The current 12X legislation contains three articles**: Article I was passed in 2016 to dissociate the City from states that restrict LGBTQ rights. Articles II and III were added in 2019 and 2021, respectively, to dissociate the City from states that restrict abortion access and voting rights.

- More specifically, **12X has two separately administered components**: It bans nearly all City-funded travel to states with restrictive rights, identified through a list that the City Administrator compiles and updates semiannually; and it bans construction (Chapter 6), commodity and services (Chapter 21) contracting with companies headquartered in those states. Under limited circumstances, City staff can seek waivers for contracting, but they must provide proper justification and receive approval from their departmental leadership. (See Appendix 2 for a brief explanation of 12X exemptions, waivers, and applicability).

12X now restricts activities with over half of the states in this country. States highlighted in red are subject to 12X travel and contracting bans.



Efficacy of 12X

On a policy level, it is unclear how much the City's prohibition on City-funded travel and boycott of businesses headquartered in banned states can influence another jurisdiction's policies.

- **No states with restrictive LGBTQ rights, voting rights, or abortion policies have cited the City's travel and contract bans as motivation for reforming their laws.**
- Since 12X became operative, the number of banned states has grown from 8 states in 2017 to 30 in 2022. This increase suggests that the City's threat of boycott may not serve as a compelling deterrent to states considering restrictive policies. Only 1 state has ever been removed from the list.
- Few, if any, other cities or states are known to implement boycotts as far reaching as the City's, and many that have instituted travel or contracting bans in the past have since lifted them (see Appendix 2: Other Jurisdictions' Policies for examples).

Impact on City Operations

The policy impact of 12X is unclear. Conversely, 12X is associated with high levels of administrative burden and likely imposes significant opportunity costs to the City.

- Because **traveling to or contracting with companies located in banned states is at times necessary to maintain City operations and/or further the City's mission,** City spending continues to flow to businesses and institutions headquartered in banned states, but City staff and suppliers must complete additional administrative requirements.
- **There are unintended consequences to 12X.** For example, a department might distribute City-funded grants to nonprofit organizations. As part of the program, the nonprofit runs a sports program for children and the children must travel to tournaments, some of which are in banned states. This travel may be banned or require additional administrative steps due to 12X restrictions.
- While it is difficult to quantify the exact cost of 12X to the City, the Budget and Legislative Analyst notes that **a loss in competition is likely to increase the City's contracting costs by 10 – 20% annually.** These costs could continue to increase and compound overtime as the City's potential contractor pool shrinks if the list of banned states grows.
- **On an administrative level, 12X compliance is complicated and confusing.** There are different rules governing the travel ban and the contracting ban, making it very complicated for staff to administer. The Administrative Code allows departments the flexibility to develop their own protocols for administering 12X, which can lead to a high level of variation in how individual departments interpret and document waiver justifications, monitor implementation, and conduct reporting. Finally, due to the nature of corporate structures, determining where a business is headquartered is complex and can require legal analysis.
- **There is a cost associated with administering 12X.** The Budget and Legislative Analyst's report confirms that there are one-time implementation and on-going administrative costs associated with 12X.

Alternative 1: Repeal the Entirety of 12X

What Would This Look Like?

- Under this approach, City departments can work with suppliers headquartered in banned states without needing a 12X waiver, as long as the supplier meets the City's other supplier requirements, such as local hire, nondiscrimination requirements, prevailing wage, and local business requirements, depending on the type of procurement.
- City staff can travel to banned states to conduct City business where this travel was previously not allowed.
- The Board of Supervisors would need to pass legislation fully repealing Administrative Code Section 12X.

Considerations

- 12X has increased administrative complexity for City staff while reducing competition and increasing the price for the goods and services that the City purchases. Repealing the entire law would **remove complexity, allow for greater competition, and potentially reduce prices.**
- Without the contracting ban, the City opens itself up to new possibilities in resource savings and value generation when procuring goods and services.
- An increase in bidders may result in greater competition for businesses located in non-banned states, including local businesses.
- Without the travel ban, the City opens up **new developmental and enrichment possibilities for staff and San Francisco residents**.

Alternative 2: Repeal the Contracting Ban, Retain the Travel Ban

What Would This Look Like?

- Under this approach, City departments can work with suppliers headquartered in banned states without needing a 12X waiver, as long as the supplier meets the City's other supplier requirements.
- Staff would not be allowed to travel to a banned state on City business unless explicitly exempted under 12X.
- This approach would mean that the Board of Supervisors passes legislation repealing Administrative Code Sections 12X.5, 12X.15, and 12X.26 related to the Contracting Ban. Other sections of 12X would remain in place.
- This approach was included in the Budget and Legislative Analyst's report on 12X.

Considerations

- Repealing the contracting ban would allow the City to broaden its pool of potential contractors, which would **likely increase competition, lower costs, and bring and resource savings to the City**.
- Repealing the contracting ban and aligning the City's travel ban to the State of California's travel ban would **create a more cohesive policy environment for City staff**. Instead of navigating multiple policy frameworks that can at times conflict, staff would only have to understand one, overarching travel policy framework. California's AB 1887* prohibits state-sponsored travel to certain states, but it does not include a contracting ban.
- Currently, the list of banned states with restrictive LBGTQ policies differs slightly between the State and the City. As part of this approach, the City could adopt the State's list, which would simplify the policymaking process moving forward.
- The travel ban can extend to contractors conducting work on behalf of the City, so City staff must continue to interpret and navigate some administrative complexities for travel.
- **The State's travel ban has also been critiqued**. Editorials and opinion pieces in the LA Times and New York Times have both pointed out that the State's policy has led to more bureaucracy and administrative workarounds.
- **Many of the banned states are also home to sites of historical or cultural significance to the populations that 12X is supposed to defend.** This can lead to instances where SF residents face increased barriers to accessing enrichment opportunities. For example, a program supporting youth travel to Historically Black Colleges and Universities (HBCUs) had to complete several additional administrative requirements before the travel could be approved because many HBCUs are located in banned states.

*AB 1887 only pertains to states with restrictive LGBTQ policies; it does not include abortion or voting rights.

Alternative 3: Exempt Chapter 6 Contracts from 12X

What Would This Look Like?

- This approach would exempt Chapter 6 contracts for construction and construction professional services from 12X. Chapter 6 departments could work with suppliers headquartered in banned states without needing a 12X waiver, as long as the supplier meets the City's other supplier requirements.
- Chapter 21 commodities and services contracts would remain subject to 12X.
- Ordinance 221147 has already been introduced to exempt Chapter 6 contracts (construction & related services) from 12X.
- This legislation would need to be passed by the Board of Supervisors.

Considerations

- Exempting Chapter 6 contracts from 12X would increase competition and potentially reduce prices for Chapter 6 contracts.
- Removing Chapter 6 contracts from 12X would reduce some of the administrative complexities when procuring goods and services critical to our infrastructure and maintenance projects.
- This will not remove the administrative complexity or allow for greater competition – and potentially reduce prices – for the City's commodity or service contracts. In the last 5 years, the City spent approximately $12B on Chapter 21 commodities and services. Key commodities that the City purchases – such as medical supplies, crime lab equipment, and water treatment chemicals – will still be subject to 12X.
- Exempting Chapter 6 contracts while continuing to subject Chapter 21 contracts to 12X creates a different set of administrative rules and system configurations that are based on the type of procurement (construction, services or commodities) a department is conducting. **This can lead to additional administrative costs and confusion over time.**

Alternative 4: Conduct an Administrative Clean-up of 12X

What Would This Look Like?

- This approach will keep the policy framework of 12X in place but amend Administrative Code Section 12X to make 12X simpler to administer.
- This could include merging the three Articles that cover the different aspects of the law into one to ensure consistent terminology and applicability, aligning and/or clarifying the operative dates between the different Articles, and updating the applicability of the contracting and travel bans so they match.
- Legislation implementing administrative amendments to 12X would need to be passed by the Board of Supervisors.

Considerations

- Currently, the 12X ordinance is written in a way that makes it difficult to administer. For example, different articles have different operative dates, and the travel and contract bans require different analyses to determine applicability and waiver eligibility.
- Re-writing the ordinance so that operative dates, terminology, travel and contract exemption requirements, and other administrative aspects align would improve 12X oversight.
- Administrative clean-up alone is **will not increase competition or reduce administrative burdens.**
- Though an administrative clean-up could make the procurement and contracting process easier for City staff to conduct, it **would not reduce the burden of compliance for suppliers or increase competition for City procurement**.

Alternative 5: Create "Off-ramps" for 12X

What Would This Look Like?

- An off-ramp is a mechanism by which a supplier in a banned state could still do business with the City by demonstrating that their organization aligns with and represents the City's stated values.
- This approach would implement ways that suppliers could demonstrate their alignment with City values and therefore be allowed to enter into contracts with City departments without obtaining a 12X waiver.
- Legislation allowing for these off-ramps and providing funding for staff to oversee this work would need to be passed by the Board of Supervisors.

Considerations

- Creating off-ramps would allow the City to do business with compliant suppliers in banned states, which could possibly increase competition. However, suppliers in banned states may not fully understand the nuance of the City's off-ramps and chose not to bid.
- Off-ramps would not apply to the travel ban (i.e. the travel ban would remain in place.)
- **3 different sets of offramps that the City can clearly define and verify would need to be created** for each of 12X's articles. Given that many states are banned by multiple articles, a business may need to comply with up to 3 different sets of criteria before it would be considered 12X compliant.
- This will **likely lead to a higher level of administrative burden and costs than currently exists**. Specifically, the City would need to develop and administer entirely new processes for ensuring compliance with the new supplier compliance requirements.
- Off-ramps are **more likely to benefit bigger, more-resourced businesses**. The burden and cost of meeting 3 separate off-ramp criteria would likely overwhelm small businesses.
- **This would likely slow down the process of executing a contractual agreement** if a supplier is not compliant at the time of award.

Appendix 1: Currently Banned States List

Restrictive LGBTQ Laws	Restrictive Abortion Laws	Restrictive Voting Laws
1. Alabama	1. Alabama	1. Alabama
2. Arizona	2. Arizona	2. Arizona
3. Florida	3. Arkansas	3. Arkansas
4. Georgia	4. Florida	4. Florida
5. Idaho	5. Georgia	5. Georgia
6. Indiana	6. Idaho	6. Idaho
7. Iowa	7. Indiana	7. Indiana
8. Kansas	8. Iowa	8. Iowa
9. Kentucky	9. Kansas	9. Kansas
10. Louisiana	10. Kentucky	10. Kentucky
11. Mississippi	11. Louisiana	11. Louisiana
12. Montana	12. Mississippi	12. Montana
13. North Carolina	13. Missouri	13. Nevada
14. North Dakota	14. Montana	14. New Hampshire
15. Ohio	15. Nebraska	15. Oklahoma
16. Oklahoma	16. Nevada	16. Texas
17. South Carolina	17. New Hampshire	17. Wyoming
18. South Dakota	18. North Carolina	
19. Tennessee	19. North Dakota	
20. Texas	20. Ohio	
21. West Virgina	21. Oklahoma	
	22. Pennsylvania	
	23. South Carolina	
	24. South Dakota	
	25. Tennessee	
	26. Texas	
	27. Utah	
	28. West Virginia	
	29. Wisconsin	
	30. Wyoming	

Current as of September 15, 2022. Note: The State of California's list currently restricts travel to 23 states and only pertains to states with restrictive LGBTQ laws.

Appendix 2: 12X applicability vs. exemptions vs. waivers

Note: **The travel ban and the contracting ban require two separate analyses** (i.e., in cases where the travel ban is exempt, the contracting ban may still apply. In cases where the contracting ban is exempt or waived, the travel ban may still apply.)

	Travel Ban	Contracting Ban
Applicability	The 12X Travel Ban applies to <u>any</u> expense paid by City funds with respect to travel to a 12X State by City employees, contractors or grantees, unless the travel purpose falls into one of 7 exemption categories.	The 12X Contracting Ban applies solely to Contracts, Purchase Orders and Direct Vouchers that fall under Administrative Code Chapter 6 or Chapter 21.
Exemptions	City-funded travel to a banned state is exempt if it falls into one of the seven categories below: 1. Travel is necessary for the enforcement of any state or City law; 2. Travel is necessary for the defense of any legal claim against the City; 3. Travel is required by law. 4. Travel is required to meet contractual obligations incurred by the City. 5. Travel is necessary for the protection of public health, welfare, or safety. 6. Where the funding source of the Employee, Contractor or Grantee travel prohibits City from applying the 12X Travel Ban (e.g., Federal Funds). 7. Employee, Contractor or Grantee travel that requires landing in or going through a 12X State to complete the travel.	• Chapter 21G Agreements • Chapter 23 Agreements • Employee Expenses and Reimbursements • Contracts for the Investment of Trust Money • Contracts for Underwriting Services • Contracts Advertised, Solicited or Initiated prior to the Applicable Article's Operative Date
Waiver Eligibility (documentation required)	The travel ban <u>cannot be waived</u>. Travel to a banned state may only occur if it is considered exempt.	If a contract is not exempt, it can still be waived under the following circumstances: • Sole Source • Declared Emergency • Only One Responsive Contractor • Adverse Impact/Substantial Interest • Bulk Purchasing (i.e., Piggybacking) • Conflicting Grant Terms • SFPUC Bulk Water, Power and Gas

Appendix 3: Other Jurisdictions' Policies

What other jurisdictions have tried travel or business boycotts?

It is difficult to quantify the number of jurisdictions that have enacted travel and/or contracting bans, as this would require a detailed analysis of governing codes and executive orders for 50 states and over 300 municipalities.[1] However, a recent Wall Street Journal article[2] noted, "Other Democratic-controlled state and local governments including New York City and state, Seattle, Salt Lake City, Los Angeles County and California have implemented similar bans on publicly funded travel, though San Francisco remains the most expansive" (Oct 2022).

Below are examples of jurisdictions that have restricted activities with other states at some point in time and why those restrictions were put in place. Note: These examples are not comprehensive and are for illustrative purposes only.

Jurisdiction	Example
City of Seattle	Executive Orders in 2016 restriction travel to Indiana, Mississippi, North Carolina over LGBTQ rights; travel restriction to Indiana lifted within a year. Status of restrictions on Mississippi and North Carolina unclear.
State of New York	Executive Order in 2016 restriction travel to North Carolina over LGBTQ rights. Current status unclear.
City of Los Angeles	Ordinance in 2010 restricting travel and contracting with the state of Arizona over immigration policies. Restrictions dropped in 2018. (See legislative analysis.)

[1]If the analysis were limited to cities with population size >100,000.
[2]Mai-Duc, Christine (2022). "San Francisco Reconsiders Business Ban that Targets States' Social Values." *Wall Street Journal*. Retrieved at: https://www.wsj.com/articles/san-francisco-reconsiders-business-ban-that-targets-states-social-values-11666789223

Member, Board of Supervisors
District 8

City and County of San Francisco

RAFAEL MANDELMAN

October 18, 2022

City Administrator Carmen Chu
1 Dr. Carlton B. Goodlett Place
City Hall Room 362
San Francisco, CA 94102

Dear Administrator Chu,

Following the U.S. Supreme Court's landmark 2015 decision that recognized the constitutional right of same-sex couples to marry, a number of states responded by enacting laws to discriminate against the LGBT community. The Board of Supervisors responded in October 2016 by approving an ordinance that prohibited City-funded travel to states that enact anti-LGBT laws. The newly adopted Chapter 12X of the Administrative Code also prohibited the City from contracting with companies headquartered in these states, or where work on the contract would be performed in these states. The Board expanded Chapter 12X in July 2019 to include states with restrictive abortion laws, and in October 2021 amended Chapter 12X a third time to expand the travel and contracting bans to states that suppress voting rights.

As of September 2022, Chapter 12X prohibits City staff from traveling to and contracting with companies headquartered in 30 states. By prohibiting the City from doing business with half the nation, this policy has resulted in significant administrative costs and potentially far more significant contracting costs by limiting bidder competition. It is also unclear if this policy has been effective in changing the policymaking choices of states subject to San Francisco's 12X Covered State List. We believe now is the time to revisit this legislation, analyze its efficacy, and explore potential policy alternatives to advance our shared social policy goals.

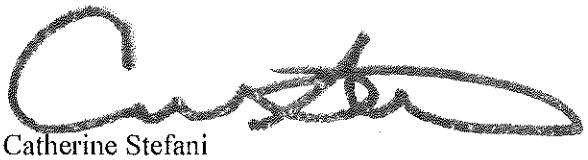
Pursuant to the unlimited power of inquiry assigned to the Board of Supervisors in the San Francisco City Charter, we hereby ask the City Administrator to develop a recommendation on policy options to amend Chapter 12X of the Administrative Code. The recommendation should include a review of the efficacy of the current 12X legislation, the impact of 12X on City operations, an analysis of whether other jurisdictions have enacted similar policies that could serve as best practices, and a range of policy alternatives for the Board's considerations.

City Hall • 1 Dr. Carlton B. Goodlett Place • Room 244 • San Francisco, California 94102-4689 • (415) 554-6968 Fax (415) 554-6909 • TDD/TTY (415) 554-5227 • E-mail: Rafael.Mandelman@sfgov.org

We look forward to your response to this letter of inquiry and request that your office draft the recommendation by May 31, 2023.

Sincerely,

Rafael Mandelman
Member, San Francisco Board of Supervisors



Catherine Stefani
Member, San Francisco Board of Supervisors

Aaron Peskin
Member, San Francisco Board of Supervisors

Hillary Ronen
Member, San Francisco Board of Supervisors

Ahsha Safai
Member, San Francisco Board of Supervisors

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From:	Board of Supervisors (BOS)
To:	BOS-Supervisors; BOS-Legislative Aides
Cc:	Calvillo, Angela (BOS); Somera, Alisa (BOS); Ng, Wilson (BOS); De Asis, Edward (BOS); Mchugh, Eileen (BOS); BOS Legislation, (BOS); Young, Victor (BOS)
Subject:	FW: San Francisco Ends Boycott of 30 States with Conservative LGBTQ Laws
Date:	Thursday, April 27, 2023 2:27:38 PM

Hello,

Please see below for communication from a member of the public regarding File No. 230213.

> **File No. 230213 -** Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws

Sincerely,

Joe Adkins
Office of the Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Phone: (415) 554-5184 | Fax: (415) 554-5163
board.of.supervisors@sfgov.org | www.sfbos.org

From: d w <dwdwdw10@hotmail.com>
Sent: Thursday, April 27, 2023 1:08 PM
To: Board of Supervisors (BOS) <board.of.supervisors@sfgov.org>
Subject: San Francisco Ends Boycott of 30 States with Conservative LGBTQ Laws

Didn't work out well for you, did it.

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- [ ] 2. Request for next printed agenda (For Adoption Without Committee Reference)
  (Routine, non-controversial and/or commendatory matters only)
- [ ] 3. Request for Hearing on a subject matter at Committee
- [ ] 4. Request for Letter beginning with "Supervisor _____ inquires..."
- [ ] 5. City Attorney Request
- [ ] 6. Call File No. _____ from Committee.
- [ ] 7. Budget and Legislative Analyst Request (attached written Motion)
- [ ] 8. Substitute Legislation File No. _____
- [ ] 9. Reactivate File No. _____
- [ ] 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

☐ Yes ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

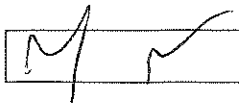
Mandelman; Stefani, Peskin, Ronen

Subject:

Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws

Long Title or text listed:

Ordinance amending the Administrative Code to repeal Chapter 12X, and thereby repeal the prohibitions on City-funded travel to a state, and the City's entering into a contract with a contractor that has its U.S. headquarters in a state or where any or all of the contract would be performed in a state, that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws.

Signature of Sponsoring Supervisor: 

From:	Green, Ross (BOS)
To:	BOS Legislation, (BOS)
Cc:	Donovan, Dominica (BOS); Herrera, Ana (BOS); Angulo, Sunny (BOS); GUIBERT, GUS (CAT); Mandelman, Rafael (BOS); Cukierman, Rachel (ADM); Chu, Carmen (ADM)
Subject:	Introduction: [Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]
Date:	Tuesday, February 28, 2023 3:46:56 PM
Attachments:	For Introduction - Repeal of 12X Leg Digest.docx For Introduction - Repeal of 12X Ordinance.DOCX BLA.Chapter 12X.101822.pdf Chapter 12X Policy Alternatives Memo.pdf Introduction Form_Mandelman_12X Repeal.pdf Mandelman_Chapter 12X LOI 10182022.pdf

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Good afternoon,
Please find the attached introduction form, ordinance, and leg digest for the repeal of Chapter 12X of the Administrative Code. I'm including DCA Gus Guibert to confirm the ordinance is approved as to form.

Co-sponsors (in order): Mandelman; Stefani, Peskin, Ronen

I'm also attaching the associated BLA Report, Letter of Inquiry, and ADM Report on 12X policy alternatives for the Leg File.

Thanks,
Ross

Ross Green
Legislative Aide
Office of Supervisor Rafael Mandelman, District 8
Ross.Green@sfgov.org | (415) 554-6987
Pronouns: he/him/his

From:	Green, Ross (BOS)
To:	GUIBERT, GUS (CAT); BOS Legislation, (BOS)
Cc:	Donovan, Dominica (BOS); Herrera, Ana (BOS); Angulo, Sunny (BOS); Mandelman, Rafael (BOS); Cukierman, Rachel (ADM); Chu, Carmen (ADM)
Subject:	Re: Introduction: [Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]
Date:	Wednesday, March 1, 2023 11:22:31 AM
Attachments:	image001.png

Acceptable on our end as well. Thank you!

Ross Green
Legislative Aide
Office of Supervisor Rafael Mandelman, District 8
Ross.Green@sfgov.org | (415) 554-6987
Pronouns: he/him/his

From: Guibert, Gus (CAT) <Gus.Guibert@sfcityatty.org>
Sent: Wednesday, March 1, 2023 11:21 AM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>; Green, Ross (BOS) <ross.green@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Donovan, Dominica (BOS) <dominica.donovan@sfgov.org>; Herrera, Ana (BOS) <ana.herrera@sfgov.org>; Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Cukierman, Rachel (ADM) <rachel.cukierman@sfgov.org>; Chu, Carmen (ADM) <carmen.chu@sfgov.org>
Subject: RE: Introduction: [Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]

Hello,

Yes, the clerical edits are acceptable. Further, I confirm that the attached ordinance is approved as to form, with my /s/ signature having the same effect as a corporeal signature. Thank you.

Gus

Gustin R. Guibert, Deputy City Attorney (he/his)
Office of City Attorney David Chiu
(415) 554-4213 (email preferred)
Gus.Guibert@sfcityatty.org

from your email system. Thank you.

From: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Sent: Wednesday, March 1, 2023 10:28 AM
To: Green, Ross (BOS) <ross.green@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Donovan, Dominica (BOS) <dominica.donovan@sfgov.org>; Herrera, Ana (BOS) <ana.herrera@sfgov.org>; Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>; Guibert, Gus (CAT) <Gus.Guibert@sfcityatty.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Cukierman, Rachel (ADM) <rachel.cukierman@sfgov.org>; Chu, Carmen (ADM) <carmen.chu@sfgov.org>
Subject: RE: Introduction: [Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]

Greetings,

Please see attached for proof of clerical edits made to the titles of the Ordinance. Kindly review and confirm these edits are acceptable.

We are seeking the approval of Deputy City Attorney Gustin Guibert for use of their electronic signature and approval as to form. Kindly confirm that the attached ordinance is approved as to form, and the /s/ next to their name in the signature line of the ordinance has the same effect as their signature, by reply to this email. Thank you.

Best regards,
Jocelyn Wong
Legislative Clerk
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T: 415.554.7702 | F: 415.554.5163
jocelyn.wong@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a "virtual" meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services


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From: Green, Ross (BOS) <ross.green@sfgov.org>
Sent: Tuesday, February 28, 2023 3:47 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Donovan, Dominica (BOS) <dominica.donovan@sfgov.org>; Herrera, Ana (BOS) <ana.herrera@sfgov.org>; Angulo, Sunny (BOS) <sunny.angulo@sfgov.org>; GUIBERT, GUS (CAT) <Gus.Guibert@sfcityatty.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Cukierman, Rachel (ADM) <rachel.cukierman@sfgov.org>; Chu, Carmen (ADM) <carmen.chu@sfgov.org>
Subject: Introduction: [Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]

Good afternoon,
Please find the attached introduction form, ordinance, and leg digest for the repeal of Chapter 12X of the Administrative Code. I'm including DCA Gus Guibert to confirm the ordinance is approved as to form.

Co-sponsors (in order): Mandelman; Stefani, Peskin, Ronen

I'm also attaching the associated BLA Report, Letter of Inquiry, and ADM Report on 12X policy alternatives for the Leg File.

Thanks,
Ross

Ross Green
Legislative Aide
Office of Supervisor Rafael Mandelman, District 8
Ross.Green@sfgov.org | (415) 554-6987
Pronouns: he/him/his

[Administrative Code - Repealing Prohibitions on City Travel and Contracting Related to States with Certain Types of Discriminatory Laws]

Ordinance amending the Administrative Code to repeal Chapter 12X, and thereby repeal the prohibitions on City-funded travel to a state, and the City's entering into a contract with a contractor that has its U~~.S.~~nited States headquarters in a state or where any or all of the contract would be performed in a state, that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws.

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

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

Section 1. The Administrative Code is hereby amended by repealing Chapter 12X in its entirety, as follows:

~~***CHAPTER 12X:***~~

~~***PROHIBITING CITY TRAVEL AND CONTRACTING***~~

~~***IN STATES THAT ALLOW DISCRIMINATION***~~

~~***ARTICLE I: STATES THAT ALLOW DISCRIMINATION AGAINST LGBT INDIVIDUALS***~~

~~***SEC. 12X.1. FINDINGS AND PURPOSE.***~~

~~*LGBT individuals are entitled to live free from discrimination on the basis of sexual orientation, gender identity, and gender expression. San Francisco has a long history of protecting and promoting the rights of LGBT individuals. San Francisco is also a city open to the free expression and protection of religious views of all kinds.*~~

~~*Since the U.S. Supreme Court's landmark decision in Obergefell v. Hodges on June 26, 2015, recognizing the constitutional right of same-sex couples to marry, states have enacted laws aimed at reducing the legal protections for the LGBT community. In March 2016, North Carolina passed a law nullifying municipal anti-discrimination protections for LGBT individuals in the state. Under the North Carolina law, any existing local LGBT anti-discrimination measure is unenforceable, as would be any future measure adopted by a local government. The law also discriminates against transgender people by requiring them to use public bathrooms that correspond to their biological sex rather than their gender identity. Other states, are considering similar laws. In April 2016, Mississippi enacted a law that would permit discrimination against LGBT individuals if the person choosing to treat LGBT individuals differently claims that the disparate treatment is based on "sincerely held religious beliefs." Such laws have been proposed in other states. The City and County of San Francisco does not support discrimination against LGBT individuals under any circumstances, including when such discrimination is based on religion.*~~

~~*The Board of Supervisors finds that the City should not require its employees, many of whom are LGBT individuals, to be subjected to these discriminatory laws while traveling on City business. No individual, and certainly no employee of the City while conducting City business, should suffer the indignity of being denied services on the basis of being lesbian, gay, bisexual, or transgender. The City and the country have moved in the direction of granting more rights and more protections to LGBT individuals. These new laws represent an affront to progress and to the recognition that the LGBT community is entitled to equal treatment under the law.*~~

~~*Further, the City has a strong interest in dissociating itself from the discriminatory practices of states that have enacted or in the future might enact such laws, and from companies that choose to have their headquarters therein. City funds should not be expended, directly or indirectly, in states that perpetuate unequal treatment of the LGBT community. The Board finds that supporting such states*~~

~~*through the tax revenue that would result from the expenditure of City funds therein is inconsistent with the principles of equality that San Francisco strives to promote.*~~

~~***SEC. 12X.2. DEFINITIONS.***~~

~~*For purposes of this Article I:*~~

~~*"City" means the City and County of San Francisco.*~~

~~*"Contract" means an agreement between a Contracting Department and any person or entity that provides, at the expense of the City, for public works or public improvements to be purchased under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing, "Contract" shall not include:*~~

~~*(a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or*~~

~~*(b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or*~~

~~*(c) Agreements advertised, solicited, or initiated prior to the Operative Date of this Chapter 12X, including amendments to existing Contracts.*~~

~~*"Contracting Department" means the City department, office, board, commission, or other City agency that enters into a Contract on behalf of the City.*~~

~~*"Contractor" means any corporation, partnership, individual, sole proprietorship, joint venture, or other legal entity or combination thereof, which enters into a Contract with the City.*~~

~~*"Covered State" means any state that after June 26, 2015, has enacted a law that,*~~

~~*(a) voids or repeals existing state or local protections against discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, or*~~

~~*(b) authorizes or requires discrimination against same-sex couples or their families or that authorizes or requires discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, including any law that creates an exemption to antidiscrimination laws in order to permit discrimination against same-sex couples or their families or on the basis of Sexual Orientation, Gender Identity, or Gender Expression.*~~

~~*"Covered State List" means the list maintained by the City Administrator of all states that meet the definition of a Covered State, in accordance with Section 12X.3.*~~

~~*"Gender Expression" has the meaning set forth in Section 3304.1(c) of the Police Code.*~~

~~*"Gender Identity" has the meaning set forth in Section 3304.1(c) of the Police Code.*~~

~~*"Operative Date" means February 11, 2017.*~~

~~*"Sexual Orientation" has the meaning set forth in Section 12B.1(c) of the Administrative Code.*~~

~~***SEC. 12X.3. COVERED STATE LIST.***~~

~~*The City Administrator shall create and maintain the Covered State List. A state shall be added to the Covered State List when it meets the definition of a Covered State. A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed and updated by the City Administrator at least semiannually.*~~

~~***SEC. 12X.4. TRAVEL.***~~

~~*(a) The City shall not:*~~

~~*(1) Require any of its employees or officers to travel to a state on the Covered State List;*~~ ~~*or*~~

~~*(2) Approve a request for City-funded travel to a state on the Covered State List.*~~

~~*(b) Subsection (a) shall not apply to travel that is:*~~

~~*(1) necessary for the enforcement of any state or City law;*~~

~~*(2) necessary for the defense of any legal claim against the City;*~~

~~*(3) required by law;*~~

~~*(4) required to meet contractual obligations incurred by the City; or*~~

~~*(5) necessary for the protection of public health, welfare, or safety.*~~

~~*(c) For purposes of this Section 12X.4, "travel" does not include landing in a state by plane to make a connecting flight to a destination outside that state, or traversing a state by automobile, train, bus, or otherwise, to reach a destination outside that state.*~~

~~***SEC. 12X.5. CONTRACTING.***~~

~~*(a) The City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during the term of a Contract, the Contractor moves its headquarters, or the location from which it will provide services to the City, to a state on the Covered State List, such a move shall not constitute grounds to terminate the Contract.*~~

~~*(b) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to Contracts in the following circumstances:*~~

~~*(1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or*~~

~~*(2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or*~~

~~*(3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public; or*~~

~~*(4) The Contracting Department determines that the public interest warrants the granting of a waiver because application of this Section 12X.5 would have an adverse impact on services or a substantial adverse financial impact on the City; or*~~

~~*(5) The Contracting Department determines that the services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a group purchasing organization; purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and purchase under such an arrangement is in the best interest of the City; or*~~

~~*(6) The Contracting Department determines that the requirements of this Section 12X.5 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 Section; or*~~

~~*(7) The General Manager of the Public Utilities Commission may waive the requirements of this Section 12X.5 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 waiver provision shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.*~~

~~*(c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*~~

~~*(d) The requirements of this Section 12X.5 shall apply to Contracts first advertised, solicited, or initiated on or after the Operative Date.*~~

~~***SEC. 12X.6. RULES AND REGULATIONS.***~~

~~*The City Administrator may adopt rules, regulations, and guidelines to implement this Article I, Chapter 12X.*~~

~~***SEC. 12X.7. PREEMPTION.***~~

~~*Nothing in this Article I, Chapter 12X shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. In Contracts that involve the use of any funds furnished, given, or loaned by the Government of the United States or the State of California, all laws, rules, and regulations of the United States or California or of any federal or State departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Article I, Chapter 12X when such laws, rules, or regulations are in conflict.*~~

~~***SEC. 12X.8. UNDERTAKING FOR THE GENERAL WELFARE.***~~

~~*In enacting and implementing this Article I, Chapter 12X, the City 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. 12X.9. SEVERABILITY.***~~

~~*If any section, subsection, sentence, clause, phrase, or word of this Article I, Chapter 12X, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.*~~

~~***ARTICLE II: STATES WITH RESTRICTIVE ABORTION LAWS***~~

~~***SEC. 12X.11. FINDINGS AND PURPOSE.***~~

~~*The right to choose to have an abortion is protected by the Constitutional right to privacy under the Due Process clause of the 14th Amendment. In Roe v. Wade, 410 U.S. 113 (1973), the U.S. Supreme Court held that the U.S. Constitution protects a personal decision to end a pregnancy.*~~

~~*The right to control if and when to have a child is fundamental to gender equality, and protecting the right to comprehensive reproductive healthcare makes for healthier states with stronger economies. For instance, the ability to make this personal healthcare decision has enabled people to pursue educational and employment opportunities, including serving as a main driver increasing college enrollment and wage gains for women. In 1992, the Supreme Court noted that "the ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."*~~

~~*Restrictive abortion bans can impact anyone who is capable of becoming pregnant, including trans-men, non-binary, and intersex people. Further, roll backs on reproductive rights, including passing abortion bans or restricting funding for clinical healthcare facilities that provide reproductive healthcare services, including abortions, contraception, and other healthcare services, have a disproportionate impact on LGBTQI individuals. These individuals access healthcare services at*~~

~~*clinical healthcare facilities like Planned Parenthood – including abortions, contraception and other healthcare services such as HIV and AIDS related services, hormone therapy, and other LGBTQI related care.*~~

~~*– Abortion is a medically safe procedure and critical part of reproductive health care. Nearly 1 in 4 U.S. women will have an abortion by age 45. Abortion is safer than childbirth, with only 0.23% of all abortions resulting in a major complication compared to 1.3% for childbirth.*~~

~~*– San Francisco has a legacy of leadership on women's human rights. In 1998, San Francisco became the first city in the world to adopt the principles of the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women as a local ordinance committing the City to take proactive measures to eliminate discrimination and advance women's human rights including the right to sexual and reproductive health.*~~

~~*– San Francisco has always been a national leader in supporting reproductive freedom for all. According to the National Institute for Reproductive Health Local Reproductive Freedom Index, San Francisco received the highest scores of 4.5 stars and is listed as having the most reproductive health, rights, and justice policies in place, out of 40 cities across the United States.*~~

~~*– The City also has a history of protecting reproductive rights. In 2014, the City enacted an ordinance establishing "buffer-zones" to prohibit harassment of people attaining services at reproductive health clinics. The City also banned false and misleading claims by "Crisis Pregnancy Centers," and enacted multiple resolutions in support of continued state and federal funding for reproductive health services.*~~

~~*– Abortion access is increasingly restricted in many states across the country. Since 1995, states have enacted 1,041 anti-choice measures, and in 2018, 22 states enacted 50 anti-choice legislative measures. Given the risks that these measures pose to health and access, San Francisco must continue to support vital efforts to protect access to safe and legal abortion services at the local, state and federal levels.*~~

~~*The City has a strong interest in dissociating itself from states that enact laws that limit the legal right to abortion guaranteed by the United States Constitution. By prohibiting City-funded travel to such states and by prohibiting the City from entering into contracts with companies headquartered in such states, the City voices its opposition to these severe anti-choice policies by refusing to expend City funds that would support such states through the tax revenue that would result from such expenditures.*~~

~~***SEC. 12X.12. DEFINITIONS.***~~

~~*For purposes of this Article II:*~~

~~*"City" means the City and County of San Francisco.*~~

~~*"Contract" means an agreement between a Contracting Department and any person or entity that provides, at the expense of the City, for public works or public improvements to be purchased under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing, "Contract" shall not include:*~~

~~*(a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or*~~

~~*(b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or*~~

~~*(c) Agreements advertised, solicited, or initiated prior to the Operative Date of this Article II, Chapter 12X, including amendments to existing Contracts.*~~

~~*"Contracting Department" means the City department, office, board, commission, or other City agency that enters into a Contract on behalf of the City.*~~

~~*"Contractor" means any corporation, partnership, individual, sole proprietorship, joint venture, or other legal entity or combination thereof, which enters into a Contract with the City.*~~

~~*"Covered State" means a state that has enacted a law that prohibits abortion prior to the Viability of the fetus, regardless of whether there are exceptions to such prohibition. Examples of such restrictive laws include a law prohibiting abortion after fetal pole cardiac activity can be detected but before viability (so-called "fetal heartbeat" laws), and a law that prohibits abortion a set number of weeks after fertilization but before Viability.*~~

~~*"Covered State List" means the list maintained by the City Administrator of all states that meet the definition of a Covered State, in accordance with Section 12X.13.*~~

~~*"Operative Date" means January 1, 2020.*~~

~~*"Viability" has the meaning articulated by the United States Supreme Court in Roe v. Wade: "potentially able to live outside the mother's womb, albeit with artificial aid," and as further articulated in the California Reproductive Privacy Act, (Health & Safety Code Sec. 123464): "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."*~~

~~***SEC. 12X.13. COVERED STATE LIST.***~~

~~*(a) The City Administrator shall create and maintain the Covered State List. A state shall be added to the Covered State List when it meets the definition of a Covered State. A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed and updated by the City Administrator at least semiannually.*~~

~~*(b) Role of the Department on the Status of Women. The Department on the Status of Women shall analyze whether a state's law meets the definition of a Covered State. Within 30 days of the effective date of the ordinance in File No. 190658, creating this Article II of Chapter 12X, the Department on the Status of Women shall submit a recommendation to the City Administrator of states*~~

~~*that satisfy the definition of a Covered State. If the law that caused the state to meet the definition of a Covered State is enjoined by a court of competent jurisdiction, the Department on the Status of Women shall not recommend that state for inclusion on the Covered State List. The Department on the Status of Women shall thereafter review the Covered States that appear on the Covered State List on at least a semiannual basis and shall recommend to the City Administrator any states that should be added to or removed from the Covered State List.*~~

~~***SEC. 12X.14. TRAVEL.***~~

~~*(a) The City shall not:*~~

~~*(1) Require any of its employees or officers to travel to a state on the Covered State List;*~~ ~~*or*~~

~~*(2) Approve a request for City-funded travel to a state on the Covered State List.*~~

~~*(b) Subsection (a) shall not apply to travel that is:*~~

~~*(1) necessary for the enforcement of any state or City law;*~~

~~*(2) necessary for the defense of any legal claim against the City;*~~

~~*(3) required by law;*~~

~~*(4) required to meet contractual obligations incurred by the City; or*~~

~~*(5) necessary for the protection of public health, welfare, or safety.*~~

~~*(c) For purposes of this Section 12X.14, "travel" does not include landing in a state by plane to make a connecting flight to a destination outside that state, or traversing a state by automobile, train, bus, or otherwise, to reach a destination outside that state.*~~

~~***SEC. 12X.15. CONTRACTING.***~~

~~*(a) The City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during the term of a Contract, the Contractor moves its headquarters, or the location from which it will*~~

~~*provide services to the City, to a state on the Covered State List, such a move shall not constitute grounds to terminate the Contract.*~~

~~*(b) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to Contracts in the following circumstances:*~~

~~*(1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or*~~

~~*(2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or*~~

~~*(3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public; or*~~

~~*(4) The Contracting Department determines that the public interest warrants the granting of a waiver because application of this Section 12X.15 would have an adverse impact on services or a substantial adverse financial impact on the City; or*~~

~~*(5) The Contracting Department determines that the services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a group purchasing organization; purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and purchase under such an arrangement is in the best interest of the City; or*~~

~~*(6) The Contracting Department determines that the requirements of this Section 12X.15 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 Section; or*~~

~~*(7) The General Manager of the Public Utilities Commission may waive the requirements of this Section 12X.15 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 waiver provision shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.*~~

~~*(c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*~~

~~*(d) The requirements of this Section 12X.15 shall apply to Contracts first advertised, solicited, or initiated on or after the Operative Date.*~~

~~***SEC. 12X.16. RULES AND REGULATIONS; REPORTING.***~~

~~*(a) The City Administrator may adopt rules, regulations, and guidelines to implement this Article II, Chapter 12X.*~~

~~*(b) By December 31, 2023, the Controller shall conduct an evaluation and submit a report to the Board of Supervisors regarding the economic impact of this Article II of Chapter 12X on the City.*~~

~~***SEC. 12X.17. PREEMPTION.***~~

~~*Nothing in this Article II, Chapter 12X shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. In Contracts that involve the use of any funds furnished, given, or loaned by the Government of the United States or the State of California, all laws, rules, and regulations of the United States or California or of any federal or State departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Article II, Chapter 12X when such laws, rules, or regulations are in conflict.*~~

~~***SEC. 12X.18. UNDERTAKING FOR THE GENERAL WELFARE.***~~

~~*In enacting and implementing this Article II, Chapter 12X, the City 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. 12X.19. SEVERABILITY.***~~

~~*If any section, subsection, sentence, clause, phrase, or word of this Article II, Chapter 12X, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.*~~

~~***ARTICLE III: STATES WITH VOTER SUPRESSION LAWS***~~

~~***SEC. 12X.21. FINDINGS AND PURPOSE.***~~

~~*(a) San Francisco is committed to conducting fair and open elections. That commitment includes making elections as widely accessible as possible. For example, the City has instituted early*~~

~~*voting at City Hall, sent vote-by-mail ballots to all voters during the recent pandemic, and provided ballot drop-off boxes throughout the City, including in all precincts on Election Day.*~~

~~*(b) But the history of our nation has been marred by recurring efforts to restrict the voting rights of Black citizens and other citizens of color. After the 2020 presidential election, many states introduced, and several states have already enacted, new and oppressive voter restriction laws that disproportionately impact minority and low-income voters and that make it harder for Black people, other people of color, and voters from low-income communities to exercise their most fundamental of rights. Such voter suppression is a threat to our entire democratic system.*~~

~~*(c) San Francisco adopts this Chapter 12X, Article III, to prevent the expenditure of City funds on travel in states that have enacted voter suppression laws or on contracts with businesses headquartered or performing contractual services for the City in such states.*~~

~~***SEC. 12X.22. GENERAL DEFINITIONS.***~~

~~*For purposes of this Article III, Chapter 12X:*~~

~~*"City" means the City and County of San Francisco.*~~

~~*"Contract" means an agreement between a Contracting Department and any person or entity that provides, at the expense of the City, for public works or public improvements to be purchased under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing, "Contract" shall not include:*~~

~~*(a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or*~~

~~*(b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or*~~

~~*(c) Agreements advertised, solicited, or initiated prior to the operative date of this Article III, Chapter 12X, including amendments to existing Contracts.*~~

~~*"Contracting Department" means the City department, office, board, commission, or other City agency that enters into a Contract on behalf of the City.*~~

~~*"Contractor" means any corporation, partnership, individual, sole proprietorship, joint venture, or other legal entity or combination thereof, which enters into a Contract with the City.*~~

~~*"Covered State" means a state that has adopted a Voter Suppression Law, as defined in Section 12X.23, below, on or after January 1, 2021.*~~

~~*"Covered State List" means the list maintained by the City Administrator of all states that meet the definition of a Covered State, in accordance with Section 12X.24.*~~

~~***SEC. 12X.23. "VOTER SUPRESSION LAW" DEFINED.***~~

~~*"Voter Suppression Law" means a state law, adopted on or after January 1, 2021, that makes it, on balance, harder to register to vote, harder to stay on the voter registration rolls, or harder to vote, as compared to existing state law prior to the date of adoption, regardless of whether there are exceptions to such laws. In addition, "Voter Suppression Law" means a state law, adopted on or after January 1, 2021, that reallocates responsibility for the processing, tabulation, or determination of votes and/or election results in a manner that, on balance, presents a danger that the will of the voters as expressed in their votes will be overridden. By way of example but not limitation, the following laws are likely to be Voter Suppression Laws within the meaning of this Section 12X.23:*~~

~~*(a) **Laws Restricting Voter Registration:***~~

~~*(1) Laws that remove voters from voter rolls for not having voted in previous elections.*~~

~~*(2) Laws that require voters to re-register repeatedly in order to remain on voter rolls.*~~

~~*(3) Laws that expand voter roll purges or eliminate safeguards that prevent improper purges.*~~

~~*(b) **Laws Restricting General Voting:***~~

~~*(1) Laws that unduly limit or reduce the number of polling places.*~~

~~*(2) Laws that restrict or ban the use of ballot drop boxes, or that limit the number of drop boxes solely by county or other geographic or geopolitical area despite variances in population.*~~

~~*(3) Laws that do not allow same-day voting at a polling place if a voter goes to the wrong polling location.*~~

~~*(4) Laws that limit or ban same-day voter registration on election day.*~~

~~*(5) Laws that otherwise limit access to voting by reducing the times, places, or methods by which eligible persons may vote.*~~

~~*(6) Laws that prohibit extension of voting hours if election problems arise.*~~

~~*(c) **Laws Imposing Restrictive ID Requirements:***~~

~~*(1) Laws that impose strict photographic identification requirements, such as laws requiring state ID for in-person and/or absentee ballots but that do not accept student IDs issued by universities and colleges located in the state.*~~

~~*(2) Laws that prevent voters without photo IDs from satisfying an identification requirement in some other manner, such as by submitting a signed and sworn affidavit.*~~

~~*(3) Laws that require multiple forms of photo ID to vote.*~~

~~*(d) **Laws Restricting Absentee Voting:***~~

~~*(1) Laws that make it more difficult to obtain or cast an absentee ballot by narrowing eligibility for absentee voting.*~~

~~*(2) Laws that make the application process for absentee ballots unduly difficult by requiring multiple steps.*~~

~~*(3) Laws that unduly limit the time frame for requesting and/or returning absentee ballots.*~~

~~*(4) Laws limiting or prohibiting local election departments from mailing absentee ballots or absentee ballot applications to all voters.*~~

~~*(5) Laws that remove voters as absentee voters if they failed to vote absentee in two or more consecutive state or federal election cycles.*~~

~~*(6) Laws barring persons other than the individual voter or their families from turning in an absentee ballot.*~~

~~*(e) **Laws Restricting Elections by Mail:***~~

~~*(1) Laws that prevent mail-in ballots from being counted in a presidential election.*~~

~~*(2) Laws that ban pre-paid postage for mail-in ballots.*~~

~~*(f) **Laws Restricting Voting by Persons with Disabilities:***~~

~~*(1) Laws that require disabled persons to prove their disability when voting.*~~

~~*(g) **Laws Reallocating Responsibility for Processing, Tabulation, or Determination of Votes or Results:***~~

~~*(1) Laws that remove the secretary of state from the state election board, or otherwise take away the power of the state's chief elections officer to remedy election problems.*~~

~~*(2) Laws that undermine the power of local officials to conduct fair elections.*~~

~~*(3) Laws that allow the state legislature to override or disregard local voting returns and declare their own election results.*~~

~~***SEC. 12X.24. COVERED STATE LIST.***~~

~~*(a) The City Administrator shall create and maintain the Covered State List. A state shall be included in the Covered State List when, in the judgment of the City Administrator, in consultation with the Director of Elections and the City Attorney, it meets the definition of a Covered State.*~~

~~*(b) A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. A decision to remove a state from the Covered State List shall be made by the City Administrator, in consultation with the Director of Elections and the City Attorney.*~~

~~*(c) The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed, and updated as appropriate, by the City Administrator at least semiannually.*~~

~~***SEC. 12X.25. TRAVEL.***~~

~~*(a) The City shall not:*~~

~~*(1) Require any of its employees or officers to travel to a state on the Covered State List; or*~~

~~*(2) Approve a request for City-funded travel to a state on the Covered State List.*~~

~~*(b) Subsection (a) shall not apply to travel that is:*~~

~~*(1) necessary for the enforcement of any state or City law;*~~

~~*(2) necessary for the defense of any legal claim against the City;*~~

~~*(3) required by law;*~~

~~*(4) required to meet contractual obligations incurred by the City; or*~~

~~*(5) necessary for the protection of public health, welfare, or safety.*~~

~~*(c) For purposes of this Section 12X.25, "travel" does not include landing in a state by plane to make a connecting flight to a destination outside that state, or traversing a state by automobile, train, bus, or otherwise, to reach a destination outside that state.*~~

~~***SEC. 12X.26. CONTRACTING.***~~

~~*(a) The City shall not enter into any Contract with a Contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during the term of a Contract, the Contractor moves its headquarters, or the location from which it will provide services to the City, to a state on the Covered State List, such a move shall not constitute grounds to terminate the Contract.*~~

~~*(b) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to Contracts in the following circumstances:*~~

~~*(1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or*~~

~~*(2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or*~~

~~*(3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public; or*~~

~~*(4) The Contracting Department determines that the public interest warrants the granting of a waiver because application of this Section 112X.26 would have an adverse impact on services or a substantial adverse financial impact on the City; or*~~

~~*(5) The Contracting Department determines that the services to be purchased are available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a group purchasing organization; purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and purchase under such an arrangement is in the best interest of the City; or*~~

~~*(6) The Contracting Department determines that the requirements of this Section 12X.26 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 Section; or*~~

~~*(7) The General Manager of the Public Utilities Commission may waive the requirements of this Section 12X.26 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 waiver provision shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.*~~

~~*(c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b), the Contracting Department shall maintain a record documenting the basis for such decision. Each Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the fiscal year.*~~

~~*(d) The requirements of this Section 12X.26 shall apply to Contracts first advertised, solicited, or initiated on or after the operative date.*~~

~~***SEC. 12X.27. RULES AND REGULATIONS; REPORTING.***~~

~~*(a) The City Administrator may adopt rules, regulations, and guidelines to implement this Article III of Chapter 12X.*~~

~~*(b) By January 1, 2023, the Controller shall conduct an evaluation and submit a report to the Board of Supervisors regarding the economic impact of this Article III of Chapter 12X on the City.*~~

~~***SEC. 12X.28. PREEMPTION.***~~

~~*Nothing in this Article III, Chapter 12X shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or State of California law. In Contracts that involve the use of any funds furnished, given, or loaned by the Government of the United States or the*~~

~~*State of California, all laws, rules, and regulations of the United States or California or of any federal or State departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Article III, Chapter 12X when such laws, rules, or regulations are in conflict.*~~

~~***SEC. 12X.29. UNDERTAKING FOR THE GENERAL WELFARE.***~~

~~*In enacting and implementing this Article III, Chapter 12X, the City 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. 12X.30. SEVERABILITY.***~~

~~*If any section, subsection, sentence, clause, phrase, or word of this Article III, Chapter 12X, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Article or Chapter. The Board of Supervisors hereby declares that it would have passed this Article and Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion this Article or Chapter or application thereof would be subsequently declared invalid or unconstitutional.*~~

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 3. Operative Date. The Operative Date of this Chapter 12X repeal is the same as the Effective Date. As of that date, all restrictions imposed by Chapter 12X relating to travel and contracting will cease to exist. Prior to the Operative Date, the restrictions will remain in place, and the City may not fund travel to, or award contracts to entities based in, states on the City Administrator's list, unless an exemption, waiver, or other applicable determination is made under Chapter 12X. This section does not create any new contracting requirements. Agreements awarded prior to the Operative Date and amendments of such agreements remain valid. Departments are not required to alter or rescind any procurements that are in process as of the Operative Date. The City Administrator may adopt guidance to implement this repeal ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/ Gustin R. Guibert
GUSTIN R. GUIBERT
Deputy City Attorney

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