

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Barbara A. Garcia, Director, Department of Public Health  
Micki Callahan, Director, Department of Human Resources  
Naomi Kelly, City Administrator, Office of the City Administrator  
Ben Rosenfield, City Controller, Office of the Controller  
Jaci Fong, Director, Office of Contract Administration  
Jose Cisneros, Treasurer, Office of the Treasurer and Tax Collector  
Harlan Kelly, Jr., General Manager, Public Utilities Commission  
Mohammed Nuru, Director, Public Works

FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee,  
Board of Supervisors

DATE: August 10, 2016

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

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The Board of Supervisors' Government Audit and Oversight Committee has received the following substitute legislation, introduced by the Supervisor Wiener on August 2, 2016:

**File No. 160425**

**Ordinance amending the Administrative Code to prohibit City-funded travel to states that have enacted laws after June 26, 2015, reversing anti-discrimination protections for LGBT individuals or permitting discrimination against LGBT individuals, and to prohibit City contracting with companies headquartered in states that have enacted such laws, or where work on the contract would be performed in such states.**

If you have any 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.

Referral from the Office of the Clerk of the Board  
Government Audit and Oversight Committee  
August 10, 2016  
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c:

Greg Wagner, Department of Public Health  
Colleen Chawla, Department of Public Health  
Susan Gard, Department of Human Resources  
Todd Rydstrom, Office of the Controller  
Amanda Kahn Fried, Office of the Treasurer and Tax Collector  
Juliet Ellis, Public Utilities Commission  
Donna Hood, Public Utilities Commission  
Frank Lee, Public Works  
Fuad Sweiss, Public Works

1 [Administrative Code - Ban on City-Funded Travel to and City Contracts Involving States With  
2 Anti-LGBT Laws]

3 **Ordinance amending the Administrative Code to prohibit City-funded travel to states**  
4 **that have enacted laws after June 26, 2015, reversing anti-discrimination protections**  
5 **for LGBT individuals or permitting discrimination against LGBT individuals, and to**  
6 **prohibit City contracting with companies headquartered in states that have enacted**  
7 **such laws, or where work on the contract would be performed in such states.**

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

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

16 Section 1. The Administrative Code is hereby amended by Adding Chapter 12X, to  
17 read as follows:

18 **CHAPTER 12X: PROHIBITING CITY TRAVEL AND CONTRACTING IN STATES THAT**

19 **ALLOW DISCRIMINATION AGAINST LGBT INDIVIDUALS**

20 **SEC. 12X.1. Findings and Purpose.**

21 **SEC. 12X.2. Definitions.**

22 **SEC. 12X.3. Covered State List.**

23 **SEC. 12X.4. Travel.**

24 **SEC. 12X.5. Contracting.**

25 **SEC. 12X.6. Rules and Regulations.**

1                   SEC. 12X.7. Preemption.

2                   SEC. 12X.8. Undertaking for the General Welfare.

3                   SEC. 12X.9. Severability.

4  
5                   SEC. 12X.1. FINDINGS AND PURPOSE.

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

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

23                  The Board of Supervisors finds that the City should not require its employees, many of whom  
24 are LGBT individuals, to be subjected to these discriminatory laws while traveling on City business.  
25 No individual, and certainly no employee of the City while conducting City business, should suffer the

1 indignity of being denied services on the basis of being lesbian, gay, bisexual, or transgender. The City  
2 and the country have moved in the direction of granting more rights and more protections to LGBT  
3 individuals. These new laws represent an affront to progress and to the recognition that the LGBT  
4 community is entitled to equal treatment under the law.

5 Further, the City has a strong interest in dissociating itself from the discriminatory practices of  
6 states that have enacted or in the future might enact such laws, and from companies that choose to have  
7 their headquarters therein. City funds should not be expended, directly or indirectly, in states that  
8 perpetuate unequal treatment of the LGBT community. The Board finds that supporting such states  
9 through the tax revenue that would result from the expenditure of City funds therein is inconsistent with  
10 the principles of equality that San Francisco strives to promote.

11  
12 **SEC. 12X.2. DEFINITIONS.**

13 “City” means the City and County of San Francisco.

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

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

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

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

3 “Contracting Department” means the City department, office, board, commission, or other City  
4 agency that enters into a Contract on behalf of the City.

5 “Contractor” means any corporation, partnership, individual, sole proprietorship, joint  
6 venture, or other legal entity or combination thereof, which enters into a Contract with the City.

7 “Covered State” means any state that after June 26, 2015, has enacted a law that,

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

10 (b) authorizes or requires discrimination against same-sex couples or their families or  
11 that authorizes or requires discrimination on the basis of sexual orientation, gender identity, or gender  
12 expression, including any law that creates an exemption to antidiscrimination laws in order to permit  
13 discrimination against same-sex couples or their families or on the basis of Sexual Orientation, Gender  
14 Identity, or Gender Expression.

15 “Covered State List” means the list maintained by the City Administrator of all states that meet  
16 the definition of a Covered State, in accordance with Section 12X.3.

17 “Gender Expression” has the meaning set forth in Section 3304.1(c) of the Police Code.

18 “Gender Identity” has the meaning set forth in Section 3304.1(c) of the Police Code.

19 “Operative Date” means 90 days after the effective date of Chapter 12X.

20 “Sexual Orientation” has the meaning set forth in Section 12B.1(c) of the Administrative Code.

21  
22 **SEC. 12X.3. COVERED STATE LIST.**

23 The City Administrator shall create and maintain the Covered State List. A state shall be added  
24 to the Covered State List when it meets the definition of a Covered State. A state shall be removed from  
25 the Covered State List where the law or laws that caused the state to meet the definition of a Covered

1 State have been repealed or found to be unenforceable by a court of competent jurisdiction. The  
2 Covered State List shall be posted on the website of the City Administrator, and shall be reviewed and  
3 updated by the City Administrator at least semiannually.

4  
5 **SEC. 12X.4. TRAVEL.**

6 (a) The City shall not:

7 (1) Require any of its employees or officers to travel to a state on the Covered State

8 List; or

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

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

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

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

13 (3) required by law;

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

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

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

19  
20 **SEC. 12X.5. CONTRACTING.**

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

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

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

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

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

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

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

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

23 (6) The Contracting Department determines that the requirements of this Section  
24 12X.5 will violate or are inconsistent with the terms or conditions of a grant, subvention, or agreement  
25 with a public agency or the instructions of an authorized representative of any such agency with



1 respect to any such grant, subvention, or agreement, provided that the contracting officer has made a  
2 good faith attempt to change the terms or conditions of any such grant, subvention, or agreement to  
3 authorize application of this Section; or

4 (7) The General Manager of the Public Utilities Commission may waive the  
5 requirements of this Section 12X.5 where the Contractor is providing wholesale or bulk water, power,  
6 or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve,  
7 voltage control, or loading scheduling, as required for assuring reliable services in accordance with  
8 good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that  
9 the purchase of same may not practically be accomplished through the City's standard competitive  
10 bidding procedures; and further provided that this waiver provision shall not apply to Contractors or  
11 franchisees providing direct, retail services to end users within the City.

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

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

20  
21 **SEC. 12X.6. RULES AND REGULATIONS.**

22 The City Administrator may adopt rules, regulations, and guidelines to implement this Chapter  
23 12X.

1           **SEC. 12X.7. PREEMPTION.**

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

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

10          In enacting and implementing this Chapter 12X, the City is assuming an undertaking only to  
11 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an  
12 obligation for breach of which it is liable in money damages to any person who claims that such breach  
13 proximately caused injury.

14  
15          **SEC. 12X.9. SEVERABILITY.**

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

23  
24           Section 2. Renumbering of Chapter and Sections. Existing Chapter 12X of the  
25 Administrative Code, consisting of existing Sections 12X.1-12X.9 (with Section 12X.6 having

1 been repealed), shall be renumbered as Chapter 96B of the Administrative Code, consisting  
2 of Sections 96B.1-96B.9 (with Section 96B.6 having been repealed); and any cross-  
3 references in the Municipal Code to existing Chapter 12X or its component sections shall be  
4 renumbered accordingly. These changes are not made for any substantive reason and shall  
5 have no substantive effect. The changes are made solely for the purpose of renumbering the  
6 affected chapter and sections, so as to permit this ordinance to be codified in Chapter 12X of  
7 the Administrative Code. The City Attorney shall direct the publisher of the Municipal Code to  
8 take all appropriate steps to effectuate this provision.

9  
10 Section 3. Effective and Operative Date.

11 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
12 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
13 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
14 Mayor's veto of the ordinance.

15 (b) This ordinance shall become operative 90 days after the effective date.  
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18 APPROVED AS TO FORM:  
19 DENNIS J. HERRERA, City Attorney

20 By:



21 BRADLEY A. RUSSI  
22 Deputy City Attorney

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