

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

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

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

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

8 Chapter 12U –SWEATFREE CONTRACTING

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

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

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

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

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

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

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

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

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

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

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

23 (d) "Director" shall mean the Director of the Office of Contract Administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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22 Sec. 12U.6. ADVISORY GROUP.

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

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

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

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16 Sec. 12U.7 ADMINISTRATION AND ENFORCEMENT.

17 (a) The Director shall implement and administer, and the Director and the Office of Labor  
18 Standards Enforcement shall enforce the requirements of this Chapter. The Director may issue  
19 regulations for the implementation and administration of this Chapter. The Director may, in  
20 consultation with the Office of Labor Standards Enforcement, issue regulations for the enforcement of  
21 this Chapter. The Director may delegate, in writing, responsibilities to other departments, offices,  
22 employees, officers, or agents of the City and County. Each City department, when requested by the  
23 Director, shall cooperate with the Director in the implementation or administration of this Chapter,  
24 and when requested by the Director or Office of Labor Standards Enforcement, shall cooperate with

1 the enforcement of this Chapter by providing relevant information that is in the department's  
2 possession and control, and providing any other assistance that it is feasible for the department to  
3 provide. The City and County may, subject to the Charter, including without limitation its budgetary  
4 and fiscal provisions, and the Municipal Codes, enter into contracts with any entity and cooperative  
5 agreements or arrangements with any public entity for assistance in implementing, administering or  
6 enforcing this Chapter, and shall explore efficient and cost-effective mechanisms for ensuring the  
7 compliance of Contractors.

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

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

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

24 (1) Assess liquidated damages as provided for in the Contract.  
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- 1           (2) Terminate the Contract
- 2           (3) Commence debarment proceedings pursuant to Chapter 28 of this Code against the  
3 Contractor, where the Contractor has failed to comply with this Chapter, or against the Subcontractor,  
4 or Contractor and Subcontractor, where the Subcontractor has failed to comply with this Chapter.
- 5           (4) Withhold payments under the Contract until the Contractor or its Subcontractor is in full  
6 compliance with this Chapter.
- 7           (5) Require the Contractor or Subcontractor, at its expense, to provide training and best  
8 practices guidelines to managers and employees at the facility or operation where the violation  
9 occurred to ensure future compliance. Upon request by the Director or the Director's designee, the  
10 Contractor or Subcontractor shall submit such materials for the City and County's review and approval  
11 prior to distribution to managers and employees.
- 12           (6) Any Contractor or Subcontractor shall provide the Director or the Director's designees or  
13 contractor, and other City employees and agents authorized to assist in the administration and  
14 enforcement of this Chapter immediate access to the facility or operation where the violation has  
15 occurred for an inspection of the facility or operation and records, and interviews of Workers.
- 16           (7) During the term of the Contract, but not more than once every 30 days, the Director, the  
17 Office of Labor Standards Enforcement, or the Director's designee may require the Contractor or  
18 Subcontractor to provide a written summary of the steps taken to remedy the noncompliance and any  
19 difficulties encountered in curing the noncompliance. The request may require the response to be  
20 submitted under penalty of perjury. The Contractor or Subcontractor shall provided the written  
21 summary within the time period specified by the Director, the Office of Labor Standards Enforcement,  
22 or the Director's designee, which shall not be less than 14 days from receipt of the request.
- 23           (8) Pursue any other remedies available to the City and County at law or in equity.

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

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

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

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

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

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

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

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

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

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

13 By: \_\_\_\_\_  
14 ROBERT A. BRYAN  
15 Deputy City Attorney