

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Carla Short, Interim Director, Public Works
Romulus Asenloo, Acting Director, Contract Monitoring Division
Sailaja Kurella, Director and Purchaser, Office of Contract Administration

FROM: Victor Young, Assistant Clerk

A handwritten signature in black ink that reads "Victor Young".

DATE: November 17, 2022

SUBJECT: LEGISLATION INTRODUCED

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

File No. 221147

Ordinance amending the Administrative Code to remove agreements let under Chapter 6 for Public Works or Improvement from the prohibitions in Chapter 12X on the City's entering into a contract with a contractor that has its United States headquarters in a state that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws, or where any or all of the contract would be performed in such a state.

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: David Steinberg, Public Works
Ian Schneider, Public Works
John Thomas, Public Works
Lena Liu, Public Works
Rochelle Fretty, Contract Monitoring Division
Taraneh Moayed, Office of Contract Administration
Rachel Cukierman, Office of Contract Administration



City and County of San Francisco

Master Report

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

File Number: 221147 **File Type:** Ordinance **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

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

File Name: Administrative Code - Removing Construction Agreements from the Prohibition on Contracting in States with Certain Types of Discriminatory Laws **Date Introduced:** 11/08/2022

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

Comment: _____ **Title:** Ordinance amending the Administrative Code to remove agreements let under Chapter 6 for Public Works or Improvement from the prohibitions in Chapter 12X on the City's entering into a contract with a contractor that has its United States headquarters in a state that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws, or where any or all of the contract would be performed in such a state.

Sponsor: Safai

History of Legislative File 221147

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	11/08/2022	ASSIGNED UNDER 30 DAY RULE	Rules Committee	12/08/2022	

1 [Administrative Code - Removing Construction Agreements from the Prohibition on
2 Contracting in States with Certain Types of Discriminatory Laws]

3 **Ordinance amending the Administrative Code to remove agreements let under Chapter**
4 **6 for Public Works or Improvement from the prohibitions in Chapter 12X on the City’s**
5 **entering into a contract with a contractor that has its United States headquarters in a**
6 **state that allows discrimination against LGBT individuals, has restrictive abortion laws,**
7 **or has voter suppression laws, or where any or all of the contract would be performed**
8 **in such a state.**

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

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

17 Section 1. Findings.

18 The Board of Supervisors finds that due to the COVID-19 pandemic, its aftermath, and supply
19 chain limitations, the construction sector lacks availability of bidders. Increasing the number of
20 bidders will reduce cost and ensure that enough bidders respond to deliver the City’s critical
21 infrastructure projects.

22 Section 2. Chapter 12X of the Administrative Code is hereby amended by revising
23 Sections 12.X.2, 12X.12, and 12X. 22, to read as follows:

24 **SEC. 12X.2. DEFINITIONS.**

25 * * * *

1 “Contract” means an agreement between a Contracting Department and any person
2 or entity that provides, at the expense of the City, ~~for public works or public improvements to be~~
3 ~~purchased under Chapter 6 of the Administrative Code, or~~ for commodities or services to be
4 purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing,

5 “Contract” shall not include:

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

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

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

15 * * * *

16 **SEC. 12X.12. DEFINITIONS.**

17 * * * *

18 “Contract” means an agreement between a Contracting Department and any person
19 or entity that provides, at the expense of the City, ~~for public works or public improvements to be~~
20 ~~purchased under Chapter 6 of the Administrative Code, or~~ for commodities or services to be
21 purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing,

22 “Contract” shall not include:

23 (a) Agreements for the investment of trust money or relating to the management
24 of trust assets, agreements to invest City moneys in U.S. government securities, or
25 agreements for the investment, deposit, or safekeeping of City moneys, where, for any such

1 agreement, the Treasurer, as a fiduciary of the City, determines that entering into the
2 agreement is in the interest of soundly investing public assets; or

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

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

7 * * * *

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

9 * * * *

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

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

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

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

24 * * * *

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

5
6 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
10 additions, and Board amendment deletions in accordance with the “Note” that appears under
11 the official title of the ordinance.

12
13 APPROVED AS TO FORM:
14 DAVID CHIU, City Attorney

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

18
19
20
21
22
23
24
25
N:\LEGANAVIAS2022\2300114\01637281

LEGISLATIVE DIGEST

[Administrative Code - Removing Construction Agreements from the Prohibition on Contracting in States with Certain Types of Discriminatory Laws]

Ordinance amending the Administrative Code to remove agreements let under Chapter 6 for Public Works or Improvement from the prohibitions in Chapter 12X on the City's entering into a contract with a contractor that has its United States headquarters in a state that allows discrimination against LGBT individuals, has restrictive abortion laws, or has voter suppression laws, or where any or all of the contract would be performed in such a state.

Existing Law

Chapter 12X of the Administrative Code is comprised of three articles, each of which restricts the ability of the City to enter contracts with entities headquartered in states that have enacted: i) laws that allow discrimination against LGBT individuals, ii) restrictive abortion laws, or iii) voter suppression laws, or where any or all of the contract would be performed in such a state. 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. Other types of contracts and agreements are exempt from these restrictions.

Amendments to Current Law

Chapter 6 contracts are being removed from the definition of contract that is restricted by the articles of Chapter 12X. The City may contract with entities headquartered in states with certain types of discriminatory laws, or enter in a contract where performance of the contract will be in such a state. Chapter 21 contracts are still subject to the restrictions.

Background Information

The current restrictions of Chapter 12X result in more than half of the United States being placed on the ineligible list, reducing the pool of available contractors. The Board of Supervisors finds that due to the COVID-19 pandemic, its aftermath, and supply chain limitations, the construction sector lacks availability of bidders. Removing the restrictions of Chapter 12X may increase the number of bidders, reduce costs, and ensure that enough bidders respond to deliver the City's critical infrastructure projects.

N:\LEGANA\AS2022\2300114\01637280

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):


Safai

Subject:

Amendments to Administrative Code Chapter 12X

The text is listed:

Please see attached legislation.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only

From: [Barnes, Bill \(BOS\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [GUIBERT, GUS \(CAT\)](#); [PEARSON, ANNE \(CAT\)](#); [Chung, Lauren \(BOS\)](#); [Safai, Ahsha \(BOS\)](#)
Subject: FOR INTRODUCTION: Administrative Code Chapter 12X amendments
Date: Tuesday, November 8, 2022 2:26:25 PM
Attachments: [Introduction Form - 12X.pdf](#)
[Legislative Digest Final Chapter 12X exemption for Public Works.docx](#)
[Legislation Final Chapter 12X exemption for Public Works.docx](#)

Attached for introduction please find Chapter 12X amendments to the Administrative Code.

Copying Deputy City Attorney Gus Guibert for approval of the use of his electronic signature.

Thanks,

BILL BARNES *(he/him/his)*

Chief of Staff

Supervisor Ahsha Safaí

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

415.554.7896 (direct)

415.554.6975 (main line)

From: [Guibert, Gus \(CAT\)](#)
To: [Barnes, Bill \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Cc: [PEARSON, ANNE \(CAT\)](#); [Chung, Lauren \(BOS\)](#); [Safai, Ahsha \(BOS\)](#)
Subject: RE: FOR INTRODUCTION: Administrative Code Chapter 12X amendments
Date: Tuesday, November 8, 2022 2:36:31 PM

Yes, the electronic signature is valid.

Gus

Gustin R. Guibert, Deputy City Attorney (he/his)
Office of City Attorney David Chiu
(415) 554-4213 (email preferred)
Gus.Guibert@sfcityatty.org

CONFIDENTIAL - ATTORNEY CLIENT PRIVILEGE

The information contained in this email may be confidential and may be subject to the attorney-client privilege and/or the attorney work product doctrine. It is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, you are notified that any use, dissemination or copying of this communication is strictly prohibited. If you have received this email in error, please delete the original message from your email system. Thank you.

From: Barnes, Bill (BOS) <bill.barnes@sfgov.org>
Sent: Tuesday, November 8, 2022 2:26 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Guibert, Gus (CAT) <Gus.Guibert@sfcityatty.org>; Pearson, Anne (CAT) <Anne.Pearson@sfcityatty.org>; Chung, Lauren (BOS) <lauren.l.chung@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>
Subject: FOR INTRODUCTION: Administrative Code Chapter 12X amendments

Attached for introduction please find Chapter 12X amendments to the Administrative Code.

Copying Deputy City Attorney Gus Guibert for approval of the use of his electronic signature.

Thanks,

BILL BARNES *(he/him/his)*

Chief of Staff
Supervisor Ahsha Safaí
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

415.554.7896 (direct)
415.554.6975 (main line)

1 [Administrative Code - Removing Construction Agreements from the Prohibition on
2 Contracting in States with Certain Types of Discriminatory Laws]

3
4 **Ordinance amending the Administrative Code to remove agreements let under Chapter**
5 **6 for Public Works or Improvement from the prohibitions in Chapter 12X on the City's**
6 **entering into a contract with a contractor that has its ~~U.S.~~nited States headquarters in a**
7 **state that allows discrimination against LGBT individuals, has restrictive abortion laws,**
8 **or has voter suppression laws, or where any or all of the contract would be performed**
9 **in such a state.**

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

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

18 Section 1. Findings.

19 The Board of Supervisors finds that due to the COVID-19 pandemic, its aftermath, and supply
20 chain limitations, the construction sector lacks availability of bidders. Increasing the number of
21 bidders will reduce cost and ensure that enough bidders respond to deliver the City's critical
22 infrastructure projects.

23 Section 2. Chapter 12X of the Administrative Code is hereby amended by revising
24 Sections 12.X.2, 12X.12, and 12X. 22, to read as follows:

25 **SEC. 12X.2. DEFINITIONS.**

1 * * * *

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

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

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

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

16 * * * *

17 **SEC. 12X.12. DEFINITIONS.**

18 * * * *

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

24 (a) Agreements for the investment of trust money or relating to the management
25 of trust assets, agreements to invest City moneys in U.S. government securities, or

1 agreements for the investment, deposit, or safekeeping of City moneys, where, for any such
2 agreement, the Treasurer, as a fiduciary of the City, determines that entering into the
3 agreement is in the interest of soundly investing public assets; or

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

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

8 * * * *

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

10 * * * *

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

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

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

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

25 * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

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

N:\LEGANAVIAS2022\2300114\01637281