25

[Administrative, Labor and Employment Codes - City Contract Processes and Requirements]

Ordinance amending the Administrative Code to 1) create a procurement legislative analysis authority for the City Administrator; 2) revise or create threshold dollar amounts for application of various contract requirements tied to the statutory Minimum Competitive Amount or statutory federal Single Audit Standard; 3) reorganize, standardize, and narrow Chapter 12F (relating to the MacBride Principles concerning Northern Ireland; including sunset of ordinance in 20356); 4) repeal Chapter 12J (relating to City business with Burma); and 5) narrow coverage of, and reduce meeting requirements in, Chapter 12L (relating to certain non-profit organizations receiving funds from the City); and amending the Labor and Employment Code to 6) reorganize, standardize, revise exemptions and waivers narrowing coverage, create threshold dollar amount for application tied to the statutorily based Minimum Competitive Amount, and update Article 131 (relating to nondiscrimination under City contracts; including sunset of ordinance in 20356) and repeal Article 132 (relating to nondiscrimination under City property contracts), while incorporating some of its provisions under Article 131; 7) reorganize, standardize, revise exemptions and waivers narrowing coverage, create a threshold dollar amount for application tied to the statutorily based Minimum Competitive Amount and update Article 151 (relating to

NOTE: Unchanged Code text and uncodified text are in plain Arial font.

City procurement of sweatfree goods; including abolition of the Sweatfree Procurement

Advisory Group and sunset of ordinance in 2035); 8) repeal Article 141 (relating to salary

history in the hiring process of City contractors), Article 142 (relating to criminal

history in the hiring and employment process of City contractors), and Article 161

(relating to earned income credit forms for employees of City contractors).

Additions to Codes are in <u>single-underline italics Times New Roman font</u>. Deletions to Codes are in <u>strikethrough italics Times New Roman font</u>. Board amendment additions are in <u>double-underlined Arial font</u>. Board amendment deletions are in <u>strikethrough Arial font</u>. 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. Background, Findings, and Purpose.

- (a) In order to better serve the public, the City and County of San Francisco contracts for necessary goods, programs, and services.
- (b) Over time, the City has enacted contract-related ordinances that seek to use the City's market participant powers to advance various social noncommercial social policy priorities, often without consideration of how these requirements interact with other existing laws or impact the efficiency of the City's procurement processes.
- (c) Such ordinances are rarely, if ever, repealed or even reviewed for effectiveness or cost.
- (d) In 2016, for example, the City enacted Administrative Code Chapter 12X in response to the proliferation of laws in states across the country that discriminated against the LGBTQ community; Chapter 12X prohibited the City from contracting with businesses based in states with such laws.
- (i) Between 2016 and 2023, the Board of Supervisors and Mayor expanded the reach of Chapter 12X to include businesses in states with restrictive abortion and voting rights laws, bringing the total number of banned states to 30.
- (ii) In 2023, the Board of Supervisors repealed Chapter 12X after analyses by the Budget and Legislative Analyst and City Administrator concluded that Chapter 12X increased the City's contracting costs and required significant City resources to administer,

yet failed to impact legislative activity of banned states; furthermore, they found that limiting free and open competition for contracts increases the costs of those contracts by as much as 20%.

- (iii) The review and repeal of Chapter 12X drew heightened attention to the costs and benefits of the array of social policies the City has sought to advance through its contracts, and in 2022, Supervisor Mandelman submitted a Letter of Inquiry asking the Office of the City Administrator to make recommendations for a new more-transparent, streamlined, and less-costly procurement process for low-value Chapter 21 contracts to encourage greater competition and support the City's small businesses.
- (e) In May 2024, City Administrator Carmen Chu released her response to Supervisor Mandelman's Letter of Inquiry, a report entitled "Improving the Process for Chapter 21 Low-value Procurements," which found as follows:
- (i) The City's contracting processes create a high level of administrative burden for both City staff and suppliers, making it more difficult for the City to fulfill its mission and serve the public;
- (ii) City staff spend an excessive amount of time navigating complicated procurement processes and guiding suppliers through compliance requirements, which can take time away from strategic or performance management activities;
- (iii) The City's contracting requirements make doing business with the City confusing and cost-prohibitive for some suppliers, and small and local businesses are especially impacted by high barriers to entry, which can run counter to the City's goals of local investment and equitable contracting;
- (iv) Low-value contracts are subject to the same contracting requirements as higher-value contracts, making executing a \$100,000 contract just as difficult as executing a \$5,000,000 contract;

- (v) In the past five years, the City awarded thousands of contracts for \$200,000 or less accounting for 59% of the City's contract volume but only 1.8% of the City's total contract spending, meaning that that City staff and suppliers are spending disproportionate time, energy, and effort on a relatively small share of the City's spending; and
- (vi) The complexity of the City's contracting processes may also be limiting competition to provide City goods and services; for example, in Fiscal Year 2023, nearly half of the solicitations that the Office of Contract Administration issued received a single response or no response.
- (f) The City Administrator's report presents five recommendations to help address these challenges:
- (i) Improve the informal procurement process, which refers to procurements under the City's "Minimum Competitive Amount" (Currently \$230,000 but reset every five years using the Consumer Price Index);
- (ii) Simplify the City's standard contract terms and conditions, which are significantly longer than those in other cities and municipalities;
- (iii) Amend the City's procurement requirements to update and reconcile inconsistencies in processes, thresholds, and triggers;
 - (iv) Standardize future procurement legislation; and
- (v) Increase inter-departmental coordination in contracting and align policy and administrative processes across departments.
- (g) The purpose of this legislation, the Open for Business Contract Streamlining Act of 2025, is to simplify the City's procurement processes and promote competition, especially for low-value contracts under the Minimum Competitive Amount, by doing the following:
- (i) Creating a common structure and terminology to inform and model any future contracting ordinances, as well as existing ordinances that may be amended;

- (ii) Requiring a City Administrator analysis for future proposed ordinances that may materially impact procurement processes;
- (iii) Updating sections of the Municipal Code to align with current terminology and government functions;
- (iv) Repealing sections of the Municipal Code that are no longer in use or are duplicative of state law; and
- (v) Revising sections of the Municipal Code to standardize their triggering thresholds at the Minimum Competitive Amount.
- Section 2. Chapter 2A of the Administrative Code is hereby amended by adding Section 2A.25-1, to read as follows:

SEC. 2A.25-1. ANALYSIS OF LEGISLATION IMPACTING PROCUREMENT.

- (a) The City Administrator's Office (the "City Administrator") shall identify and report on all legislation introduced at the Board of Supervisors that may have a material impact on City procurement processes for goods and services as determined by the City Administrator.
- (b) In preparing this analysis, the City Administrator shall analyze the legislation for factors such as but not limited to: (1) the impact on City operations; (2) the impact on contracting parties that may wish to contract with the City; (3) oversight responsibilities and procedures; (4) consistency in procurement policies; and (5) implementation considerations. The City Administrator may solicit assistance from the Purchaser, the Board of Supervisors' Budget Analyst, the Controller, the Office of Labor Standards Enforcement ("OLSE"), the Contract Monitoring Division ("CMD"), impacted departments, and other public and private stakeholders as the City Administrator deems may be appropriate in the development of the analysis.
 - (c) The City Administrator's analysis shall: (1) summarize the impact of the legislation

based on factors such as those outlined above; (2) analyze the feasibility of the proposed operative date of the legislation given its anticipated impact; and (3) recommend ways the proposed legislation could be improved to mitigate adverse impacts or unintended consequences on City procurement processes.

days of receiving the legislation from the Clerk of the Board, unless the President of the Board grants an extension prior to the expiration of the 60-day deadline, for legislation of unusual scope or complexity. The City Administrator's analysis shall be submitted to the Board prior to the legislation being heard in committee, except if the City Administrator fails to provide the analysis by the 60-day deadline or by any extension approved by the President, the Board may proceed with consideration of the legislation without the analysis.

Section 3. The Labor and Employment Code is hereby amended by revising Article 131 consisting of existing Sections 131.1 to 131.7, by replacing it with a new Article 131, consisting of Sections 131.1 to 131.9 that incorporate parts of existing Articles 131 and 132, to read as follows:

ARTICLE 131: NONDISCRIMINATION IN CONTRACTS AND EQUAL BENEFITS REQUIREMENTS

SEC. 131.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS; DEFINITIONS.

— (a)—All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts hereinafter executed or amended in any manner or as to any portion thereof, a provision obligating the contractor not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national

25

origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this Article or in retaliation for opposition to any practices forbidden under this Article against any employee of, any City employee working with, or applicant for employment with such contractor and shall require such contractor to include a similar provision in all subcontracts executed or amended thereunder.

- (b) No contracting agency of the City, or any department thereof, acting for or on behalf of the City and County, shall execute or amend any contract or property contract with any contractor that discriminates in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent.

— (c) Definitions. As used in this Article 131, the following words and phrases shall have the meanings indicated herein:

life activities, and includes being regarded as having such an impairment, or having a record of such an impairment.

— "Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

— "Gender Expression" shall mean the outward expression of one's gender identity, which may include, but is not limited to, clothing, hair styles, gestures, makeup, or behavior which may or may not conform to societal expectations typically related to traits associated with a person's gender identity, sexual orientation, or assigned sex at birth.

"Gender identity" shall mean how a person self-identifies their gender, or their internal understanding of their gender. A person's gender identity may or may not correspond with social norms or stereotypes related to the sex they were assigned at birth. There are many terms related to gender with which a person may identify, including but not limited to: agender; androgynous; bigender; cisgender man; cisgender woman; gender fluid; gender non-conforming; gender-expansive; genderqueer, non-binary, pangender, Two-Spirit, transgender, trans, transgender man, transgender woman, masculine, and feminine. One's gender identity may be described through any number of ever-expanding terms or definitions, and one's gender identity may be subject to change by the individual.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Article, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or

encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

— "Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" shall mean one's anatomical, physiological, genetic, or physical attributes, and the variation in these attributes that may or may not indicate male, female, or a different sex such as intersex. These attributes may include but are not limited to both primary and secondary sex characteristics, including internal and external reproductive organs, hormone levels, hormone receptors, chromosomes and genes, all of which may change over time. A person's sex may or may not align with their gender identity.

"Sexual orientation" shall mean one's physical, emotional, romantic, or sexual attraction to people of a particular gender or multiple genders, or lack thereof, and is distinct from their gender expression or gender identity. A person's sexual orientation may be identified by terms including, but not limited to, asexual, bisexual, gay, lesbian, heterosexual, homosexual, pansexual, and queer.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, or (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property

contract.

— "Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

— (d)—The requirements of this Article shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to a contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States.

SEC. 131.2. NONDISCRIMINATION PROVISIONS.

Every contract and property contract for or on behalf of the City shall incorporate by reference and require the contractor to comply with the provisions of Section 131.2. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements set forth in this Section 131.2, and failure to do so shall constitute a material breach of contract.

- *In the performance of a contract the contractor agrees as follows:*
- —(a) The contractor or subcontractor will not discriminate against any employee, City and County employee working with such contractor or subcontractor, or applicant for employment with such contractor or subcontractor on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, AIDS/HIV status, or association with members of classes protected under this Article or in retaliation for opposition to any practices forbidden under this Article. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-

25(b) of the Administrative Code. The contractor or subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this Article shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this Section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, and (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor or subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this Section.

-(b) The prime contractor shall state that the prime contractor does not, and will not during the term of the contract discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the

spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a eash equivalent. The Director shall be the final arbiter of a contractor's or property contractor's compliance or substantial compliance with this Article and the Director's determination shall not be appealable to the Commission. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of contractor's insurance provider any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

— In adopting this Section 131.2(b), the intent of the Board of Supervisors is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.

— In particular, consistent with the severability clause set forth in Section 131.7 below, the Board of Supervisors intends that if a court or agency of competent jurisdiction finds that a State or federal law, rule or regulation invalidates (1) the application of this Section to any business, person, type of compensation or benefit, or location; or (2) any other requirement of this Section, then the court or agency should sever the invalid clause and leave in effect the remainder of this Section.

—(c) The contractor or subcontractor shall provide reasonable accommodation for qualified disabled applicants for employment and for qualified disabled employees. Said contractor or subcontractor need not provide reasonable accommodation if such would present an undue hardship. An undue hardship may include but not be limited to more than a de minimus cost, violation of the seniority rights of other co-workers as established by a bona fide seniority system, or a health or safety

risk to the employee or co-employees. The burden of establishing an undue hardship rests on the employer.

- (d) The contractor or subcontractor will in all solicitations or advertisements for employees placed by or on his or her behalf, state that qualified applicants will receive consideration for employment without regard to the fact or perception of their race, creed, religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or AIDS/HIV status.
- (e) The contractor or subcontractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other agreement or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers' representative of the contractor's or subcontractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (f) The contractor or subcontractor shall:
- (1)—Permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Commission, the City's awarding authority or the Fair Employment and Housing Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Article, and upon request shall provide evidence that the contractor has complied or will comply with the nondiscrimination provisions of this Article.
- (2)—Submit an Equal Pay Report if the contractor or subcontractor has at least 20 employees worldwide and, for a contract or subcontract, the agreement has a value equal to or in excess of the Threshold Amount set forth in Administrative Code Chapter 6 or the Minimum Competitive Amount set forth in Administrative Code Chapter 21, as applicable, or, for a grant, the agreement has a value equal to or in excess of \$50,000.
 - (A) The Equal Pay Report shall provide summary information on compensation paid to

regulation.
— (B) Each contractor or subcontractor shall file a complete and accurate Equal Pay
Report with the Commission commencing on a date set by the Commission but no later than July 3,
2017. Thereafter, each contractor or subcontractor shall file a Equal Pay Report annually.
— (C) The Equal Pay Report requirements of this Subsection (f)(2) shall apply to all
qualifying contracts, subcontracts and grants first advertised for bid, request for qualification or
proposal is issued or initiated on a date set by the Commission but no later than July 3, 2017.
——————————————————————————————————————
confidential trade secret, or is protected by the right of privacy under the U.S. or California
Constitution, the City shall not disclose such information unless required by law, including under the
California Public Records Act and the San Francisco Sunshine Ordinance.
-(g) A contractor or subcontractor shall be deemed to have breached the nondiscrimination
provisions of this Article upon:
— (1)—A finding by the Director or such other official who may be designated by the
Commission, that the contractor or subcontractor has wilfully violated such nondiscrimination
provisions; or
— (2)—A finding by the California Fair Employment and Housing Commission that a
contractor or subcontractor has violated any provision of the California Fair Employment and Housing
Act or the nondiscrimination provisions of this Article, provided that the California Fair Employment
and Housing Commission has issued a final order pursuant to Section 12970 of the Government Code,
or has obtained a judgment and order enforcing the final order pursuant to Section 12973 of the
Government Code; provided further, that for the purposes of these provisions, an order or injunction
shall not be considered final during the period within which (1) appeal may be taken, or (2) the same

has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are

employees identified by sex, race, sex and race, and data points the Commission has adopted by

in progress before a competent administrative or judicial tribunal.

— (3)—Upon such finding by the Director or other official designated by the Commission, or the California Fair Employment and Housing Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission, within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Subparagraphs (h) and (i) hereof.

— (4)—The Commission shall, within 10 days of the date of issuance of any finding by the Director or other official designated by the Commission for the enforcement of this Article, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

— (5) For purpose of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 131.2(g)(1) of this Article, that Commissioner may not participate in an appeal under this Section except as a witness.

— (6)—The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding, and requiring him or her to bring such books, records, documents or other things under his or her control.

— (7)—All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

— (8) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

— (9) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Article.

-(h)—The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Article, or may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Article. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Article or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 131.2(g) that the contractor has discriminated contrary to the provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

—(i) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible bidder

as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Article, be allowed to act as a contractor or subcontractor under any contract or property contract.

- -(j) If a finding of discrimination is made by either the Director or the Commission, the contract awarding department shall submit a report to the Board of Supervisors, the Mayor's Office, and the Commission that provides details of what actions, if any, the contract awarding department undertook under this Article.
- (k) The Commission shall provide an annual report to the Board of Supervisors summarizing the effectiveness of the information obtained from the Equal Pay Reports, recommendations for legislative change if needed, and a summary of the investigations, if any, that stem from the Equal Pay Reports. The Commission's recommendations shall include drafts of one or more ordinances if legislative change is necessary or desirable to implement the recommendations.
- -(l) Nothing contained in this Article shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.
 - -(m) The contractor or subcontractor will meet the following standards for compliance:
- (1)—If the contractor or subcontractor has been held to be an irresponsible bidder under Section 131.2(i) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Article.
- (2) The contractor or subcontractor may be required to file with the Commission a basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report as determined by the Commission. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

—(a)—Nondiscrimination programs developed pursuant to this Section shall be effective for a period of 12 months from the date of approval by the Commission. Contractors or subcontractors who are members in good standing of a trade association which has negotiated a nondiscrimination program with the Commission may make this association program their commitment for the specific contract or property contract upon approval of the Commission without the process of a separate prebid or pre-award conference. Such an association agreement shall be effective for a period of 12 months from the date of approval by the Commission. Trade associations shall provide the Commission with a list of members in good standing in such association. The Commission shall annually supply contracting agencies of the City and County with a list of contractors and subcontractors who have developed approved nondiscrimination programs.

—(b)—The awarding authority shall be responsible for notifying all prospective bidders or proposers of the requirements of this Section and, when requested by the Commission, for notifying the Commission of each contract or property contract which is being proposed to be put to public bid.

- —(c)—The proposed nondiscrimination program described by this Section, and the pre-bid or pre-award conference which may be required by the Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
- (1)—Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;
 - (2) Classroom preparation for the job when not apprenticeable;
 - (3) Pre-apprenticeship education and preparation;
 - (4) Upgrading training and opportunities;
- (5) Encouraging the use of contractors and subcontractors of all ethnic groups, provided, however, that any contract or property contract subject to this Article shall require the contractor or subcontractor to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City for such work; and

— (6)—The entry of qualified minority journeypersons into the industry.

— (d) Nondiscrimination agreements resulting from the proposed nondiscrimination programs or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the Commission at its discretion. In addition, the Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this Article.

— (e)—Any job training or education program using the funds, facilities, or staff of the City which, in the judgment of the Board of Supervisors or the Commission, can make a contribution to the implementation of this Article shall submit reports to the Commission as requested and shall be required to cooperate with the contractors, subcontractors and unions and with the Commission for the effectuation of the nondiscrimination programs developed under this Article.

SEC. 131.5. ARTICLE APPLIES ONLY TO DISCRIMINATORY EMPLOYMENT PRACTICES.

— (a)—This Article shall not confer upon the City and County of San Francisco or any agency, board or commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or subcontractors engaged in the performance of City and County contracts or property contracts.

— (b) The Board of Supervisors shall appropriate such funds from the General Fund of the City, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for the enforcement of this Article.

SEC. 131.6. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

-(a) The Director shall waive the requirements of this Article under the following

circumstances:

— (1)—Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

— (2)—If the contracting department, board or commission certifies in writing to the Director that pursuant to Administrative Code Sections 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Article capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

— (3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Article.

— (b) This Article shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

—(c)—This Article shall not apply where the contracting officer finds that the requirements of this Article 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 Article.

- (d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Article for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:
- (1)—Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Article and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or
- (2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or
- (3) Where the contracting officer determines that the requirements of this Article would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Article, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Article;
- (4) The waiver authority granted to contracting officers in this Section 131.6(d) shall be subject to the requirements that:
- (i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Article and why the waiver does

not defeat the intent of this Article, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Article. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

- (ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and
- authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 131.6(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 131.6(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 131.6(d);
- (5) Nothing in this Section 131.6(d) shall limit the right of the Board of Supervisors to waive the provisions of this Article.
- (e) This Article shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

— (1)—No person, entity or financial institution doing business in the City and County which is in compliance with this Article is capable of performing the desired transactions(s); or

— (2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

— This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Article.

-(f)—The General Manager of the Public Utilities Commission may waive the requirements of this Article 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 exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco.

—(g) Sections 131.1(b) and 131.2(b) shall not apply to any contracts or property contracts executed or amended prior to June 1, 1997, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City, prior to June 1, 1997, unless and until such contracts or property contracts are amended after June 1, 1997, and would otherwise be subject to this Article.

SEC. 131.7. SEVERABILITY.

—This Article shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Article shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall remain in effect.

SEC. 131.1. GENERAL PROVISIONS.

- (a) Name of Article. This Article shall be known as the "Nondiscrimination in Contracts and Equal Benefits Ordinance."
- (b) Findings. In adopting Section 131.4-2, the intent of the Board of Supervisors is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.

SEC. 131.2. SCOPE OF ARTICLE.

- (a) Authority. This Article 131 governs the obligations of a person or entity entering into an agreement with the City at the expense of the City or to be paid out of moneys deposited in the Treasury or out of trust moneys under the control of or collected by the City, or agreements for the exclusive use of City-owned property.
- (b) Agreements Subject to this Article. Except as stated in subsection (c), the requirements of this Article 131 apply to the following:
- (1) Agreements entered into under Chapter 6 of the Administrative Code valued above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.
- (2) Agreements entered into under Chapter 21 of the Administrative Code valued above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.
 - (3) Agreements entered into under Chapter 21G of the Administrative Code valued

being performed by a contractor for the City within the United States.

SEC. 131.3. DEFINITIONS.

11

13

14

17

19

21

23 24

25

As used in this Article 131, the following words and phrases shall have the meanings indicated herein:

"Age" means the age of any employee or applicant for employment who has attained the age of 40 years. For the purposes of this Article 131, discrimination because of age means dismissal from employment or refusal to employ or rehire any person because of their age, if such person has attained the age of 40 years and is physically able and mentally competent to perform the services required. Age limitations for apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this Article.

"Benefits" means bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any similar employment benefits.

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

"Commission" means the Human Rights Commission. The Commission may revocably delegate the administration of this Article 131 to the Contract Monitoring Division within the City Administrator's Office. References in this Article to the Commission when acting as a Department, rather than as a body, shall be construed to refer to the Contract Monitoring Division where duties have been so delegated.

"Contract" means an agreement subject to this Article 131 as stated in Section 131.2.

"Contracting Department" or "Department" means the City department, office, commission, or other City entity that enters into the applicable Contract on behalf of the City.

"Contracting Officer" means the City official or employee who is authorized to execute a contract, either as a Department Head or as a designee appointed in writing by the Department Head,

board, or commission as having the authority to sign contracts for the Department.

"Contractor" means any person or persons, firm, partnership, corporation, or combination
thereof that enters into a contract or property contract with a Department Head or officer empowered
by law to enter into contracts or property contracts on behalf of the City.

"Department Head" means the duly appointed General Manager, Director, or Executive

Director of a City department having charge and management of said department.

"Director" means the Director of the Human Rights Commission. The Director may revocably delegate the administration of this Article 131 to the Director of the Contract Monitoring Division within the City Administrator's Office. References in this Article to the Director shall be construed as to the Contract Monitoring Division Director where duties have been so delegated.

"Disability" means a physical or mental impairment which limits one or more major life activities, and includes being regarded as having such an impairment, or having a record of such an impairment.

"Domestic partner" means any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

"Gender Expression" means the outward expression of one's gender identity, which may include, but is not limited to, clothing, hair style, gestures, makeup, or behavior, which may or may not conform to societal expectations typically related to traits associated with a person's gender identity, sexual orientation, or assigned sex at birth.

"Gender identity" means how a person self-identifies their gender, or their internal understanding of their gender. A person's gender identity may or may not correspond with social norms or stereotypes related to the sex they were assigned at birth. There are many terms related to gender with which a person may identify, including but not limited to: agender; androgynous; bigender; cisgender man; cisgender woman; gender fluid; gender non-conforming; gender-expansive; genderqueer, non-binary, pangender, Two-Spirit, transgender, trans, transgender man,

transgender woman, masculine, and feminine. One's gender identity may be described through any number of ever-expanding terms or definitions, and one's gender identity may be subject to change by the individual.

"Property Contract" means a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 consecutive days in any calendar year, whether by singular or cumulative instrument, for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises, and easements subject to this Article as stated in Section 131.2.

<u>"Protected Category" means race, color, creed, religion, national origin, ancestry, Age, Sex, Sexual orientation, Gender Identity, Gender Expression, domestic partner status, marital status, Disability, Acquired Immune Deficiency Syndrome, AIDS/HIV status, weight, or height.</u>

"Qualified disabled employee" means a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" means one's anatomical, physiological, genetic, or physical attributes, and the variation in these attributes that may or may not indicate male, female, or a different sex such as intersex. These attributes may include but are not limited to both primary and secondary sex characteristics, including internal and external reproductive organs, hormone levels, hormone receptors, chromosomes, and genes, all of which may change over time. A person's sex may or may not align with their gender identity.

"Sexual orientation" means one's physical, emotional, romantic, or sexual attraction to people of a particular gender or multiple genders, or lack thereof, and is distinct from their gender expression or gender identity. A person's sexual orientation may be identified by terms including, but not limited to, asexual, bisexual, gay, lesbian, heterosexual, homosexual, pansexual, and queer.

"Subcontract" means an agreement to (1) provide goods and/or services, including construction labor, materials, or equipment, to a contractor, if such goods or services are procured or

used in the fulfillment of a Contractor's obligations arising from a Contract with the City, or (2) transfer the right to occupy or use all or a portion of a real property interest subject to a Property Contract to a Subcontractor and pursuant to which the contractor remains obligated under the Property Contract, and which in either case is subject to the provisions of this Article pursuant to Section 131.2(d).

"Subcontractor" means any person or persons, firm, partnership, corporation, or any combination thereof, that enters into a Subcontract with a Contractor that is subject to the provisions of this Article pursuant to Section 131.2(d).

SEC. 131.4-1. REQUIREMENTS AND OBLIGATIONS RELATING TO NONDISCRIMINATION IN CONTRACTS.

(a) City Contracting Departments.

All Contracts and Property Contracts shall include, a provision obligating the Contractor not to discriminate, as required by subsections (b)(1) and (b)(2) unless exempt under Section 131.2 or waived under Section 131.6.

(b) **Obligations of City Contractors.**

(1) Nondiscrimination in Employment. In the performance of a Contract, the

Contractor or Subcontractor will not discriminate against any employee, City employee working with
such Contractor or Subcontractor, or applicant for employment with such Contractor or
Subcontractor, on the basis of the fact or perception of that person's Protected Category, or association
with members of classes protected under this Article 131 or in retaliation for opposing any practices
forbidden under this Article. Discrimination on the basis of sex includes sexual harassment as defined
in Section 16.9-25(b) of the Administrative Code. The Contractor or Subcontractor will take action to
ensure that applicants are employed, and that employees are treated equally during employment,
without regard to the fact or perception of their Protected Category. Such action shall include, but not

be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

- (2) Property Contracts. In the performance of a Property Contract, the Contractor or Subcontractor will not discriminate against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization operated by the Contractor or Subcontractor on the basis of the fact or perception of that person's Protected Category, association with members of classes protected under this Article or in retaliation for opposition to any practices forbidden under this Article. Services provided by Contractor or Subcontractor to the public shall be provided regardless of Disability of persons otherwise entitled to or qualified for such services.
- (3) Equal Opportunity in Hiring. In the performance of a Contract, the Contractor or Subcontractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor or Subcontractor, state that qualified applicants will receive consideration for employment without regard to the fact or perception of their Protected Category.
- (4) Subcontract Incorporation by Reference. All Contractors must incorporate by reference in all Subcontracts and require Subcontractors to comply with the requirements set forth in this Section 131.4-1 and failure to do so shall constitute a material breach of contract.
- (5) Records and Reporting. The Contractor or Subcontractor shall permit the City access to its records of employment, employment advertisements, application forms, and other pertinent data and records for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Article 131, and upon request shall provide evidence that the Contractor has complied or will comply with the nondiscrimination provisions of this Article. Should the Contractor or Subcontractor operate as a membership organization, the Contractor or Subcontractor shall permit access to its membership records, rules, regulations, and other pertinent data, by the City for the

such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the Contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the Contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the Contractor shall not be deemed to discriminate in the provision of benefits if the Contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event the Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the Contractor shall not be deemed to discriminate in the provision of benefits if the Contractor provides the employee with a cash equivalent.

- (2) Confidentiality. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of Contractor's insurance provider any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.
- (3) Records and Reporting. The Contractor shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the City for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Article, and upon request shall provide evidence that the Contractor has complied or will comply with the nondiscrimination provisions of this Section 131.4-2.
- (4) Notice to Employees and Applicants. The Contractor will send a notice, in such form and content as shall be furnished or approved by the awarding authority, to their employees or applicants for employment advising of the Contractor's or Subcontractor's commitments under this Section 131.4-2.
- (5) Subcontracts. The requirements of this Section 131.4-2 apply only to prime Contracts, and do not apply to Subcontracts in any form.

SEC. 131.5. ADMINISTRATION AND REMEDIES.

- (a) Administration of Article. The implementation and administration of this Article 131 shall be conducted by the San Francisco Human Rights Commission, its presiding officer and its Director. The Commission and Director may delegate the duties to the Contract Monitoring Division and its Director. Such delegation is revocable.
- (b) Rules and Regulations. The Commission, or Contract Monitoring Division if so delegated, shall promulgate rules and regulations for the implementation of this Article 131.

(c) Enforcement.

(1) Enforcement Relating to Nondiscrimination in Contracts.

- (A) Findings of Breach. The Contractor or Subcontractor shall be deemed to have breached the nondiscrimination provisions of this Article 131 upon a finding by the Director or such other official who may be designated by the Commission, that the Contractor or Subcontractor has willfully violated such nondiscrimination provisions; or a finding by the State of California that a contractor or subcontractor has violated any provision of the California Fair Employment and Housing Act.
- (B) Notice and Corrective Action. Upon such finding the awarding authority shall notify the Contractor or Subcontractor that, unless the Contractor or Subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission within such reasonable period as the Commission shall determine, the violation has been corrected, action will be taken as set forth in subsection (d)(1).
- (C) Appeals. A process for appeals of findings of breach may but need not be established in Rules and Regulations.
- (D) Reports. If a finding of discrimination is made by either the Director or the Commission, the contract awarding Department shall submit a report to the Board of Supervisors,

the Mayor's Office, and the Commission that provides details of what actions, if any, the contract awarding Department undertook under this Article 131 because of the finding.

(2) Enforcement Relating to Provisions of Benefits.

- (A) Findings of Breach. The Contractor shall be deemed to have breached the equal benefits provisions of this Article 131 upon a finding by the Director that the Contractor has willfully violated such provisions.
- (B) Notice and Corrective Action. Upon such finding, the awarding authority shall notify the Contractor that unless the Contractor demonstrates to the satisfaction of the Director that the violation has been corrected, action will be taken as set forth in subsection (d)(2).
- (C) Appeals. The Director shall be the final arbiter of a Contractor's compliance or substantial compliance with this Article 131 and the Director's determination shall not be appealable to the Commission.

(d) Remedies for Violations of this Article.

- (1) Damages and Termination. The awarding authority may deduct from the amount payable to the Contractor or Subcontractor by the City under any Contract or Property

 Contract subject to this Article 131, or may impose upon the Contractor or Subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Article. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Article or for the failure of any Contractor or Subcontractor to abide by the rules and regulations of the Commission, the Contract, Property Contract, or Subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in subsection (c)(1)(A) that the Contractor has discriminated contrary to the provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.
 - (2) *Irresponsible Bidder,* A breach of the nondiscrimination provisions in the

performance of a Contract, Property Contract, or Subcontract shall be deemed by the City to be a material breach of contract and the basis for determination by the awarding authority that the Contractor or Subcontractor is an irresponsible bidder as to all future Contracts or Property Contracts, for which such Contractor or Subcontractor may submit bids. Such Contractor or Subcontractor shall not for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Article, be allowed to act as a contractor or subcontractor under any contract or property contract for the City.

- (3) Remedial Compliance. A process for remedial compliance actions may be established in rules and regulations.
- (4) Withholding. The City may withhold payments under the Contract until the Contractor is in full compliance with this Article 131.
- (5) Nonexclusive Remedies. Nothing contained in this Article 131 shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law or equity or under any Contract or Property Contract.

SEC. 131.6. WAIVERS AND EXCEPTIONS.

- (a) Waivers by Director. The Director, or duly authorized designee, may waive in whole or in part the requirements of this Article 131 in the following circumstances:
- (1) Sole Source. When the Director finds, upon the advice of the awarding authority, that needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source.
- (2) Only One Qualified Bidder. When the Director finds, upon the advice of the awarding authority, that there is only one qualified, responsive bidder or proposer who can perform the work under the proposed agreement and who is not at that time disqualified from doing business with the City.

<u>reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public</u>

<u>Utilities Commission; provided, that the purchase of same may not practically be accomplished</u>

<u>through the City's standard competitive bidding procedures; and further provided, that this exemption</u>

<u>shall not apply to Contractors or franchisees providing direct, retail services to end users within the</u>

<u>City.</u>

(d) **Documentation.** All proposed waivers must set forth the reasons the Contracting Officer is requesting the waiver.

SEC. 131.7. SUPERSEDING AUTHORITY.

- (a) Federal or State Law Preemption. The requirements of this Article 131 shall not be in effect in the event they would conflict with federal or State laws, or the City Attorney determines they are reasonably likely to do so. Nothing in this Article shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or State law.
- (b) Grant or Subvention. If the requirements of this Article 131 would 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, the requirements of this Article shall not be in effect.

SEC. 131.8. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 131, 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. The Board of Supervisors hereby declares that it would have passed this Article 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 Article or

application thereof would be subsequently declared invalid or unconstitutional.

SEC. 131.9. OPERATIVE DATE AND SUNSET.

- (a) Operative Date. This Article 131 shall become operative on JulyJanuary April 1, 20256 and shall have prospective effect only.
- (b) Sunset. Unless extended by ordinance, this Article 131 shall expire by operation of law on JulyJanuaryApril 1, 20356. After the expiration, the City Attorney shall be authorized to cause this Article to be removed from the Labor and Employment Code.
- Section 4. The Labor and Employment Code is hereby amended by deleting Article 132, consisting of Sections 132.1 to 132.7, as follows:

ARTICLE 132: NONDISCRIMINATION IN PROPERTY CONTRACTS

SEC. 132.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts a provision obligating the contractor not to discriminate on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this Article or in retaliation for opposition to any practices forbidden under this Article against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or

other establishments or organizations, operated by that contractor, and shall require such contractor to include a similar provision in all subcontracts.

-(b) The requirements of this Article shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to as contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States.

SEC. 132.2. DEFINITIONS.

- As used in this Article 132, the term:
- -"Age" for the purpose of membership refers to the age of any person who has attained the age of 18 years, except for bona fide senior citizen organizations.
 - "City" shall mean the City and County of San Francisco.
- "Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or grants to be provided, or for goods or services to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into pursuant to settlement of legal proceedings, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

—"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

- "Director" shall mean the Director of the Human Rights Commission.

"Disability" is a physical or mental impairment which limits one or more major life activities, and includes being regarded as having such an impairment, or having a record of such an impairment.

"Domestic partner" shall mean any person who has a currently registered domestic

partnership with a governmental body pursuant to State or local law authorizing such registration.

"Gender Expression" shall mean the outward expression of one's gender identity, which may include, but is not limited to, clothing, hair styles, gestures, make up, or behavior which may or may not conform to societal expectations typically related to traits associated with a person's gender identity, sexual orientation, or assigned sex at birth.

—"Gender identity" shall mean how a person self-identifies their gender, or their internal understanding of their gender. A person's gender identity may or may not correspond with social norms or stereotypes related to the sex they were assigned at birth. There are many terms related to gender with which a person may identify, including but not limited to: agender; androgynous; bigender; eisgender man; eisgender woman; gender fluid; gender non-conforming; gender-expansive; genderqueer, non-binary, pangender, Two-Spirit, transgender, trans, transgender man, transgender woman, masculine, and feminine. One's gender identity may be described through any number of ever-expanding terms or definitions, and one's gender identity may be subject to change by the individual.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Article, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or

encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

- "Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

— "Sex" shall mean one's anatomical, physiological, genetic, or physical attributes, and the variation in these attributes that may or may not indicate male, female, or a different sex such as intersex. These attributes may include but are not limited to both primary and secondary sex characteristics, including internal and external reproductive organs, hormone levels, hormone receptors, chromosomes and genes, all of which may change over time. A person's sex may or may not align with their gender identity.

"Sexual orientation" shall mean one's physical, emotional, romantic, or sexual attraction to people of a particular gender or multiple genders, or lack thereof, and is distinct from their gender expression or gender identity. A person's sexual orientation may be identified by terms including, but not limited to, asexual, bisexual, gay, lesbian, heterosexual, homosexual, pansexual, and queer.

—"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property

contract.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

SEC. 132.3. NONDISCRIMINATION PROVISIONS.

Every contract and property contract entered into by any agency of the City shall incorporate by reference and require contractor to comply with the nondiscrimination provisions of Section 132.3. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements of this Section 132.3, and failure to do so shall constitute a material breach of contract.

— In the performance of a contract, the contractor or subcontractor shall agree as follows:

— (a) The contractor or subcontractor will not discriminate against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization operated by the contractor or subcontractor on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, AIDS/HIV status, weight, height, association with members of classes protected under this Article or in retaliation for opposition to any practices forbidden under this Article. Services provided by contractor or subcontractor to the public shall be provided regardless of disability of persons otherwise entitled to or qualified for such services.

—(b) Should the contractor or subcontractor operate as a membership organization, the contractor or subcontractor will permit access to its membership records, rules, regulations and other pertinent data, by the City's awarding authority, or the Commission, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Article, and on request provide

evidence that the contractor or subcontractor has complied or will comply with the nondiscrimination provisions of this Article. The Director shall be the final arbiter of a contractor's or subcontractor's compliance or substantial compliance with this Article and the Director's determination shall not be appealable to the Commission.

- -(c) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Article upon:
- (1) A finding by the Director or such other official who may be designated by the Commission, that contractor or subcontractor has wilfully violated such nondiscrimination provisions.
- (2)—Upon such finding by the Director or other official designated by the Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Section 132.3(d) and/or Section 132.3(g).
- (3) The Commission shall, within 10 days of the date of issuance of any findings by the Director or other official designated by the Commission for the enforcement of this Article, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.
- (4) For purposes of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 132.3(c)(1) of this Article, that Commissioner may not participate in an appeal under this Section except as a witness.
- (5) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail

or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoend such person, requiring his or her presence at the proceeding and requiring him or her to bring such books, records, documents or other things under his or her control.

— (6)—All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

— (7) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

— (8)—The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Article.

— (d)—A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be a material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible contractor or subcontractor as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not, for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Article, be allowed to act as a contractor or subcontractor under

any contract or property contract.

- (e) Nothing contained in this Article shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.
 - (f) The contractor or subcontractor will meet the following standards for compliance:
- (1) If the contractor or subcontractor has been held to be irresponsible under Section

 132.3(d) hereof, the contractor or subcontractor shall furnish evidence that it has established and is earrying out a program in conformity with the nondiscrimination provisions of this Article.
- (2) The contractor or subcontractor may be required to file with the Commission a basic compliance report. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.
- -(g) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Article, or may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Article. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Article or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 132.3(d) that the contractor or subcontractor has discriminated contrary to the provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

SEC. 132.4. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 132.3 thereof.

SEC. 132.5. FUNDING.

— The Board of Supervisors shall appropriate such funds from the General Fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for enforcement of this ordinance.

SEC. 132.6. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

-(a) The Director shall waive the requirements of this Article under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

— (2)—If the contracting department or commission certifies in writing to the Director that pursuant to Administrative Code Section 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Article capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

— (3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Article.

— (b)—This Article shall not apply where the prospective contractor is a public entity and the

Director finds that goods, services, construction services for a public work or improvement or interest
in or right to use real property of comparable quality or accessibility as are available under the

proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

—(c)—This Article shall not apply where the contracting officer finds that the requirements of this Article 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 Article.

— (d)—Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Article for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

— (1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Article and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

— (2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

— (3) Where the contracting officer determines that the requirements of this Article would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Article, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Article;

— (4) The waiver authority granted to contracting officers in this Section 132.6(d) shall be
subject to the requirements that:
— (i) All proposed waivers must be submitted to the Director and the Clerk of the Board of
Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the
waiver, what steps were taken to find an entity that complies with this Article and why the waiver does
not defeat the intent of this Article, which is to prohibit the City from entering into contracts with
entities that discriminate based on the criteria set forth in this Article. Such waivers shall be subject to
the prior approval of the Director, who shall take action approving or denying a proposed waiver
within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30
days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved.
The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next
available Board agenda, and
—— (ii) Contracting officers report to the Director whenever such a waiver is granted within
five days of granting the waiver, and
(iii) For any contract subject to approval by the Board, the contracting officer shall state
in the approving resolution whether any waiver under this Section 132.6(d) has been or is proposed to
be granted for that contract, and
(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver
authority by departments and shall make a report to the Board of Supervisors. Contracting officers who
have exercised waiver authority under this Section 132.6(d) in the previous quarter must appear before
a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds
abuse of waiver authority by a department under this Section 132.6(d), either as a result of a report of
the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for

that department to the Director, to be exercised by the Director upon recommendation of the

contracting officer under any or all of the circumstances enumerated in this Section 132.6(d);

— (5) Nothing in this Section 132.6(d) shall limit the right of the Board of Supervisors to waive the provisions of this Article.

- (e) This Article shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

— (1) No person, entity or financial institution doing business in the City and County which is in compliance with this Article is capable of performing the desired transactions(s); or

— (2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Article.

(f)—The General Manager of the Public Utilities Commission may waive the requirements of this Article 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 exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco.

SEC. 132.7. SEVERABILITY.

This Article shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Article shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall remain in effect.

Section 5. The Labor and Employment Code is hereby amended by revising Article 151, consisting of existing Sections 151.1 to 151.13, by replacing it with a new Article 151, consisting of Sections 151.1 to 151.9 that incorporate parts of existing Article 151, to read as follows:

ARTICLE 151: SWEATFREE CONTRACTING

SEC. 151.1. FINDINGS.

- The Board of Supervisors finds and declares the following:
- -(a) This Article shall be known as the Sweatfree Contracting Ordinance.
- -(b) Each year the City and County of San Francisco spends hundreds of millions of dollars contracting with private sector contractors for the purchase or rental of goods. The prudent expenditure of public dollars requires that the City select responsible contractors.
- (c)—The City and County, as a major purchaser of goods, must be cognizant of the labor conditions that may be supported by its actions as a major market participant. Better working conditions assure consistently better quality goods for the City and County, by assuring fewer disruptions in the workplace due to workers' grievances, fewer absences due to illnesses, less fatigue and fewer workplace injuries, less turnover of workers, and greater incentive to perform.
- (d) In its role as a market participant, the City and County seeks to assure that the integrity of the procurement process is not undermined by contractors or subcontractors who engage in sweatshop practices. Contractors who use Sweatshop Labor are able to underbid responsible

contractors who pay fair wages and maintain humane work environments and conditions. Such practices place responsible contractors at a competitive disadvantage, which may dissuade responsible contractors from participating in the City and County procurement process. This Article will encourage responsible contracting with the City and County and reduce any inadvertent support of contractors who use Sweatshop Labor.

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

SEC. 151.2. DEFINITIONS.

- For the purposes of this Article, the following definitions shall apply to the terms used herein.
- (a) "Abusive Forms of Child Labor" shall mean the following: work performed by a person under the age of 18 when the person does not voluntarily seek the work or the person is threatened by the person's employer with physical, mental or emotional harm for nonperformance; (2) work performed by a person under the age of 18 in violation of any applicable law of the country of manufacture or assembly governing the minimum age of employment, compulsory education, or occupational health and safety; or (3) the use of a person under the age of 18 for illegal activities, including but not limited to the production or trafficking of illicit drugs or for prostitution.
- (b) "Contract" shall mean an agreement for Goods for an amount greater than \$25,000 and having a term in excess of three months to be purchased or provided at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City and County. "Contract" shall also mean any amendment to a contract entered into after the effective date of this Article that causes the amount of the contract to exceed \$25,000 or causes the term to exceed three months.
- (c)—"Contractor" shall mean any person or persons, association, cooperative, firm, partnership, corporation, company, venture, trustee, trustee in bankruptcy, receiver, or combination thereof who enters into a Contract with the City and County.

- (d) "Director" shall mean the Director of the Office of Contract Administration.
- (e) "Foreign Convict or Forced Labor" shall mean any form of labor used to produce or manufacture goods prohibited from importation into the United States under 19 U.S. C. § 1307, which includes Abusive Forms of Child Labor and Slave Labor.
- (f) "Good" shall mean any good, including without limitation, any material, supply, or equipment.
- (g) "Slave Labor" shall mean any form of slavery, sale and trafficking of persons, debt bondage, indentured servitude, serfdom, or forced or compulsory labor.
- (h) "Subcontract" shall mean any subcontract agreement or arrangement directly with a Contractor for any work under a Contract (first tier subcontract) and shall mean any subcontract agreement or arrangement between subcontractors, at any tier, except for any agreement or arrangement between subcontractors if the amount of the agreement or arrangement is less than the lesser of (1) 10 percent of the amount of the higher tier subcontractor's work; or (2) \$25,000.

 "Subcontract" also shall mean any subcontract agreement or arrangement that any Contractor or Subcontractor creates by dividing work into smaller increments for award to any subcontracting entity created for the purpose of awarding a subcontract that is not subject to this Article on the basis that it fails to meet either of the monetary thresholds for a Subcontract set above in this subsection (h).
- (i) "Subcontractor" shall mean any person or persons, association, cooperative, firm, partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof including without limitation any subcontractor, entering into a Subcontract.
- (j) "Sweatshop Labor" shall mean work performed by any Worker under terms or conditions that seriously or repeatedly violate laws of the jurisdiction within which the work is performed governing: (i) wages: (ii) employee benefits; (iii) health and safety, including without limitation exposure to hazardous or toxic substances; (iv) labor, including without limitation collective bargaining rights; (v) environmental conditions; (vi) nondiscrimination, harassment, or retaliation,

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

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

SEC. 151.3. PROHIBITION ON SWEATSHOP CONDITIONS.

- Each Contractor and Subcontractor shall comply with each of the following requirements:
- (a)—Each Contractor and Subcontractor, regarding any Worker, shall comply with all human and labor rights and labor standards imposed by treaty or law on the country in which the Goods are made or assembled, and shall not engage in Sweatshop Labor.
- (b)—Each Contractor and Subcontractor shall pay at least the following minimum wages to Workers: (1) to Workers working in the United States a base hourly wage, to be set and adjusted annually by the Director, to produce for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services most recent poverty guidelines for a family of three plus an additional 20 percent of the wage level paid, including without limitation amounts paid as hourly wages or health benefits or retirement benefits; and (2) for Workers working in countries other than the United States, a wage, to be set and adjusted annually by the Director, that shall be comparable to the wage for domestic manufacturers established above, adjusted to reflect the country's level of economic development by using the World Bank's most recent Gross National Income per capita Purchasing Power Parity Index.
- -(c) This Article specifies a minimum level of compensation to be paid Workers and shall not be construed to preempt or otherwise limit any other applicable law, regulation or requirement that

requires a higher level of compensation.

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

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

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

-(g) All Contractors and Subcontractors shall comply with the overtime laws and regulations applicable to their Workers. In the absence of a law setting overtime compensation, overtime hours shall be compensated at the rate of one-and-one-half times the regular hourly compensation rate. All overtime hours worked beyond 48 hours of working time per work week shall be worked voluntarily, except mandatory overtime above that 48-hour mark is permitted if each of the following conditions is satisfied: (1) the law of the country of manufacture permits mandatory overtime, (2) the manufacturing

facility is party to a collective bargaining agreement that permits mandatory overtime, and (3) the mandatory overtime hours are worked in conformance with the collective bargaining agreement.

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

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

-(i) Before commencing any work under the Contract, the Contractor shall provide the City and County a list of the names and addresses of each Subcontractor to be utilized in the performance of the Contract, the Contractor's and each Subcontractor's applicable State tax identification number and the address of each manufacturing or other facility or operation of the Contractor and its Subcontractors for the performance of the Contract. The Office of Contract Administration shall post this information on its internet website before a Contractor or any of its Subcontractors may commence work under the Contract. Contractor shall update the list to show any changes in the Subcontractors or the facilities or operation during the term of the Contract. Before commencing any work under the Contract, the Contractor also shall provide the City and County a written statement showing the amount to be paid each Subcontractor and shall update this information in writing to show changes in the amount to be paid any Subcontractor or amounts to be paid Subcontractors added after submittal of the most recent statement to the City and County. Amounts to be paid to subcontractors may be reported in ranges of \$20,000.00 to \$50,000.00; \$50,001.00 to \$100,000.00; \$100,001.00 to \$250,000.00; \$250,001.00 to \$500,000.00; above \$500,000.00; or such other ranges as the Director, after consultation with the Office of Labor Standards Enforcement and Sweatfree Procurement Advisory Group, deems appropriate to effectively implement this Article. Updates in the amount to be paid a Subcontractor or Subcontractors after submittal of the most recent statements to the City and

County need only be submitted if the changed amount would fall into a different range.

— (k)—During each year of the term of a Contract, the Director, the Office of Labor Standards

Enforcement, or the Director's designee may request a written assurance from the Contractor and each
of its Subcontractors that the Contractor or Subcontractor is in compliance with this Article. The
request may seek confirmation of compliance with some or all of the requirements of this Article, and
may require the response to be submitted under penalty of perjury. The Contractor or Subcontractor
shall provide the written assurance within the time period specified by the Director, the Office of Labor
Standards Enforcement, or the Director's designee, which shall not be less than 14 days from receipt of
the request.

-(l) Each Contractor and Subcontractor shall be responsible for ensuring the Subcontractor's compliance with this Article.

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

SEC. 151.4. CONTRACTUAL REQUIREMENT.

Each Contract shall include an agreement by the Contractor to comply with the requirements of this Article, and shall incorporate this Article by reference. Contracts shall provide the following:

(1) that in the event the Director determines that any Contractor or Subcontractor has failed to comply with any provision of this Article or any regulations implementing this Article, the Contractor shall be liable for liquidated damages equal to the greater of \$1,000 or 20% of the amount of the Goods provided in violation of this Article, as determined by the Director; and (2) the City and County may deduct any liquidated damages owed by a Contractor from any monies owed the Contractor under the

8

9

10 11

12 13

14

15

16

17 18

19 20

22

21

23 24

25

Contract or any other agreement that the Contractor has with the City and County.

SEC. 151.5. PHASE-IN PERIOD.

- During the first full fiscal year of the City and County after the effective date of this Article, the City and County shall target for enforcement only Contracts for apparel, garments and corresponding accessories, materials, supplies or equipment. Agreements for other Goods shall be targeted for enforcement in accordance with the procedure set forth in Section 151.7.

SEC. 151.6. ADDITIONAL GOODS COVERED BY ORDINANCE.

- In addition to Contracts for apparel, garments and corresponding accessories, materials, supplies or equipment, contracts for the following goods shall be targeted for enforcement:

-(a) Textiles; meaning all items of cloth that are produced by weaving, knitting, felting, sewing, or similar production processes, including but not limited to such cloth items as sheets, pillows, pillowcases, towels, blankets, comforters, bath mats, mattress covers, table linens, cloth napkins, cleaning cloths, draperies, upholstery, rugs, and entrance mats, but excluding earpets.

SEC. 151.7. ADVISORY GROUP.

-(a) The City and County shall establish a Sweatfree Procurement Advisory Group. The Sweatfree Procurement Advisory Group shall evaluate the industries engaged in the manufacture and sale of goods to determine whether contracts for any goods, in addition to apparel and garments, should be targeted for enforcement, and to evaluate the implementation, administration, and enforcement of this Article. To determine whether a particular good shall be targeted for enforcement, the factors that the Sweatfree Procurement Advisory Group shall consider shall include, but not be limited to: (a) the amount the City and County has spent, and anticipates spending for such good; (b) evidence of Sweatshop Labor or other conditions prohibited by this Article in the manufacturing, assemblage or distribution of such good; and (c) any financial impact that targeting the good for enforcement will have on the City and County. At the end of the first full fiscal year of the City and County following the effective date of this Article, and annually thereafter, the Sweatfree Procurement

Advisory Group shall submit a written report to the Director and the Office of Labor Standards

Enforcement that contains any recommendations on the administration, implementation, and
enforcement of this Article, or the application of this Article to other goods. The report shall include the
supporting information upon which each recommendation is based and a report on the financial impact
that adoption of the recommendation will have on the City and County. The Director may submit any
recommendation to extend the applicability of this Article to other goods to the Board of Supervisors.
Upon the adoption of an ordinance approving such recommendation, Contracts for the purchase of
such goods shall be subject to this Article. The Director in the Director's discretion may adopt other
recommendations of the Sweatfree Procurement Advisory Group subject to the Municipal Code and the
Charter.

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

— (c)—The Sweatfree Procurement Advisory Group shall consist of eleven members. The Mayor and the Board of Supervisors shall each appoint five members. The Controller shall appoint one member. Each member shall be appointed to a term of two years. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must have significant experience representing employees in labor matters. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must have significant experience acquiring goods or services for a public entity. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must have significant experience as an advocate for human rights or the poor. The Controller's appointee

shall have significant experience in finance, financial auditing, or accounting. All members of the Sweatfree Procurement Advisory Group shall be appointed within sixty days of the effective date of this Article. Each member shall serve at the pleasure of the appointing authority. The Sweatfree Procurement Advisory Group shall meet not less than once each fiscal year.

SEC. 151.8. ADMINISTRATION AND ENFORCEMENT.

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

— (b) Until such time as the City and County determines that it is able to adequately monitor compliance with this Article using City personnel, the City and County shall, subject to the Charter, including without limitation its budgetary and fiscal provisions, and the Municipal Codes, enter into an agreement with an independent non-profit organization with expertise in monitoring and reporting on Sweatshop Labor for assistance monitoring the compliance of Contractors. This subsection does not in anyway limit the City's ability to contract for assistance under subsection 151.8(a).

— (c)—Each Contractor and Subcontractor shall cooperate fully with any investigation of the Director, the Office of Labor Standards Enforcement, the Director's designee or contractors, including without limitation any independent non-profit monitor, and other City employees and agents authorized to assist in the implementation, administration or enforcement of this Article. Such persons or entities shall, in the performance of their duties, have the right to engage in random inspections of any worksite where the Contract or any Subcontract is performed and have access to any Worker or any record required to be maintained in Section 151.3.

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

- (1) Assess liquidated damages as provided for in the Contract.
- (2) *Terminate the Contract.*

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

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

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

— (6) Any Contractor or Subcontractor shall provide the Director or the Director's designees or contractor, and other City employees and agents authorized to assist in the administration and

enforcement of this Article immediate access to the facility or operation where the violation has occurred for an inspection of the facility or operation and records, and interviews of Workers.

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

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

SEC. 151.9. EFFECTIVE DATE.

This Article shall be effective ninety days after it is adopted. This legislation is intended to have prospective effect only.

SEC. 151.10. EXCEPTIONS.

- This Article shall not apply in the following circumstances:
- (a) When a Contract involves the expenditure of funds received by the City and County and the application of this Article would violate or be inconsistent with the terms or conditions of the applicable grant agreement, subvention or agreement or the instructions of an authorized representative of any such agency with respect to any such grant agreement, subvention or agreement.
- (b) When the Director or the Director's designee determines that there is only one responsible contractor available to provide the Goods and that contractor is unable to comply with this Article, or the City and County department, commission, office or other City and County entity seeking to enter into the contract certifies in writing to the Director, and the Director finds that there are no qualified responsive bidders or proposers or prospective contractors that would comply with the requirements of this Article and the Contract is for Goods that are essential to the City or the public.

This subsection (b) is subject to the provisions of Section 151.11. If a waiver is granted pursuant to this subsection (b), the Contract entered into as a result of the waiver may be for a term of no greater than two years.

- (c) When the Contract is with a public entity.
- (d) When the acquisition of Goods is only incidental to the other purchases under the Contract. The acquisition of Goods shall be incidental if the amount paid by the City for the Goods is 10 percent or less than the total amount of the Contract.
- (e)—If the department recommending the Contract certifies in writing to the Director that pursuant to Administrative Code Section 6.60 or 21.15 that the Contract is necessary to respond to an emergency which endangers the pubic health or safety and no entity which complies with the requirements of this Article capable of responding to the emergency is immediately available.

SEC. 151.11. AWARD OF CONTRACT ABSENT A SWEATFREE-COMPLIANT BID OR PROPOSAL.

- (a)—It is the City's goal to achieve full compliance with this Article. But, in the absence of bids or proposals that are fully compliant with the provisions of this Article, the City should have authority to award Contracts to the bidder or proposer that is most compliant with this Article. If, in response to a solicitation for bids or a request for proposals, the City receives no bids or proposals that are fully compliant with the provisions of this Article, the Director is authorized to enter into a Contract with a noncompliant bidder or proposer, according to the following principles.
- (b) Notwithstanding the determination of low bid or highest ranked proposal, the Director shall have authority to determine which bidder or proposer most substantially complies with this Article, and shall award the Contract to that bidder or proposer.
- —(c) No Contract awarded pursuant to subsection (b) may exceed two years in term unless the Director determines, no later than six months prior to the expiration of the original term of the Contract, that the Contractor has achieved an additional level or levels of compliance with the

provisions of this Article that warrants exercise of an option to extend the Contract for up to an additional year.

-(d) Any Contract awarded pursuant to subsection (b) shall be terminated by the Director during the original term of the Contract or any extension of the original term if the Director determines that the Contractor (i) is not making a good faith effort to achieve an additional level or levels of compliance with the provisions of this Article or (ii) has not corrected within a reasonable time, as defined by the Director, a specific violation of this Article that the City discovers after award of the Contract. In addition, the Director shall include in any Contract awarded pursuant to subsection (b) a compliance plan that identifies deficiencies in the bid or proposal and specifies a condition or conditions and related timetables designed to achieve an additional level or levels of compliance with the provisions of this Article no later than six months prior to the expiration of the original term of the Contract; and failure of the Contractor to satisfy said compliance plan may serve as the basis for the Director to terminate the Contract.

—(e)—Standards for determining most substantial compliance under subsection (b) and additional level or levels of compliance under subsections (c) and (d) shall be adopted by the Director following consultation with the Office of Labor Standards Enforcement and the Sweatfree Procurement Advisory Group, and a public hearing. Such standards shall give due consideration to the City's need to receive information from bidders and Contractors to enable the City to monitor compliance with this Article; the degree to which a particular requirement of the Ordinance is not being complied with by a bidder or Contractor; the number of requirements of the Ordinance that are not being complied with by a bidder or Contractor; practical difficulties faced by bidders and/or Contractors generally in complying with a particular requirement of the Ordinance; the relative importance, if ascertainable, of the different labor standards set forth in Section 151.3; and such other factors as may be relevant to achieving maximum compliance with this Article.

- Such standards shall become operative on the effective date of this Section if they are

adopted by the Director before then. Such standards shall become operative on the date they are adopted by the Director if that occurs after the effective date of this Section.

- In addition, the Director has authority to adopt rules and procedures that implement this Section.
- -(f) The Director shall not award a Contract pursuant to subsection (b) where the cost of that contract would exceed the low bid or highest ranked proposal by more than 15 percent.
- -(g) The Director shall maintain a record of contracts issued under this Section to
 noncompliant bidders and proposers. This information shall be compiled on an annual fiscal year basis
 and reported to the Board of Supervisors upon written request to the Director by any member of the
 Board of Supervisors.
- (h) Neither subsection (b) nor any other provision in this Section shall override the Director's authority to reject all bids or proposals or take other action within his or her legal authority.

SEC. 151.12. PREEMPTION.

-Nothing in this Article shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

SEC. 151.13. SEVERABILITY.

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

SEC. 151.1. GENERAL PROVISIONS.

(a) Name of Article. This Article shall be known as the "Sweatfree Contracting Ordinance."

(b) Findings.	The Board	of S	Supervisors 1	finds and	! declares i	the	following	ζ.

- (1) Each year the City spends hundreds of millions of dollars contracting with private sector contractors for the purchase or rental of goods. The prudent expenditure of public funds requires that the City select responsible contractors.
- (2) The City, as a major purchaser of goods, must be cognizant of the labor conditions that may be supported by its actions as a major market participant. Better working conditions assure consistently better quality goods for the City, by assuring fewer disruptions in the workplace due to workers' grievances, fewer absences due to illnesses, less fatigue and fewer workplace injuries, less turnover of workers, and greater incentive to perform the work well.
- (3) In its role as a market participant, the City seeks to assure that the integrity of the procurement process is not undermined by entities that engage in sweatshop practices. Contractors who source goods from manufacturers that use Sweatshop Labor are able to underbid responsible contractors who source goods from manufacturers who pay fair wages and maintain humane work environments and conditions. Such practices place responsible contractors at a competitive disadvantage, which may dissuade responsible contractors from participating in the City procurement process. This Article 151 will encourage responsible contracting with the City and reduce any inadvertent support of manufacturers that use Sweatshop Labor.
- (4) By adopting this Article 151, the City does not intend to preclude the City or its contractors or subcontractors from doing business with any foreign country.

SEC. 151.2. SCOPE OF ARTICLE.

(a) Authority. This Article 151 governs the obligations of a person or entity entering into an agreement with the City at the expense of the City or to be paid out of moneys deposited in the Treasury or out of trust moneys under the control of or collected by the City, or agreements for the exclusive use of City-owned property.

by a person under the age of 18 in violation of any applicable law of the country of manufacture or assembly governing the minimum age of employment, compulsory education, or occupational health and safety; or (3) the use of a person under the age of 18 for illegal activities, including but not limited to the production or trafficking of illicit drugs or for prostitution.

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

"Contract" means an agreement subject to this Article 151 as stated in Section 151.2.

"Contracting Department" or "Department" means the City department, office, commission, or other City entity that enters into the applicable Contract on behalf of the City.

"Contracting Officer" means the City official or employee who is authorized to execute a contract, either as a Department Head or as a designee appointed in writing by the Department Head, board, or commission as having the authority to sign contracts for the Department.

"Contractor" means any person or persons, firm, partnership, corporation, or combination
thereof that enters into a contract or property contract with a Department Head or officer empowered
by law to enter into contracts or property contracts on behalf of the City.

"Covered Goods" means apparel and garments (including any accessories, materials, supplies, or equipment associated with the apparel or garments) that are assembled together through weaving, knitting, felting, sewing, or other production process in a Factory for a Manufacturer from which a Contractor secures apparel and garments for the purpose of selling said apparel and garments to the City. Notwithstanding the prior sentence, Covered Goods shall exclude: (1) goods purchased for a service Contract, where the goods are incidental to the provision of the service; (2) apparel and garments procured for a public works related contract, such as safety vests and helmets; and (3) uniforms, garments, and shoes that require special production processes to ensure the safety of the wearer in the fulfillment of public health and public safety, including but not limited to: firefighting gear, neoprene gloves, ballistic vests and body armor, helmet covers, medical gowns, personal protective equipment, or similar items.

"Department Head" means the duly appointed General Manager, Director, or Executive Director of a City department having charge and management of said department.

"Director" means the Director of the Office of Contract Administration, also known as the Purchaser, or the Director's designee.

"Factory" means a facility that manufactures or otherwise contributes significantly to the production of a Covered Good. For apparel, the Factory is the facility that manufactures the Covered Good by cutting and assembling through processes such as but not limited to: sewing, weaving, knitting, or felting, and may also include the facility that finishes and applies marks to the Covered Goods.

"Foreign Convict or Forced Labor" means any form of labor used to produce or manufacture goods prohibited from importation into the United States under 19 U.S. C. § 1307, as may be amended from time to time, which includes Abusive Forms of Child Labor and Slave Labor.

"Labor Laws" means those laws specifying responsibilities and rights in employment, including, but not limited to laws governing: (1) wages; (2) employee benefits; (3) health and safety, including without limitation exposure to hazardous or toxic substances; (4) collective bargaining rights; (5) environmental conditions; (6) nondiscrimination, harassment, or retaliation, including without limitation all laws prohibiting workplace and employment discrimination; (7) freedom of association; or (8) building or fire codes.

"Manufacturer" means a person or business that owns an apparel brand.

"Slave Labor" means any form of slavery, sale and trafficking of persons, debt bondage, indentured servitude, serfdom, or forced or compulsory labor.

"Sweatshop Labor" means work performed in a Factory by any Worker for the purpose of producing a Covered Good under terms or conditions that: (1) seriously or repeatedly violate Labor Laws of the jurisdiction within which the work is performed; or (2) constitute Foreign Convict or Forced Labor, Abusive Forms of Child Labor, or Slave Labor.

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

(vi) Do not otherwise comply with all human rights laws and Labor Laws imposed by treaty or law on the country in which the Factories that make or assemble the Covered Goods are located, unless the City determines that such laws are inconsistent with this Article 151.

(C) Minimum Standards. This Article 151 specifies the basic rights afforded to Workers. This Article does not preempt or limit any other applicable law, regulation or requirement, or decision by a private entity, that requires a higher level of compensation or rights.

(2) Records Retention.

(A) Worker Related Records. Each Contractor shall require the

Manufacturers from which Covered Goods are procured to maintain for a period of not less than three years from the date of the expiration or termination of the term of the Contract, basic payroll and time records for each Worker, and copies of any tax records filed with a governmental entity during the term. Such records shall include the following for each Worker: (i) name and job classification; (ii) the rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); (iii) the daily and weekly number of hours worked; (iv) deductions made; and (v) any actual wages paid.

(B) Inspection by City. Each Contractor shall require the Manufacturers from which Covered Goods are secured to make all records required to be maintained by this Article

151 available at all times for inspection and examination by the duly authorized officers and agents of the City.

(C) Lists of Manufacturers and Factories. Each Contractor shall maintain and, upon request of the City, provide the City a list of the names, addresses, and State tax identification numbers, as applicable, of all Manufacturers from whom the Covered Goods are sourced and the Factories in which the Covered Goods are produced. The Contractor also shall provide the City a written statement showing the amount to be paid each Manufacturer and/or Factory and shall update this information in writing upon request to show changes in the amount to be paid.

Director, the Office of Labor Standards Enforcement, or the Director's designee may request a written assurance from the Contractor and each of its Manufacturers and/or Factories that they are in compliance with this Article 151. The request may seek confirmation of compliance with some or all of the requirements of this Article, and may require the response to be submitted under penalty of perjury. The Contractor, Manufacturer, and/or Factory shall provide the written assurance within the time period specified by the Director, the Office of Labor Standards Enforcement, or the Director's designee, which shall not be less than 14 days from receipt of the request.

SEC. 151.5. ADMINISTRATION AND REMEDIES.

(a) Administration of Article.

(1) Office of Contract Administration. The Director of the Office of Contract

Administration shall implement and administer the procurement requirements of this Article 151. The

Director is authorized to create and maintain a prequalified list of Manufacturers that meet the

requirements of this Article, and awarded Contractors using listed Manufacturers in performance of a

Contract shall be deemed in compliance with this Article. The Director of Contract Administration may

develop rules and regulations to implement such a prequalified list program.

- (2) Office of Labor Standards Enforcement. The Director of the Office of Labor Standards Enforcement shall monitor compliance with this Article 151 and work jointly with the Office of Contract Administration to make recommendations on the enforcement and remedies for violations of this Article.
- (3) Cooperative Implementation. The City may, subject to the Charter, including without limitation its budgetary and fiscal provisions, and the Municipal Code, enter into contracts with any entity and cooperative agreements or arrangements with any public entity for assistance in implementing, administering, or enforcing this Article 151, and shall explore efficient and cost-effective mechanisms for ensuring the compliance of Contractors.
- (b) Rules and Regulations. The Director of the Office of Contract Administration may promulgate rules and regulations for the implementation of the Article 151.

(c) Enforcement.

- (1) Office of Labor Standards Enforcement. When allegations of violations of this

 Article 151 are brought to the attention of the Office of Labor Standards Enforcement, the Director of
 the Office of Labor Standards Enforcement shall promptly review the allegations and, if confirmed,
 recommend appropriate enforcement actions.
- (2) Use of External Sources of Information. When determining whether there is a violation of this Article 151, the Office of Labor Standards Enforcement shall take into consideration relevant and reliable information including, but not limited to, information provided by the Contractor on behalf of the Manufacturer, reports from reputable national and international organizations, documented media reports, and credible information from local groups and organizations.
- (3) City Departments to Cooperate with Agencies. Each City department, when requested by the Director of the Office of Contract Administration, shall cooperate in the implementation or administration of this Article 151, and when requested by the Director of the Office of Contract Administration or the Director of Office of Labor Standards Enforcement, shall cooperate

with the enforcement of this Article by providing relevant information that is in the department's possession and control, and providing any other assistance that it is feasible for the department to provide.

Manufacturers and/or Factories that they cooperate fully with any investigation of the Director of the Office of Labor Standards Enforcement, the Director's designee or contractors, including without limitation any independent non-profit monitor, and other City employees and agents authorized to assist in the implementation, administration, or enforcement of this Article 151. Such persons or entities shall, in the performance of their duties, have the right to engage in random inspections of any Factories where the Covered Goods are manufactured and have access to any Worker or any record required to be maintained in Section 151.4.

(d) Remedies for Violations of this Article.

If the Office of Labor Standards Enforcement determines that a Contractor or the Manufacturer or Factory from which it sources Covered Goods has violated this Article 151, or has not corrected within a reasonable timeframe, as defined by the Director of Office of Labor Standards Enforcement, a specific violation of this Article that the City discovers after award of the Contract, the Director of the Office of Labor Standards Enforcement may recommend that the awarding authority take some or all of the following measures:

- (1) Assess the Contractor with a statutory penalty equal to the greater of \$1,000 or 20% of the value of the procured equipment, goods, supplies, or materials.
 - (2) *Terminate the Contract.*
- (3) Commence debarment proceedings pursuant to Chapter 28 of the Administrative Code against the Contractor, Manufacturer, and/or Factory.
- (4) Withhold payments under the Contract until the Contractor or its Manufacturers or Factories are in full compliance with this Article.

- (5) Require the Contractor, Manufacturer, or Factory, at its expense, to provide training and best practices guidelines to managers and employees at the facility or operation where the violation occurred, to ensure future compliance. Upon request by the Director of the Office of Labor Standards Enforcement or the Director's designee, the Contractor, Manufacturer, or Factory shall submit such materials for the City's review and approval prior to distribution to managers and employees.
- (6) Inspect records and the facility or site where the violation occurred and interview Workers.
- (7) During the term of the Contract, but not more than once every 30 days, require the Contractor to provide a written report of the steps Contractor, Manufacturer, or Factory have taken to remedy the noncompliance and any difficulties encountered in curing the noncompliance. The request may require the response to be submitted under penalty of perjury. The Contractor shall provide the written report within the time period specified by the Director, the Office of Labor Standards Enforcement, or the Director's designee, which shall not be less than 14 days from receipt of the request.
 - (8) Pursue any other remedies available to the City at law or in equity.

(e) Advisory Group.

(1) The City shall establish a Sweatfree Procurement Advisory Group. The Sweatfree Procurement Advisory Group shall evaluate the industries engaged in the manufacture and sale of goods to determine whether contracts for any goods, in addition to apparel and garments, should be targeted for enforcement, and to evaluate the implementation, administration, and enforcement of this Article. To determine whether a particular good shall be targeted for enforcement, the factors that the Sweatfree Procurement Advisory Group shall consider shall include, but not be limited to: (a) the amount the City has spent, and anticipates spending, for such good; (b) evidence of Sweatshop Labor or other

conditions prohibited by this Article in the manufacturing, assemblage, or distribution of such good; and (c) any financial impact that targeting the good for enforcement will have on the City. At the end of the first full fiscal year of the City following the effective date of this Article, and annually thereafter, the Sweatfree Procurement Advisory Group shall submit a written report to the Director and the Office of Labor Standards Enforcement that contains any recommendations on the administration, implementation, and enforcement of this Article, or the application of this Article to other goods. The report shall include the supporting information upon which each recommendation is based and a report on the financial impact that adoption of the recommendation will have on the City. The Director may submit any recommendation to extend the applicability of this Article to other goods to the Board of Supervisors. Upon the adoption of an ordinance approving such recommendation, Contracts for the purchase of such goods shall be subject to this Article. The Director, in the Director's discretion, may adopt other recommendations of the Sweatfree Procurement Advisory Group subject to the Municipal Code and the Charter.

- (2) The Sweatfree Procurement Advisory Group shall determine how the City may maximize its purchase of goods produced in San Francisco. Within four months of its formation, the Sweatfree Procurement Advisory Group shall examine how the City and County may provide preferences and/or incentives to garment industry manufacturers in San Francisco that are in compliance with this Article, and explore the expansion of preferences and/or incentives to other industries. Within the four-month period, the Sweatshop Procurement Advisory Group shall propose legislation to immediately implement the preferences and/or incentives.
- (3) The Sweatfree Procurement Advisory Group shall consist of eleven members. The Mayor and the Board of Supervisors shall each appoint five members. The Controller shall appoint one member. Each member shall be appointed to a term of two years.

At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must have significant experience representing employees in labor matters. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must have significant experience acquiring goods or services for a public entity. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must have significant experience as an advocate for human rights or the poor. The Controller's appointee shall have significant experience in finance, financial auditing, or accounting. All members of the Sweatfree Procurement Advisory Group shall be appointed within sixty days of the effective date of this Article. Each member shall serve at the pleasure of the appointing authority. The Sweatfree Procurement Advisory Group shall meet not less than once each fiscal year.

(4) Enactment of the ordinance in Board File No. 250192 revising and reorganizing this Article, shall not impact the existing membership of the Sweatfree Procurement Advisory Group, or the terms of said members.

SEC. 151.6. WAIVERS AND EXCEPTIONS.

- (a) Waivers by Director. The Director, or duly authorized designee, may waive in whole or in part the requirements of this Article 151 in the following circumstances:
- (1) Sole Source. When the Director finds, upon the advice of the awarding authority, that needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source.
- (2) Only One Qualified Bidder. When the Director finds, upon the advice of the awarding authority, that there is only one qualified, responsive bidder or proposer who can perform the work under the proposed agreement and who is not at that time disqualified from doing business with the City.
 - (3) No Compliant Bidders. When the Director finds, upon the advice of the

awarding authority, that there are no qualified, responsive bidders or prospective contractors who could be certified as being in compliance with the requirements of this Article 151.

- (4) Adverse Impact on Services. Where the Director determines that the public interest warrants the granting of a waiver because application of this Article 151 would have an adverse impact on services or substantial adverse financial impact on the City, or would circumvent the purposes of this Article.
- (5) Cooperative Purchasing. When an agreement has been procured under Administrative Code Sections 6.77 or 21.16, and the Director finds that application of this Article 151 would mean: (A) a purchase under such arrangement would substantially reduce the City's cost of purchasing such services; (B) a purchase under such an arrangement is in the best interest of the City; and (C) adherence to the requirements of this Article 151 would prevent the awarding agency from entering into such an agreement.
- (b) Waiver by Treasurer for Investments. This Article 151 shall not apply to the following:

 (1) the investment of trust moneys or agreements relating to the management of trust assets, (2) City

 moneys invested in the City's investment pool, or (3) the investment of City moneys, where the

 Treasurer finds that:
- (A) No person, entity, or financial institution doing business in the City that is in compliance with this Article is capable of performing the desired transaction(s); or
- (B) Applying this Article would, in the opinion of the Treasurer, violate the Treasurer's fiduciary duties.
- (c) Waiver by Public Utilities Commission. The General Manager of the Public Utilities

 Commission may waive the requirements of this Article 151 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 exemption

shall not apply to Contractors or franchisees providing direct, retail services to end users within the

City.

(d) **Documentation.** All proposed waivers must set forth the reasons the Contracting Officer is requesting the waiver.

SEC. 151.7. SUPERSEDING AUTHORITY.

- (a) Federal or State Law Preemption. The requirements of this Article 151 shall not be in effect in the event they would conflict with federal or State laws, or the City Attorney determines they are reasonably likely to do so. Nothing in this Article shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or State law.
- (b) Grant or Subvention. If the requirements of this Article 151 would 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, the requirements of this Article shall not be in effect.

SEC. 151.8. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 151, 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. The Board of Supervisors hereby declares that it would have passed this Article 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 Article or application thereof would be subsequently declared invalid or unconstitutional.

SEC. 151.9. OPERATIVE DATE AND SUNSET.

- (a) Operative Date. *This Article 151 shall become operative on JulyOctober January 1,*20256 and shall have prospective effect only.
- (b) **Sunset.** Unless extended by ordinance, this Article 151 shall expire by operation of law on JulyOctober 1, 2035. After the expiration, the City Attorney shall be authorized to cause this Article to be removed from the Labor and Employment Code.

Section 6. The Administrative Code is hereby amended by revising Chapter 12F, consisting of existing Sections 12F.1 to 12F.7, by replacing it with a new Chapter 12F, consisting of Sections 12F.1 to 12F.9 that incorporate parts of existing Chapter 12F, to read as follows:

CHAPTER 12F: IMPLEMENTING THE MACBRIDE PRINCIPLES - NORTHERN IRELAND

SEC. 12F.1. INTENT.

- This ordinance is set forth in order to accomplish the following objectives:
- -(a) To declare the City and County of San Francisco's opposition to any form of religious discrimination.
- (b) To influence any discriminatory practices of American corporations doing business in Northern Ireland.
- (c) To support efforts to effect peaceful change with regard to the situation in Northern Ireland by means that are prudent and responsible.
- (d) To send legislation to the government of the United Kingdom stating that the people of San Francisco oppose religious discrimination and encouraging the government of the United

Kingdom to take more pro-active measures in support of affirmative action.

— (e) To express the support of the Board of Supervisors of the City and County of San

Francisco for the implementation of the MacBride Principles by companies from the United States who conduct business in Northern Ireland.

SEC. 12F.2. FINDINGS.

- The Board of Supervisors hereby makes the following findings:
- (a)—The people of the City and County of San Francisco recognize the moral responsibility of communities to continually take political steps toward insuring that full human rights are obtained for all people and that religious discrimination is abolished.
- —(b) Northern Ireland is a sectarian state in which the rights of the Irish Catholic minority citizens have been severely restricted, particularly in terms of equal employment opportunities. The result of this religious discrimination has been an unemployment rate for Catholics which is more than twice that of the majority Protestants.
- —(c)—The internationally recognized MacBride Principles are aimed at reducing employment discrimination in companies doing business in Northern Ireland, currently 26 of which are American firms. These MacBride Principles have been formally adopted by numerous state and local governments, including the States of New York, Connecticut, New Jersey, Massachusetts, Rhode Island and the Cities of New York, Philadelphia, Worcester, Hartford, Cleveland, Detroit, Chicago, Providence and Wilmington.
- (d) The MacBride Principles are authorized by Dr. Sean MacBride, distinguished Irish statesman, Nobel Peace Prize laureate and founder of Amnesty International.
- (e)—The City of San Francisco has a tradition of regulating the use of public monies to ensure that purchases, deposits and investments are made consistent with moral standards in a manner which promotes public welfare.
 - -(f) In keeping with this tradition, the Board of Supervisors seeks, through City policy, to

influence those who do business in Northern Ireland.

- (g) This legislation should not be construed to discourage future investment in Northern Ireland.
- -(h) A peaceful solution of the troubles in Northern Ireland depends on elimination of discrimination.

SEC. 12F.3. THE MACBRIDE PRINCIPLES.

- The MacBride Principles call for affirmative action to be taken by institutions and companies doing business in Northern Ireland, by:
- A. Increasing the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs.
- A work force that is severely unbalanced may indicate prima facie that full equality of opportunity is not being afforded all segments of the community in Northern Ireland. Each signatory to the MacBride Principles must make every reasonable, lawful effort to increase the representation of underrepresented religious groups at all levels of its operations in Northern Ireland.
- B. Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work.
- While total security can be guaranteed nowhere today in Northern Ireland, each signatory to the MacBride Principles must make reasonable, good-faith efforts to protect workers against intimidation and physical abuse at the workplace. Signatories must also make reasonable, good-faith efforts to ensure that applicants are not deterred from seeking employment because of fear for personal safety at the workplace or while traveling to and from work.
 - -C. Banning provocative or religious or political emblems from the workplace.
- Each signatory to the MacBride Principles must make reasonable, good faith efforts to prevent the display of provocative sectarian emblems at their plants in Northern Ireland.
 - -D. Publicly advertising all job openings and making special recruitment efforts to attract

applicants from underrepresented religious groups.

- Signatories to the MacBride Principles must exert special efforts to attract employment applications from the sectarian community that is substantially underrepresented in the work force.

 This should not be construed to imply a diminution of opportunity for other applications.
- -E. Providing that layoff, recall and termination procedures should not, in practice, favor particular religious groups.
- Each signatory to the MacBride Principles must make reasonable, good-faith efforts to ensure that layoff, recall and termination procedures do not penalize a particular religious group disproportionately. Layoff and termination practices that involve seniority solely can result in discrimination against a particular religious group if the bulk of employees with greatest seniority are disproportionately from another religious group.
- *F. Abolishing job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religious or ethnic origin.*
- Signatories to the MacBride Principles must make reasonable, good-faith efforts to abolish all differential employment criteria whose effect is discrimination on the basis of religion. For example, job reservations and apprenticeship regulations that favor relatives of current or former employees ean, in practice, promote religious discrimination if the company's work force has historically been disproportionately drawn from another religious group.
- -G. Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees.
- This does not imply that such programs should not be open to all members of the work force equally.
- H. Establishing procedures to assess, identify and actively recruit minority employees with potential for further advancement.

This section	.1		1				11	
THIS SCUIDIT	aucs not a	mpivinci	Such Di	<i>i occumi c</i> s-	snowu noi	$\omega \omega \omega \omega \omega \omega$	mi	Canativ.

- I. Appointing a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

— In addition to the above, each signatory to the MacBride Principles is required to report annually to an independent monitoring agency on its progress in the implementation of these principles.

SEC. 12F.4. RETIREMENT BOARD AND SYSTEM.

The Retirement Board of the City and County of San Francisco is hereby commended for its efforts in support of the MacBride Principles (with the exception of Principle E, as listed in Section 12F.3 of this Code) and the addition of the Principles to the Social Investment Policy of the Retirement Board. The Retirement Board is encouraged to take further steps to support these Principles by moving to the next level of the Social Investment Procedures which will be to actively promote proxies which would conform with the policy position of the Retirement Board, and by encouraging businesses with whom it deals, and in whom it invests, likewise to support the MacBride Principles.

SEC. 12F.5. CITY CONTRACTS.

—All contracts entered into by a department head or officer empowered by law to enter into contracts on behalf of the City and County for public works or improvements to be performed, for a franchise, concession or lease of property, or for goods and services or supplies to be purchased at the expense of the City and County, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the City and County, shall contain a statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, and encouraging them to abide by the MacBride Principles. Each of these statements shall also urge San Francisco companies to do business with corporations that abide by the MacBride Principles. Above the signature line for use by contractors on each contract shall be placed an acknowledgment confirming that they have read and understood the City's statement urging companies doing business in

Northern Ireland to move toward resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

SEC. 12F.6. RESEARCH AND EDUCATION.

—(a)—The Board of Supervisors shall send, and the Mayor is asked to join in, a letter to all

United States corporations listed by the Investment Responsibility Research Center as doing business in

Northern Ireland. This letter shall state the City's support for the MacBride Principles and urge the
corporations to abide by the Principles. The letter shall ask that each recipient company sign and
return to the Clerk of the Board of Supervisors a statement agreeing to the Principles. Each letter will
elearly state that the Board shall evaluate the issue further in one year, and may amend the City's
policies regarding implementation of the MacBride Principles in light of the progress made with
regard to the elimination of employment inequities in Northern Ireland.

— (b) The Clerk of the Board shall report to the Board of Supervisors by July 1, 1989 and by January 1, 1990 on the letters that were sent as required in the immediately preceding paragraph, and on any responses received. The Controller shall report to the Board of Supervisors by July 1, 1989 and by January 1, 1990 on the number of companies with whom the City is doing business who are conducting business in Northern Ireland.

(c) The City Treasurer shall sent a statement to banks with whom the City has deposits and encourage them to do business with corporations that abide by the MacBride Principles.

— (d)—The Board of Supervisors, through the Clerk of the Board, shall send a letter to the government of the United Kingdom conveying a copy of this legislation and expressing opposition to religious discrimination.

SEC. 12F.7. SEVERABILITY.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the

change with regard to the situation in Northern Ireland by means that are prudent and responsible.

SEC. 12F.2. SCOPE OF CHAPTER.

- (a) Authority. This Chapter 12F governs the obligations of a person or entity entering into an agreement with the City at the expense of the City or to be paid out of moneys deposited in the Treasury or out of trust moneys under the control of or collected by the City, or agreements for the exclusive use of City-owned property.
- (b) Agreements Subject to this Chapter. Except as stated in subsection (c), the requirements of this Chapter 12F apply to the following:
- (1) Agreements entered into under Chapter 6 of the Administrative Code valued above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.
- (2) Agreements entered into under Chapter 21 of the Administrative Code valued above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.
- (3) Agreements entered into under Chapter 21G of the Administrative Code valued above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.
- (4) A Lease, as defined in Section 23.2 of the Administrative Code, for the exclusive use of City property for more than 29 consecutive calendar days.
- (c) Agreements not Subject to this Chapter. Notwithstanding subsection (b), an agreement is exempt from all requirements of this Chapter 12F under one or more of the following circumstances:
- (1) Government Entity. This Chapter shall not apply where the prospective contractor is a Government Entity, as defined in Administrative Code Section 1.25(d).
- (2) Employee Benefits. This Chapter shall not apply to agreements where the services are related to employee benefits, including, without limitation, health plans, retirement or deferred compensation benefits, insurance and flexible accounts, provided by or through the San Francisco

 Health Service System, the Retirement Board, or the Retiree Health Care Trust Fund.

City.

(d) Subcontracts. Where a single Subcontractor is compensated to directly perform greater than 50% of the value for the Contract, they are subject to the requirements of this Chapter 12F, even when phrased as requirements applicable to "Contractors." If a Property Contract involves a sublease of more than 50% of the area, the that sublessee is a Subcontractor and subject to the requirements of this Chapter.

(e) Amendment. If an agreement is amended to increase the compensation in a manner that the cumulative new value exceeds the applicability thresholds in subsection (b), the new agreement as modified will be subject to this Chapter unless otherwise exempted under subsection (c).

SECTION 12F.3. DEFINITIONS.

As used in this Chapter 12F, the following words and phrases shall have the meanings indicated herein:

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

"Contract" means an agreement subject to this Chapter as stated in Section 12F.2.

"Contracting Department" or "Department" means the City department, office, commission, or other City entity that enters into the applicable Contract on behalf of the City.

"Contracting Officer" means the City official or employee who is authorized to execute a contract, either as a Department Head or as a designee appointed in writing by the Department Head, board, or commission as having the authority to sign contracts for the Department.

"Contractor" means any person or persons, firm, partnership, corporation, or combination
thereof that enters into a contract or property contract with a Department Head or officer empowered
by law to enter into contracts or property contracts on behalf of the City.

"Department Head" means the duly appointed General Manager, Director, or Executive

Director of a City department having charge and management of said department.

"MacBride Principles" means a set of nine equal opportunity guidelines for corporations operating in Northern Ireland, fully stated in Section 12F.4(c).

"Property Contract" means a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 consecutive days in any calendar year, whether by singular or cumulative instrument, for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises, and easements subject to this Chapter as stated in Section 12F.2.

"Subcontract" means an agreement to (1) provide goods and/or services, including construction labor, materials, or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of a Contractor's obligations arising from a Contract with the City, or (2) transfer the right to occupy or use all or a portion of a real property interest subject to a Property Contract to a Subcontractor and pursuant to which the contractor remains obligated under the Property Contract, and which in either case is subject to the provisions of this Chapter 12F pursuant to Section 12F.2(d).

"Subcontractor" means any person or persons, firm, partnership, corporation, or any combination thereof, that enters into a Subcontract with a Contractor that is subject to the provisions of this Chapter pursuant to Section 12F.2(d).

SEC. 12F.4. REQUIREMENTS AND OBLIGATIONS.

- (a) City Contracting Departments. All Contracts awarded by the City shall contain a statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, and encouraging them to abide by the MacBride Principles. Each of these statements shall also urge San Francisco companies to do business with corporations that abide by the MacBride Principles.
 - (b) **Obligations of City Contractors.** Contractors must acknowledge that they have read and

understood the City's statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

- (c) MacBride Principles. The MacBride Principles call for affirmative action to be taken by institutions and companies doing business in Northern Ireland, by:
- (1) Increasing the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical, and technical jobs. A work force that is severely unbalanced may indicate prima facie that full equality of opportunity is not being afforded all segments of the community in Northern Ireland. Each signatory to the MacBride Principles must make every reasonable, lawful effort to increase the representation of underrepresented religious groups at all levels of its operations in Northern Ireland.
- (2) Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work. While total security can not be guaranteed in Northern Ireland, each signatory to the MacBride Principles must make reasonable, good-faith efforts to protect workers against intimidation and physical abuse at the workplace. Signatories must also make reasonable, good-faith efforts to ensure that applicants are not deterred from seeking employment because of fear for personal safety at the workplace or while traveling to and from work.
- (3) Banning provocative or religious or political emblems from the workplace. Each signatory to the MacBride Principles must make reasonable, good-faith efforts to prevent the display of provocative sectarian emblems at their plants in Northern Ireland.
- (4) Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups. Signatories to the MacBride Principles must exert special efforts to attract employment applications from the sectarian community that is substantially underrepresented in the work force. This should not be construed to imply a diminution of opportunity for other applications.

(5) Providing that layoff, recall, and termination procedures should not, in practice,
favor particular religious groups. Each signatory to the MacBride Principles must make reasonable,
good-faith efforts to ensure that layoff, recall, and termination procedures do not penalize a particular
religious group disproportionately. Layoff and termination practices that involve seniority solely can
result in discrimination against a particular religious group if the bulk of employees with greatest
seniority are disproportionately from another religious group.

- (6) Abolishing job reservations, apprenticeship restrictions, and differential employment criteria which discriminate on the basis of religious or ethnic origin. Signatories to the MacBride Principles must make reasonable, good-faith efforts to abolish all differential employment criteria whose effect is discrimination on the basis of religion. For example, job reservations and apprenticeship regulations that favor relatives of current or former employees can, in practice, promote religious discrimination if the company's work force has historically been disproportionately drawn from another religious group.
- (7) Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees. This does not imply that such programs should not be open to all members of the work force equally.
- (8) Establishing procedures to assess, identify, and actively recruit minority employees with potential for further advancement. This does not imply that such procedures should not apply to all employees equally.
- (9) Appointing a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

 In addition to the above nine principles, each signatory to the MacBride Principles is required to report annually to an independent monitoring agency on its progress in the implementation of these principles.

SEC. 12F.5. ADMINISTRATION AND REMEDIES.

- (a) Administration of Chapter. Departments shall implement the requirements of this

 Chapter 12F independently. The City Attorney shall assist with drafting a Contract clause to effectuate this Chapter.
- (b) Enforcement and Remedies. Other than reading and acknowledging the City's statement in Section 12F.4(a), the obligations of this Chapter 12F are hortatory. Contractors are urged to implement the MacBride Principles but are not obligated to do so.

SEC. 12F.6. WAIVERS AND EXCEPTIONS.

- (a) Waivers by Department. The Contracting Officer may waive in whole or in part the requirements of this Chapter 12F in the following circumstances:
- (1) Sole Source. When the Contracting Officer finds, upon the advice of the awarding authority, that needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source.
- (2) Only One Qualified Bidder. When the Contracting Officer finds, upon the advice of the awarding authority, that there is only one qualified, responsive bidder or proposer who can perform under the proposed agreement and who is not at that time disqualified from doing business with the City.
- (3) No Compliant Bidders. When the Contracting Officer finds, upon the advice of the awarding authority, that there are no qualified responsive bidders or prospective contractors who could be certified as being in compliance with the requirements of this Chapter 12F.
- (4) Adverse Impact on Services. Where the Contracting Officer determines that the public interest warrants the granting of a waiver because application of this Chapter 12F would have an adverse impact on services or a substantial adverse financial impact on the City; or would

circumvent the purposes of this Chapter.

- (5) Cooperative Purchasing. When an agreement has been procured under Administrative Code Sections 6.77 or 21.16, and the Contracting Officer finds that application of this Chapter 12F would mean (A) a purchase under such arrangement would substantially reduce the City's cost of purchasing such services; (B) a purchase under such an arrangement is in the best interest of the City; and (C) adherence to the requirements of this Chapter 12F would prevent the awarding agency from entering into such an agreement.
- (b) Waiver by Treasurer for Investments. This Chapter 12F shall not apply to the following: (1) the investment of trust moneys or agreements relating to the management of trust assets, (2) City moneys invested in the City's investment pool, or (3) the investment of City moneys, where the Treasurer finds that:
- (A) No person, entity, or financial institution doing business in the City that is in compliance with this Chapter is capable of performing the desired transaction(s); or
- (B) Applying this Chapter would, in the opinion of the Treasurer, violate the Treasurer's fiduciary duties.
- (c) Waiver by Public Utilities Commission. The General Manager of the Public Utilities

 Commission may waive the requirements of this Chapter 12F 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 exemption

 shall not apply to Contractors or franchisees providing direct, retail services to end users within the

 City.
 - (d) **Documentation.** All proposed waivers must set forth the reasons the Contracting Officer

is requesting the waiver.

SEC. 12F.7. SUPERSEDING AUTHORITY.

- (a) Federal or State Law Preemption. The requirements of this Chapter 12F shall not be in effect in the event they conflict with federal or State laws, or the City Attorney determines they are reasonably likely to do so. Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or State law.
- (b) Grant or Subvention. If the requirements of this Chapter 12F would 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, the requirements of this Chapter shall not be in effect.

SECTION 12F.8. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Chapter 12F, 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.

SEC. 12F.9. OPERATIVE DATE AND SUNSET.

- (a) Operative Date. This Chapter 12F shall become operative on JulyOctober January 1, 20256 and shall have prospective effect only.
 - (b) Sunset. Unless extended by ordinance, this Chapter 12F shall expire by operation of law

on JulyOctober January 1, 20356. After the expiration, the City Attorney shall be authorized to cause this Chapter to be removed from the Administrative Code.

Section 7. The Administrative Code is hereby amended by repealing Chapter 12J, consisting of Sections 12J.1 to 12J.10, as follows:

CHAPTER 12J: CITY BUSINESS WITH BURMA PROHIBITED

SEC. 12J.1. FINDINGS.

— (a) Because the quality of life of all people is diminished when peace and justice are not fully present in the world, local communities have the responsibility to take positive steps to support the rule of law and to help end injustices and egregious violations of human rights wherever they may occur.

— (b) The nation of Burma (Myanmar) has institutionalized torture and rape as political instruments, and embarked upon campaigns of forcible relocation, forced labor and slavery, and persecution of ethnic minorities, and other human rights violations, thereby denying the majority of the population the right to participate in the political process, to benefit from the system of justice, or to exercise economic rights.

— (c)—The military regime of Burma (Myanmar) has implemented a reign of terror preventing political participation by various methods, including (1) ignoring the results of the 1990 elections in which pro-democracy candidates received over 60 percent of the vote and over 80 percent of the seats in the government; (2) forcing the imprisonment, death, or exile of many of these candidates; (3) failing to convene a Constitutional Convention as promised in 1990; (4) imposing martial law barring freedom of the press and gatherings of more than five people and declaring that "martial law means no law at all"; (5) forcibly relocating hundreds of thousands of people, including those in neighborhoods with strong pro-democracy support, ethnic minorities including the Muslim Rohingyas, and indigenous

groups in areas rich with extractive resources, to locales in which malaria and other diseases are rampant and where food, water and sewerage are scarce, if available at all; (6) barring all labor and trade union organizing and implementing forcible labor for the purposes of road and tourist site construction, portering of military goods and human mine-sweeping; (7) pressuring the governments of Thailand and Bangladesh to force refugees back to Burma (Myanmar) in exchange for continuing sales of resources such as timber, fishing concessions and natural gas; (8) harming men, women and children of Burma by pillaging villages and townships and by attacking and burning refugee camps; and (9) persecuting Buddhist monks for their support of pro-democratic organizing.

—(d)—The military regime is currently attempting to enhance its standing in the international community and to increase the flow of foreign money and investment through various means, including the development of massive natural gas fields offshore and the construction of a gas pipeline through areas traditionally held by ethnic minorities, forcing their displacement.

— (e)—The rightfully elected leadership of Burma, the National Coalition Government of the Union of Burma (NCGUB), winners of the 1990 elections, living in exile, have called upon the world community to impose economic and arms sanctions against the State Law and Order Restoration Council (SLORC). The NCGUB's call for sanctions is supported by Nobel Peace Prize Laureates Oscar Arias Sanchez, the Dalai Lama, Mairead McGuire, Archbishop Desmond Tutu, Betty Williams, Adolpho Perez Esquivel and others, and by the AFL-CIO.

—(f)—The United Nations and elected representatives of the United States, including President Clinton, the Senate, and the House of Representatives, have repeatedly shown support for the peoples of Burma, urging SLORC to release all political prisoners, to respect the results of the May 1990 elections and to commit to genuine democratic reforms. Section 138 of the U.S. Customs and Trade Act of 1990 instructs the president to impose comprehensive trade sanctions against Burma's military regime. Section 2651 (United States Policy Concerning the Dictatorship in Burma) of the sanctions amendment to the 1996 foreign aid bill, H.R. 1564, has been approved by the Senate and bans all U.S.

trade with, investment in and travel to Burma (Myanmar).

- -(g) The United States Supreme Court has upheld the power of a municipality to make legitimate economic decisions without being subject to the restraints of the Commerce Clause when it participates in the marketplace as opposed to exerting its regulatory powers.
- (h) The City and County of San Francisco declares the right to measure the moral character of its business partners in determining with whom it seeks to have business relations or to whom it grants privileges.
- (i)—The system of oppression by SLORC is illegal and contrary to international laws and covenants. The conduct of the SLORC being morally repugnant to the citizens of San Francisco, the Board of Supervisors does hereby set forth a municipal policy prohibiting contracts for personal services or the construction of public works or improvements with those who do business in Burma (Myanmar), and prohibiting the purchase of any commodities produced in Burma (Myanmar), or provided by those who do business, maintain facilities, or are organized under SLORC's rule.

SEC. 12J.2. DEFINITIONS.

- —As used in this Chapter, the following words and phrases shall have the meanings indicated herein:
- (a)—"City" or "City and County" shall mean the City and County of San Francisco, or any department, board, commission or agency thereof.
- (b) "Commodities" shall include, but not be limited to, goods, commodities, materials, supplies, vehicles, machinery, and equipment.
- (c) "Contract" shall mean an agreement with a nongovernmental entity for commodities, contractual services or contracts for the construction of public works or improvements to be purchased at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City and County.
 - -(d) "Contracting officer" shall mean that officer or employee of the City authorized under the

Charter, the Administrative Code or the Municipal Code, to enter into a contract on behalf of the City.

— (e) "Contractual services," for purposes of Section 12J.3, shall mean investment counseling, underwriting, acting as a trustee or escrow agent, providing any consulting advice or assistance under a professional or personal service contract, and services provided pursuant to any contract subject to Charter Section 10.104(15). "Contractual services" shall not include purchase orders, blanket purchase orders or other agreements of the City for the purchase of a commodity under Section 12J.4.

(f) "The government of Burma (Myanmar)" or "Burma (Myanmar)" shall mean any public or quasi-public entity sanctioned by the State Law and Order Restoration Council ("SLORC") operating within Burma, including, but not limited to, municipal, provincial, or other governing bodies operating as proxy of SLORC, including all departments and agencies of such bodies, public utilities, public facilities, or any national corporation in which the public sector of Burma (Myanmar) has a financial interest or operational responsibilities.

—(g)—"Prohibited person or entity" shall mean any private person or entity designated by the Investor Responsibility Research Center ("IRRC") as having investments or employees in Burma, or any private person or entity that licenses any person or entity organized under the laws of Burma (Myanmar) to produce and market its products. The Purchaser (1) shall develop a list of prohibited persons or entities pursuant to the terms of this paragraph, and (2) shall have the authority to delete from such list any person or entity designated by the IRRC as having investments or employees in Burma if any such entity demonstrates to the Purchaser's satisfaction that such designation is erroneous.

— (h) "Purchaser" shall mean the Purchaser of the City and County or any authorized representative of that official.

SEC. 12J.3. CONTRACTUAL SERVICES, REAL AND PERSONAL PROPERTY
AGREEMENTS.

-(a) Prohibited Transactions. The City shall not enter into, amend, modify or renew any

agreement for (i) contractual services, (ii) public works or improvements, or (iii) any lease, permit, license or other agreement for the use or sale of the City's real or personal property, with any prohibited person or entity.

- (b) Contract Condition. Each contract for services or for the use or sale of the City real or personal property shall include as a material condition to that agreement the following paragraph:
- Contractor is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(g) of the San Francisco Administrative Code. The City reserves the right to terminate this contract for default if the contractor violates the terms of this clause.
- (c)—A person or entity shall not be a prohibited person or entity under Subsection (a) above so long as such person or entity is only performing contractual services necessary to complete a specific project in Burma (Myanmar) initiated prior to May 1, 1996, so long as the scope of the services is not increased by any modification of an existing project contract after May 1, 1996, and provided that the term, or remaining term of the services contract is not greater than five years from May 1, 1996.
 - (d) Nonapplicability; Findings; Alternate Selection.
- (1) Section 12J.3 shall not apply to bid packages advertised and made available to the public or any competitive and sealed bids received by the City or to contracts for contractual services entered into prior to May 1, 1996.
- (2) The provisions of Section 12J.3 shall not apply to contracts for \$10,000 or less; to leases, permits, licenses or other agreements for the use of the City's real or personal property entered into prior to May 1, 1996, or having a monthly rental payment of \$100 or less or having a duration of 30 days or less in any calendar year, whether by single or cumulative instrument; to any transaction allowing access to or use of City real property upon purchase of an admission ticket; or to permits for the use of City streets for temporary periods of construction of improvements on abutting private real

shall be considered made in Burma (Myanmar) if it is manufactured, produced or grown in Burma (Myanmar), or if further work or material manufactured, produced or grown in Burma (Myanmar) is added to a commodity which effects a substantial transformation of that commodity. Interpretation of this Section shall be consistent with statutes and regulations of the United States regarding markings of commodities by country of origin pursuant to 19 CFR 134.

- (Myanmar) initiated prior to May 1, 1996, shall not be deemed doing business in Burma (Myanmar), so long as the scope of the services is not increased by any modification of any existing project contract after May 1, 1996, and provided that the term, or remaining term of the services contract is not greater than five years from May 1, 1996.
- -(b) Contract Condition. Each contract for the supply of a commodity to the City shall include as a material condition to that agreement the following paragraph in the contract:
- Seller is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(g) of the San Francisco Administrative Code. The item(s) sold in this contract (purchase order) to the City and County of San Francisco is (are) not made in Burma (Myanmar) as defined in Section 12J.4(a) of the San Francisco Administrative Code. The City reserves the right to terminate this contract for default if the contractor furnishes items made in Burma (Myanmar).
 - -(c) Exceptions. This Section shall not apply to:
- (1)—Any binding contractual obligation for purchase of commodities entered into prior to May 1, 1996;
- (2) The purchase of any commodity for which Burma (Myanmar) is the only source; or any commodity made outside Burma (Myanmar) which cannot be obtained except through a prohibited person or entity;
 - (3) Any contract for the purchase of commodities for \$10,000 or less;

(4)	Where the contr	acting officer f	finds that no	person or entity	doing business	in the City
that is not a pr	ohibited person o	r entity is capa	able of provic	ling the desired	-commoditv:	

- (5) Any contract, purchase order or blanket purchase order wherein the City will incur a financial loss which in the opinion of the contracting officer would violate his or her fiduciary duties.

 For purposes of this Section, prima facie evidence of a breach of fiduciary duty shall mean a financial loss of 10 percent of a contract's value or \$10,000, whichever is less; or
- (6) Where the inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State of California or the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract.

SEC. 12J.5. RULES AND REGULATIONS.

- -(a) The Purchaser or department head of a department, board or commission authorized to sell or lease City-owned property, whichever is appropriate, may promulgate any rules and regulations necessary or appropriate to carry out the purposes and requirements of this ordinance. Each City department, board and commission shall cooperate with, and provide in writing to the Purchaser, all information necessary for the Purchaser to promulgate such rules and regulations.
- —(b)—All contracts and other similar written agreements shall incorporate this Chapter by reference whenever applicable and shall provide that the failure of any bidder or contractor to comply with any of its requirements shall be deemed a material breach of contract.

SEC. 12J.6. PUBLIC RECORDS.

—All reports prepared pursuant to the requirements of this ordinance shall be made available for public inspection except those prepared for purposes of litigation.

SEC. 12J.7. PENALTIES.

— (a) Whenever a person or entity being considered for a contract or under contract with the City makes representations regarding its involvement in Burma (Myanmar) that are found by the City

SEC. 12J.9. SEVERABILITY.

—If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SEC. 12J.10. SUSPENSION.

The provisions of Chapter 12J, prohibiting the City from doing business with Burma, are hereby suspended. Until enactment of legislation withdrawing this suspension, the provisions of Chapter 12J shall have no force or effect and no City officer or employee shall enforce or implement the provisions of Chapter 12J.

Section 8. The Labor and Employment Code is hereby amended by repealing Article 141, consisting of Sections 141.1 to 141.9, as follows:

ARTICLE 141: SALARY HISTORY

SEC. 141.1. DEFINITIONS.

- -As used in this Article 141, the following terms have the following meanings:
- —"Applicant" shall mean a person applying for Employment to be performed on a Contract or Property Contract or in furtherance of a Contract or Property Contract, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an

interview, in the City or on City property. "Applicant" shall not include a person applying for Employment with their current Employer.

- -"City" shall mean City and County of San Francisco.
- "Contract" shall mean an agreement between a City 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. "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

 141, including amendments to existing Contracts; or
- (d)—Agreements for a cumulative amount of \$10,000 or less per Contractor in each fiscal year; or
 - (e) Agreements with a public entity or public utility.
- -"Contractor" shall mean any person or persons, firm, partnership, corporation, or combination thereof who enters into a Contract or Property Contract with the City.
- "Employer" shall mean any Contractor or Subcontractor, whether an individual, firm, corporation, partnership, labor organization, group of persons, association, or other organization however organized. "Employer" includes job placement and referral agencies and other employment agencies working on behalf of a Contractor or Subcontractor. "Employer" does not include any unit of local, state, or federal government. The physical location of the employment or prospective employment of an Applicant must be at least eight hours per week on City property.
- "Employment" shall mean any occupation, vocation, job, or work, including but not limited to temporary or seasonal work, part-time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency, for which the Applicant is

and interviews.

	-		
- "Inquire" shall mean any direct or	: indirect statement, qu	estion, prompting, or ot	her
communication, orally or in writing, persona	ally or through an age.	nt, to gather information	ı from or
about an Applicant, using any mode of comn	nunication, including l	but not limited to applice	ution forms

to receive a Salary. Employment doesn't include work as an independent contractor.

- "OLSE" shall mean the Office of Labor Standards Enforcement or any successor department or office. The "Director" of OLSE shall mean the head of OLSE.
- "Property Contract" shall mean a lease, permit, or license, through which the City gives to a person or entity the right to exclusively use or occupy real property owned or controlled by the City for a period of more than 29 days in any calendar year. "Property Contract" shall not mean:
 - (a) An agreement with a public entity or public utility;
- (b) A revocable at-will permit regardless of the ultimate duration of such permit, unless the permittee engages in a for-profit activity on the City property;
- (c) Regulatory permits, including street or public right of way construction, excavation and use permits;
- (d)—Agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution;
- (e) Agreements for activities which are primarily recreational in nature, unless the user engages in a for-profit activity on the City property; or
- (f) Agreements advertised, solicited, or initiated prior to the Operative Date of this Article
 141, including amendments to existing Contracts.
- "Salary" shall mean an Applicant's financial compensation in exchange for labor, including but not limited to wages, commissions, and any monetary emolument.
 - "Salary History" shall mean an Applicant's current and past Salary in the Applicant's

current position, or in a prior position with the current Employer or a prior Employer.

-"Subcontract" shall mean an agreement to (a) provide goods and/or services, including construction labor, materials or equipment, to a Contractor, if such goods or services are procured or used in the fulfillment of the Contractor's obligations arising from a Contract with the City, or (b) to transfer the right to occupy or use all or a portion of a real property interest subject to a Property Contract to a Subcontractor and pursuant to which the Contractor remains obligated under the Property Contract.

"Subcontractor" shall mean any person or persons, firm, partnership, corporation or any combination thereof who enters into a Subcontract with a Contractor. Such term shall include any person or entity who enters into an agreement with any Subcontractor for the performance of 10% or more of any Subcontract.

SEC. 141.2. APPLICABILITY OF ARTICLE TO CONTRACTORS AND SUBCONTRACTORS.

The requirements of this Article 141 shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of performing a Contract or Property Contract with the City. Accordingly, the protections of this Article apply only to applicants and employees who would be or are performing work in furtherance of performing a Contract or Property Contract with the City.

SEC. 141.3. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE PROVISION REQUIRING COMPLIANCE WITH THIS ARTICLE.

—All contracting agencies of the City, or any department thereof, acting for or on behalf of the City, shall include in all Contracts and Property Contracts a provision requiring Contractor's compliance with this Article 141 and shall require such Contractor to include a similar provision in all Subcontracts executed and amended thereunder, and failure to do so shall constitute a material breach of contract.

SEC. 141.4. PROHIBITIONS ON USE OF SALARY HISTORY IN HIRING.

- (a) An Employer shall not Inquire about an Applicant's Salary History.
- (b) An Employer shall not consider an applicant's Salary History as a factor in determining whether to offer Employment or what Salary to offer an Applicant.
- (c) An Employer shall not refuse to hire, or otherwise disfavor, injure, or retaliate against an Applicant for not disclosing his or her Salary History to the Employer.
- —(d)—An Employer shall not release the Salary History of any current or former employee to that person's Employer or prospective Employer without written authorization from the current or former employee unless the release of Salary History is required by law, is part of a publicly available record, or is subject to a collective bargaining agreement.
- (e)—Nothing in this Article 141 shall prohibit an Applicant from voluntarily and without prompting disclosing Salary History.
- (f) Where an Applicant voluntarily and without prompting discloses Salary History to a prospective Employer, nothing in this Article 141 shall prohibit that Employer from considering that voluntarily disclosed Salary History in determining Salary for such Applicant or verifying such Applicant's Salary History.
- -(g) An Employer may, without inquiring about Salary History, engage in discussion with the Applicant about the Applicant's expectations with respect to Salary, including but not limited to unvested equity or deferred compensation or bonus that an Applicant would forfeit or have cancelled by virtue of the Applicant's resignation from their current Employer.
- (h)—Nothing in this Article 141 shall prohibit an Employer from verifying non-Salary related information disclosed by the Applicant or from conducting a background check provided that when such verification or background check discloses the Applicant's Salary History, the disclosed Salary History shall not be considered for purposes of determining the Salary to be offered to the Applicant during the hiring process.

SEC. 141.5. NONAPPLICABILITY, EXCEPTIONS, AND WAIVERS.

- (a) Section 141.4 shall not apply to Contracts, Subcontracts, or Property Contracts in the following circumstances:
- (1)—The contracting City department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code and Labor and Employment Code; or
- (2)—The contracting City Department determines, pursuant to applicable provisions of the Administrative Code and Labor and Employment Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with Section 141.4 and is capable of responding to the emergency is immediately available to perform the required services; or
- (3)—The contracting City department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of Section 141.4; and the Contract is for a service, project, or property that is essential to the City or the public; or
- (4) The contracting City department determines that the public interest warrants the granting of a waiver because application of Section 141.4 would have an adverse impact on services or a substantial adverse financial impact on the City; or
- (5) The contracting City 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 City department determines that the requirements of Section 141.4 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.

- (b) The General Manager of the Public Utilities Commission may waive the requirements of Section 141.4 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.

(a) and (b), the contracting City department shall maintain a record documenting the basis for such decision. Each contracting City department that makes a determination of nonapplicability, exception, or waiver pursuant to subsections (a) and (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.

SEC. 141.6. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.

—Employers shall post the notice described in Labor and Employment Code Section 61.5(a) in a conspicuous place at every workplace, job site, or other location on City property, under the Employer's control and frequently visited by their employees or Applicants, and shall send a copy of this notice to each labor union or representative of workers with which the Employer has a collective bargaining agreement or other agreement or understanding, that is applicable to employees in the City or on City property. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

SEC. 141.7. IMPLEMENTATION AND ENFORCEMENT.

- (a) The OLSE is authorized to take appropriate steps to enforce and coordinate enforcement of this Article 141, including the investigation of possible violations of this Article.

— (b)—An employee or Applicant may report to the OLSE any suspected violation of this Article.

The OLSE shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation; provided, however, that with the authorization of such person, the OLSE may disclose his or her name and identifying information as necessary to enforce this Article or for other appropriate purposes.

(c) A Contractor or Subcontractor shall be deemed to have breached the provisions of this Article upon a finding by the OLSE that the Contractor or Subcontractor has willfully violated these provisions, provided, however, that for a first violation, or for any violation during the first 12 months following the operative date of this Article, the OLSE must issue warnings and notices to correct, and offer the Contractor or Subcontractor technical assistance on how to comply with the requirements of this Article.

—(d)—Upon a subsequent finding of a violation of this Article, the awarding authority shall notify the Contractor or Subcontractor that unless the Contractor or Subcontractor demonstrates to the satisfaction of the OLSE within such reasonable period as the OLSE shall determine, that the violation has been corrected, action will be taken as set forth in subparagraphs (e) through (i) hereof.

(e) The Director of the OLSE shall establish rules governing the administrative process for determining and appealing violations of this Article. The rules shall include procedures for:

— (1) Providing the Contractor or Subcontractor with notice that it may have violated this Article;

- (2) Providing the Contractor or Subcontractor with a right to respond to the notice;
- (3) Providing the Contractor or Subcontractor with notice of the OLSE's determination of

a violation; and,

(4) Providing the Contractor with an opportunity to appeal the OLSE's determination to a hearing officer, who is appointed by the City Controller or his or her designee.

-(f) If there is an appeal of the OLSE's determination of a violation, the hearing before the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any such hearing, the OLSE's determination of a violation shall be considered prima facie evidence of a violation, and the Contractor or Subcontractor shall have the burden of proving, by a preponderance of the evidence, that the OLSE's determination of a violation is incorrect. The hearing officer's decision of the appeal shall constitute the City's final decision.

(g) For a second violation, the awarding authority may deduct from the amount payable to the Contractor or Subcontractor by the City under any Contract subject to this Article, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of \$50 for each employee, applicant or other person as to whom the violation occurred or continued. Thereafter, for subsequent violations, the penalty may increase to no more than \$100, for each employee or applicant whose rights were, or continue to be, violated.

(h) In addition to any other penalties provided for the violation of this Article, the Contract or Property Contract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding under this Section 141.7 that the Contractor or Subcontractor has violated the provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

—(i)—A violation of the provisions of this Article during the performance of a Contract or

Property Contract shall be deemed by the City to be a material breach of contract and may provide a

basis for determination by the awarding authority that the Contractor or Subcontractor is an

irresponsible bidder subject to debarment procedures set forth in Chapter 28.

- (j) Nothing contained in this Article shall be construed in any manner so as to prevent the

City from pursuing any other remedies that may be available at law, equity or under any Contract or Property Contract.

-(k) The Director of OLSE shall have authority to adopt regulations or guidelines that implement the provisions of this Article. Regulations or guidelines shall be adopted only after consultation with the Director of the Office of Contract Administration.

—(l)—OLSE shall maintain a record of the number and types of complaints it receives alleging a violation of this Article, and the resolution of those complaints. This information shall be compiled on an annual calendar year basis and reported to the Board of Supervisors by January 31 of each year.

SEC. 141.8. UNDERTAKING FOR THE GENERAL WELFARE.

—In enacting and implementing this Article 141, 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. 141.9. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article 141, 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 this Article. The Board of Supervisors hereby declares that it would have passed this Article 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 ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 9. The Labor and Employment Code is hereby amended by repealing Article 142, consisting of Sections 142.1 to 142.11, as follows:

ARTICLE 142: CITY CONTRACTOR/SUBCONTRACTOR CONSIDERATION OF CRIMINAL HISTORY IN HIRING AND EMPLOYMENT DECISIONS

SEC. 142.1. DEFINITIONS.

-For the purposes of this Article 142, the following words and phrases shall mean and include.
- "Adverse Action" shall have the same meaning as in Police Code Section 4903.
- "Arrest" shall have the same meaning as in Police Code Section 4903.
—"Background Check Report" shall have the same meaning as in Police Code Section 4903.
—"Bid" shall mean a bid or proposal submitted to the City in response to an invitation for bids
or a request for proposals. "Bid" shall also mean a response to a request for qualifications if no
further ranking prior to Contractor selection is contemplated by the procurement process.
- "City" shall mean the City and County of San Francisco.
- "Contract" shall mean an agreement for public works or improvements to be performed, or
for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid
out of moneys deposited in the treasury or out of trust moneys under the control or collected by the
City. "Contract" does not include (1) Property Contracts, (2) agreements entered into pursuant to
settlement of legal proceedings, (3) contracts for urgent litigation expenses as determined by the City
Attorney, or (4) contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.
—"Contracting Officer" shall mean the department head or designee of the department head.
- "Contractor" shall mean any person or persons, firm, partnership, corporation, or
combination thereof who enters into a Contract or Property Contract with the City.
—"Conviction" shall have the same meaning as in Police Code Section 4903.
- "Conviction History" shall have the same meaning as in Police Code Section 4903.

- "Directly-Related Conviction" shall have the same meaning as in Police Code Section 4903.

- "Employment" shall have the same meaning as in Police Code Section 4903.

- "Evidence of Rehabilitation or Other Mitigating Factors" shall have the same meaning as in Police Code Section 4903.

- -"HRC" and "Director of HRC" shall have the same meaning as in Police Code Section 4903.
- "Inquire" shall have the same meaning as in Police Code Section 4903.
- -"OCA" shall mean the Office of Contract Administration or any successor department or office. The "Director" of OCA shall mean the head of the OCA.
- -"OLSE" and "Director of OLSE" shall have the same meaning as in Police Code Section 4903.
 - "Person" shall have the same meaning as in Police Code Section 4903.
- —"Property Contract" shall mean a written agreement, including a lease, permit, or license, through which the City gives to a person or entity the right to exclusively use or occupy real property owned or controlled by the City for a period of more than 29 days in any calendar year, but excluding the following (collectively, "Excluded Property Contracts"): (1) an agreement through which the City gives the right to use or occupy real property owned or controlled by the City to a public entity or public utility; (2) a revocable at will permit regardless of the ultimate duration of such permit, unless the permittee engages in a for profit activity on the City property; (3) regulatory permits, including street or public right of way construction, excavation, and use permits; (4) agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution; or (5) agreements for activities which are primarily recreational in nature, unless the user engages in a for-profit activity on the City property.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a Contractor, if such goods or services are procured or used in the fulfillment of the Contractor's obligations arising from a Contract with the City, or (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a Property

Contract to a Subcontractor and pursuant to which the Contractor remains obligated under the Property Contract.

-"Subcontractor" shall mean any person or persons, firm, partnership, corporation or any combination thereof who enters into a Subcontract with a Contractor. Such term shall include any person or entity who enters into an agreement with any Subcontractor for the performance of 10 percent or more of any Subcontract.

-"Unresolved Arrest" shall have the same meaning as in Police Code Section 4903.

SEC. 142.2. APPLICABILITY OF ARTICLE TO CONTRACTORS AND SUBCONTRACTORS.

The requirements of this Article shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of performing a Contract or Property Contract with the City. Accordingly, the protections of this Article apply only to applicants and employees who would be or are performing work in furtherance of performing a Contract or Property Contract with the City. If there is a conflict between the requirements of this Article and any City law, rule or regulation existing as of the effective date of Ordinance No. 249-14 amending this Article, the requirements of this Article shall prevail.

SEC. 142.3. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE PROVISION REQUIRING COMPLIANCE WITH THIS ARTICLE.

All contracting agencies of the City, or any department thereof, acting for or on behalf of the City, shall include in all Contracts and Property Contracts hereinafter executed or amended in any manner or as to any portion thereof, a provision requiring Contractor's compliance with this Article and shall require such Contractor to include a similar provision in all Subcontracts executed and amended thereunder, and failure to do so shall constitute a material breach of contract.

SEC. 142.4. PROCEDURES FOR CONTRACTOR AND SUBCONTRACTOR USE OF CRIMINAL HISTORY INFORMATION IN EMPLOYMENT DECISIONS.

– (a) Regarding applicants or potential applicants for employment, or employees, a
Contractor or Subcontractor shall not, at any time or by any means, inquire about, require disclosure
of, or if such information is received base an Adverse Action in whole or in part on:
— (1) An Arrest not leading to a Conviction, excepting under circumstances identified in this
Section an Unresolved Arrest;
— (2)—Participation in or completion of a diversion or a deferral of judgment program;
— (3) A Conviction that has been judicially dismissed, expunged, voided, invalidated, or
otherwise rendered inoperative, by way of example but not limitation, under California Penal Code
Sections-1203.4, 1203.4a, or 1203.41;
— (4)—A-Conviction or any other determination or adjudication in the juvenile justice system,
or information regarding a matter considered in or processed through the juvenile justice system;
— (5)—A Conviction that is more than seven years old, the date of Conviction being the date of
sentencing;
— (6) Information pertaining to an offense other than a felony or misdemeanor, such as an
infraction, except that a Contractor or Subcontractor may inquire about, require disclosure of, base an
Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or
employee's driving record if driving is more than a de minimis element of the employment in question;
Or
— (7)—A Conviction that arises out of conduct that has been decriminalized since the date of
the Conviction, the date of the Conviction being the date of sentencing. Examples of statutes that have
decriminalized particular conduct include but are not limited to California Health and Safety Code
Sections 11362.1 and 11362.2.
— Accordingly, the matters identified in this subsection (a) may not be considered in any
manner by the Contractor or Subcontractor.

-(b) A Contractor or Subcontractor shall not require applicants or potential applicants for

employment or employees to disclose on any employment application the fact or details of any
Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(7). Nor shall
the Contractor or Subcontractor inquire on any employment application about the fact or details of any
Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(7). A
Contractor or Subcontractor may ask on an employment application for an applicant, potential
applicant, or employee's written consent for a Background Check so long as the application includes a
elear and conspicuous statement that the Contractor or Subcontractor will not itself conduct or obtain
from a third party the Background Check until after a conditional offer of employment in accordance
with subsection (c) of this Section 142.4.

— (c)—A Contractor or Subcontractor shall not require applicants or potential applicants for employment, or employees, to disclose, and shall not inquire into or discuss, their Conviction History or an Unresolved Arrest until after a conditional offer of employment. A Contractor or Subcontractor may not itself conduct or obtain from a third party a Background Check until after a conditional offer of employment.

- (d) Prior to any Conviction History inquiry, the Contractor or Subcontractor shall provide a copy of the notice described in Section 142.5(b) to the applicant or employee.

— (e)—Prior to obtaining a copy of a Background Check Report, the Contractor or

Subcontractor shall comply with all state and federal requirements including but not limited to

California Investigative Consumer Reporting Agencies Act (ICRAA), California Civil Code sections

1786 et seq., and the Federal Consumer Reporting Act (FCRA), 15 United States Code sections 1681 et seq., to provide notice to the applicant or employee that such a report is being sought.

—(f) In making an employment decision based on an applicant's or employee's Conviction

History, a Contractor or Subcontractor shall conduct an individualized assessment, considering only

Directly-Related Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and

any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

-(g) If a Contractor or Subcontractor intends to base an Adverse Action on an item or items in the applicant or employee's Conviction-History, prior to taking any Adverse Action the Contractor or Subcontractor shall provide the applicant or employee with a copy of the Background Check Report, and shall notify the applicant or employee of the prospective Adverse Action and the item or items forming the basis for the prospective Adverse Action.

(h) If, within seven days of the date that the notice described in subsection (g) is provided by the Contractor or Subcontractor to the applicant or employee, the applicant or employee gives the Contractor or Subcontractor notice, orally or in writing, of evidence of the inaccuracy of the item or items of Conviction History or any Evidence of Rehabilitation or Other Mitigating Factors, the Contractor or Subcontractor shall delay any Adverse Action for a reasonable period after receipt of the information and during that time shall reconsider the prospective Adverse Action in light of the information.

— (i) Upon taking any final Adverse Action based upon the Conviction History of an applicant or employee, a Contractor or Subcontractor shall notify the applicant or employee of the final Adverse Action.

—(j) A Contractor or Subcontractor shall not engage in any communication that is intended and reasonably likely to reach persons who are reasonably likely to seek employment to be performed under a Contract or Property Contract and that expresses, directly or indirectly, that any person with an Arrest or Conviction will not be considered for employment or may not apply for employment. For purposes of this subsection (j), engaging in a communication includes but is not limited to making a verbal statement or producing or disseminating any solicitation, advertisement, or signage.

—(k)—Nothing in this Section 142.4 shall be construed to prohibit a Contractor or Subcontractor from observing the conditions of a seniority system or an employee benefit plan, provided such systems or plans are not a subterfuge to evade the purposes or requirements of this Article.

SEC. 142.5. NOTICE AND POSTING REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS.

— (a) The Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under a Contract or Property Contract, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of this Article.

- (b) The OLSE shall, by the operative date of this Article, publish and make available to

Contractors and Subcontractors, in English, Spanish, Chinese, and all languages spoken by more than

5% of the San Francisco workforce, a notice substantially similar in form and content to the notice

described in Police Code Section 4905(b). However, the notice shall cite this Article rather than Police

Code Article 49 as the applicable legal authority for the rights and obligations described therein.

— (c)—Contractors and Subcontractors shall post the notice described in subsection (b) in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of performing a Contract or Property Contract with the City. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

SEC. 142.6. IMPLEMENTATION AND ENFORCEMENT.

— (a)—The OLSE is authorized to take appropriate steps to enforce and coordinate enforcement of this Article 142, including the investigation of possible violations of this Article. The OLSE shall not find a violation based on a Contractor or Subcontractor's decision that an applicant or employee's Conviction History is Directly-Related, but otherwise may find a violation of this Article, including if the Contractor or Subcontractor failed to conduct the individualized assessment as required under Section 142.4(f).

(b) An employee, applicant or other person may report to the OLSE any suspected violation of this Article 142. The OLSE shall encourage reporting pursuant to this subsection (b) by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation; provided, however, that with the authorization of such person, the OLSE may disclose his or her name and identifying information as necessary to enforce this Article or for other appropriate purposes.

—(c)—A Contractor or Subcontractor shall be deemed to have breached the provisions regarding the procedures for use of Conviction History in employment upon a finding by the OLSE that the Contractor or Subcontractor has willfully violated these provisions except as provided in the second sentence of subsection (f) of this Section 142.6.

(d) The Director of the OLSE shall establish rules governing the administrative process for determining and appealing violations of this Article 142. The rules shall include procedures for:

— (1) providing the Contractor or Subcontractor with notice that it may have violated this Article;

- (2) providing the Contractor or Subcontractor with a right to respond to the notice;
- (3) providing the Contractor or Subcontractor with notice of the OLSE's determination of a violation;

— (4) providing the Contractor with an opportunity to appeal the OLSE's determination to a hearing officer, who is appointed by the City Controller or his or her designee.

—(e)—If there is an appeal of the OLSE's determination of a violation, the hearing before the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any such hearing, the OLSE's determination of a violation shall be considered prima facie evidence of a violation, and the Contractor or Subcontractor shall have the burden of proving, by a preponderance of the evidence, that the OLSE's determination of a violation is incorrect. The hearing officer's decision of the appeal shall constitute the City's final decision.

- (f) This subsection (f) applies to violations occurring during the term of a Contract entered into prior to the effective date of the ordinance in Board of Supervisors File No. 171170 amending this Article 142. For a first violation, or for any violation during the first twelve months following the operative date of this Article, the OLSE must issue warnings and notices to correct, and offer the Contractor or Subcontractor technical assistance on how to comply with the requirements of this Article. Upon a subsequent finding of a violation of this Article, the awarding authority shall notify the Contractor or Subcontractor that unless the Contractor or Subcontractor demonstrates to the satisfaction of the OLSE within such reasonable period as the OLSE shall determine, that the violation has been corrected, action will be taken as set forth in this subsection (f) and subsections (h) through (j) of this Section 142.6. For a second violation, the awarding authority may deduct from the amount payable to the Contractor or Subcontractor by the City under any Contract subject to this Article, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of \$50 for each employee, applicant or other person as to whom the violation occurred or continued. Thereafter, for subsequent violations, the penalty may increase to no more than \$100, for each employee or applicant whose rights were, or continue to be, violated. Such funds shall be allocated to the OLSE and used to offset the costs of implementing and enforcing this Article. If multiple employees or applicants are impacted by the same procedural violation at the same time (e.g. all applicants for a certain job opening are asked for their conviction history on the initial application), the violation shall be treated as a single violation rather than multiple violations.

—(g)—This subsection (g) applies to violations occurring during the term of a Contract entered into on or after the effective date of the ordinance in Board of Supervisors File No. 171170 amending this Article 142. For a first violation, the awarding authority may deduct from the amount payable to the Contractor or Subcontractor by the City under any Contract subject to this Article, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of \$500 for each employee, applicant or other person as to whom the violation occurred or continued. For a second violation, the awarding

authority may deduct from the amount payable to the Contractor or Subcontractor by the City under any Contract subject to this Article, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of no more than \$1,000 for each employee, applicant or other person as to whom the violation occurred or continued. Thereafter, for subsequent violations, the awarding authority may deduct from the amount payable to the Contractor or Subcontractor by the City under any Contract subject to this Article, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of no more than \$2,000, for each employee or applicant whose rights were, or continue to be, violated. The administrative penalties for each violation shall be paid to the employee or applicant as to whom the violation occurred or continued. If multiple employees or applicants are impacted by the same procedural violation at the same time (e.g. all applicants for a certain job opening are asked for their Conviction History on the initial application), the violation shall be treated as one violation for each impacted employee or applicant.

— (h)—In addition to any other penalties provided for the violation of this Article, the Contract or Property Contract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding under this Section 142.6 that the Contractor or Subcontractor has violated the provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

— (i)—A violation of the provisions of this Article during the performance of a Contract or

Property Contract shall be deemed by the City to be a material breach of contract and the basis for

determination by the awarding authority that the Contractor or Subcontractor is an irresponsible

bidder as to all future contracts for which such Contractor or Subcontractor may submit bids. Such

Contractor or Subcontractor shall not for a period of up to two years thereafter, be allowed to act as a

Contractor or Subcontractor under any Contract or Property Contract. This subsection (i) shall be

governed by the procedures set forth in Chapter 28.

-(j) Nothing contained in this Article shall be construed in any manner so as to prevent the

City from pursuing any other remedies that may be available at law, equity or under any Contract or Property Contract.

— (k)—The Director of OLSE shall have authority to adopt regulations or guidelines that implement the provisions of this Article. Regulations or guidelines shall be adopted only after consultation with the Director of OCA. Regulations or guidelines that relate to provisions of general import or applicability in Police Code Article 49 shall be adopted only after consultation with the Director of HRC and the Mayor's Office of Housing and Community Development. A designee of the Director of OLSE shall not have the authority to adopt regulations or guidelines under the first sentence of this subsection (k); but at the discretion of the Director of OLSE a designee of the Director of OLSE shall have the authority to conduct hearings leading to the adoption of regulations or guidelines, and to consult with the Director of HRC, the Mayor's Office of Housing and Community Development, and the Director of OCA as specified in this subsection (k).

—(l)—OLSE shall maintain a record of the number and types of complaints it receives alleging a violation of this Article, and the resolution of those complaints. This information shall be compiled on an annual calendar year basis and reported to the Board of Supervisors by January 31 of each year.

SEC. 142.7. CONTRACTOR AND SUBCONTRACTOR RECORDS.

(a) All Contractors and Subcontractors shall be subject to the same requirements for access to and maintenance of employment records as described in Police Code Section 4910. In no event shall OLSE require a Contractor or Subcontractor to provide any information or documents the disclosure of which would violate state or federal law.

— (b)—A Contractor or Subcontractor shall provide to the OLSE, or the OLSE's designee, such information on an annual basis as may be required to verify the Contractor or Subcontractor's compliance with this Article.

(c) Where a Contractor or Subcontractor does not maintain or retain adequate records documenting compliance with this Article and does not allow OLSE reasonable access to such records,

it shall be presumed that the Contractor or Subcontractor did not comply with this Article 142, absent clear and convincing evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to provide any and all nonfinancial information to OLSE necessary to fulfill OLSE's responsibilities as the enforcing agency under this Article. With regard to all such information provided by the Office of Treasurer and Tax Collector. OLSE shall be subject to the confidentiality provisions of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.

SEC. 142.8. NONAPPLICABILITY, EXCEPTIONS, AND WAIVERS.

- (a) The Director of OCA shall waive the requirements of this Article under the following circumstances:

(1)—Whenever the Director of OCA finds, upon the advice of the awarding authority, that there is only one prospective Contractor willing to enter into a Contract with the City, or a Property Contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective Contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department, board or commission certifies in writing to the OCA that pursuant to Administrative Code and Labor and Employment Code provisions the Contract or Property Contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Article capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

— (3)—Where the City Attorney certifies in writing to the OCA that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Article:

— (b) This Article shall not apply where the prospective Contractor is a public entity and the Director of OCA finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed Contract or Property Contract are not available from another source, or that the proposed Contract or Property Contract is necessary to serve a substantial public interest.

— (c) This Article shall not apply where the Director of OCA finds that the requirements of this Article 142 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 Article.

— (d)—Subject to the requirements of subsection (e), upon the request of a potential Contractor or upon the Contracting Officer's own initiative, after taking all reasonable measures to find an entity that complies with this Article 142, the Contracting Officer may propose a waiver of any or all of the requirements of this Article for any Contract, Property Contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the operative date of this Article under the following circumstances:

— (1) Where the Contracting Officer determines that there are no qualified responsive bidders or prospective Contractors who could be certified as being in compliance with the requirements of this Article and that the Contract or Property Contract is for goods, a service, or a project that is essential to the City or City residents; or

— (2) Where the Contracting Officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, state or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

— (3) Where the Contracting Officer determines that the requirements of this Article would

result in the City's entering into a Contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Article;

- (e) The waiver authority granted to Contracting Officers in this Section 142.8 shall be subject to the requirement that:
- (1)—All proposed waivers must be submitted for approval to the Director of OCA. All proposed waivers must set forth the reasons the Contracting Officer is requesting the waiver, what steps were taken to find any entity that complies with this Article, and why the waiver does not defeat the intent of this Article, which is to prohibit the City from entering into Contracts and Property Contracts with persons that do not comply with the requirements of this Article to follow certain procedures when inquiring about and using criminal history information in employment decisions.
- (2) The Director of OCA shall take action approving or denying a proposed waiver within 30 days of receiving a notification of the proposed waiver from a contracting officer. If after 30 days the Director of OCA has taken no action on the proposed waiver, the waiver shall be deemed approved.
- (3) The Director of OCA or Contracting Officer shall report to the OLSE whenever such a waiver is granted within five days of granting the waiver.
- (f)—For any Contract or Property Contract subject to approval by the Board of Supervisors, the approving resolution shall state whether any waiver or exception under this Section 142.8 has been or is proposed to be granted for that contract.
- —(g) This Article 142 shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:
- (1)—No person, entity or financial institution doing business in the City which is in compliance with this Article is capable of performing the desired transactions(s); or
 - (2) The City will incur a financial loss which in the opinion of the Treasurer would violate

his or her fiduciary duties.

— This subsection (g) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Article.

-(h) The General Manager of the Public Utilities Commission may waive the requirements of this Article 142 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 exemption shall not apply to Contractors or franchisees providing direct, retail services to end users within the City.

— (i)—OCA shall maintain a record of all instances in which the requirements of this Article have not been applicable to a Contract or Property Contract because of an exception or a waiver as recognized under this Section 142.8. This information shall be compiled on an annual fiscal year basis and reported to the Board of Supervisors upon written request by any member of the Board of Supervisors to the Purchaser.

—(j)—The Contracting Officer may waive the restriction in subsection (a)(5) of Section 142.4 and any limitations imposed in this Article based on subsection (a)(5) as to any Contract or Property Contract, including any grant, where the Contracting Officer certifies in writing that, in the performance of the agreement, the Contractor or grantee (1) is providing services to or has supervisory or disciplinary authority over a minor, (2) is providing services to or has supervisory authority over a "dependent adult," as that phrase is defined in California Welfare and Institutions Code Section 15610.23 or any successor state law, or (3) is providing support services or care to or has supervisory authority over a person 65 years or older. The Contracting Officer shall report annually in writing to

the Director of OCA all waivers that he or she grants pursuant to this subsection (j).

— (k) Waivers granted to a Contractor pursuant to this Section 142.8 shall relieve that

Contractor of any obligations it may have under Article 49 of the Police Code, but only with respect to

work performed under the Contract or Property Contract for which the waiver was granted.

SEC. 142.9. PREEMPTION.

The City recognizes that in some circumstances state or federal law governs some of the matters addressed in this Article. Nothing in this Article shall be interpreted or applied by a court or an agency of City government so as to create any requirement, power, or duty in conflict with federal or state law or with a requirement of any government agency, including any agency of City government, implementing federal or state law. Consistent with the foregoing preemption principle, for example, the OLSE is authorized to not enforce any provision of this Article upon determining that its application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law. As another example consistent with the foregoing preemption principle, Contractors may inquire about criminal convictions outside of the time periods set forth in this Article where required by federal or state law or a government agency implementing federal or state law. These examples are illustrative and do not limit the scope of the preemption principle stated in this Section 142.9.

SEC. 142.10. SEVERABILITY.

If any part or provision of this Article, or the application thereof to any person or eircumstance, is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.

SEC. 142.11. OPERATIVE DATE.

This Article shall become operative on 180 days after enactment and shall have prospective effect only, measured from the operative date forward. Enactment occurs when the Mayor signs the

ordinance creating the Article, 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 10. The Labor and Employment Code is hereby amended by repealing Article 161, consisting of Sections 161.1 to 161.4, as follows:

ARTICLE 161: EARNED INCOME CREDIT INFORMATION

-SEC. 161.1. DEFINITIONS.

- As used in this Article the following capitalized words and phrases shall have the following meanings:
 - "City" shall mean the City and County of San Francisco.
 - -"Contract" shall mean a Prime Contract or a Subcontract.
- —"Contract Amendment" shall mean an agreement pursuant to which a Contract entered into prior to the Effective Date is modified or supplemented in order to: (i) extend the term; (ii) increase the total amount of payments due to a Contractor; or (iii) increase the scope of work or services to be performed by a Contractor.
- -"Contractor" shall mean either (i) a Prime Contractor; or (ii) the person or entity that enters into a Subcontract with a Prime Contractor.
- -"Contracting Department" shall mean the department, office, commission or other City entity that enters into the applicable Contract on behalf of the City.
 - "Effective Date" shall mean January 1, 2000.
- "EIC Forms" shall mean, at the time in question, any forms published by the Federal Internal
 Revenue Service for use in claiming all or any portion of the federal Earned Income Credit. For

example, as of the Effective Date, such forms consist of IRS Form W-5 and IRS Schedule EIC.

"EIC Limit" shall mean, at the time in question, the highest income limit under which a person (assuming the highest number of qualifying children) could be eligible for the federal Earned Income Credit under federal laws, rules and regulations. For example, as of the Effective Date, such highest income limit is \$30,580 per year.

- "Eligible Employee" shall mean any employee of Contractor who is paid at a rate that, on an annualized basis, is not greater than the EIC Limit.

—"Prime Contract" shall mean (a) either an agreement pursuant to which the City obtains public works or improvements or goods or services, at the City's expense or from trust funds under the control of the City; or (b) an agreement pursuant to which the City grants funds to a third party, at the City's expense or from trust funds under the control of the City. Notwithstanding the foregoing, the term "Prime Contract" shall exclude (i) agreements entered into prior to the Effective Date (unless and until a Contract Amendment is entered into); (ii) agreements entered into after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to bid packages or requests for proposals advertised and made available to the public prior to the Effective Date, which bid packages or requests for proposals were not amended on or after the Effective Date; and (iii) agreements with a Contractor that is a public entity.

"Prime Contractor" shall mean the person or entity that enters into a Prime Contract with the City.

"Subcontract" shall mean an agreement pursuant to which a Prime Contractor obtains from a third party goods, services or labor to be used in the fulfillment of the Prime Contractor's duties under the applicable Prime Contract.

SEC. 161.2. REQUIRED CONTRACT PROVISIONS.

Every Contract or Contract Amendment entered into on or after the Effective Date shall provide as follows:

— (a)—Contractor shall provide the EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which the applicable Contract or Contract Amendment becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in question); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of the Contract.

— (b) Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract.

(c) If within thirty (30) days after the Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under the terms of the Contract or under applicable law.

SEC. 161.3. PREEMPTION.

Nothing in this Article shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law.

SEC. 161.4. SEVERABILITY.

If any part or provision of this Article, or the application of this Article to any person or circumstance, is held invalid, the remainder of this Article, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Article are severable.

Section 11. Chapter 10, Article I of the Administrative Code is hereby amended by revising Section 10.6-1, to read as follows:

SEC. 10.6-1. MONITORING OF NONPROFITS CONTRACTING WITH THE CITY.

- (a) By November 1, 2024, the Controller shall adopt Citywide standards that departments must comply with when contracting with nonprofit organizations. The standards shall include requirements that contracts with nonprofit organizations include performance measures; guidance for how departments should engage contractors in the development and monitoring of such measures; regular financial and performance reporting requirements applicable to nonprofits; standard reporting timeframes and expected elements for ongoing departmental monitoring of nonprofits; a process departments must follow when entering into and managing their contracts with nonprofits and reporting monitoring results to the Controller; and recommendations for departments with the goal of making it easier for nonprofits to do business with the City. The Controller shall have discretion to revise these standards as the Controller deems necessary to achieve the goals of standardizing and ensuring adequate Citywide programmatic and performance monitoring of nonprofit organizations and clarifying departments' obligation to appropriately monitor their contracts with nonprofits.
- (b) The Controller shall be responsible for administering a Citywide nonprofit contractor corrective action policy to ensure compliance with City funding requirements, accountability, and reliable service delivery. By November 1, 2024, the Controller shall engage with City departments and nonprofit contractors in a review of current standards for corrective action and issue a Citywide policy that establishes clear procedures for identifying areas of concern or poor performance by nonprofit contractors. The policy may include, among other things, specific procedures for identifying nonprofit contractors in need of technical assistance, multi-departmental coordination, and/or escalation protocols including but not limited to audits of nonprofit performance or financial practices.
- (c) By November 1, 2024, the Controller shall complete a review of the publicly available information the City has about its nonprofit contracted services, including spending,

performance, and types of services provided. At the conclusion of the review, the Controller shall issue a report to the Mayor and the Board of Supervisors recommending any policy changes that the Controller concludes would improve public access to this information in the future. Concurrent with the November 1, 2024 report, the Controller shall publish a directory webpage documenting where and how to access existing public information about nonprofit contracted services. The Controller shall maintain and update this directory webpage as additional public information is made transparent through the recommendations in the report, including information gathered by the Controller through the annual review required in subsection (d) below.

- (d) Each fiscal year, beginning with Fiscal Year 2025-2026, the Controller shall conduct a review of department compliance with the Controller's established contract monitoring standards and shall submit a report summarizing the review to the Mayor and the Board of Supervisors. The Controller may limit the annual review to specific departments, service areas, or contracts as the Controller deems appropriate to achieve the goal of ensuring adequate Citywide programmatic and performance monitoring of nonprofit organizations.
- (e) Starting with Fiscal Year 2024-2025, nonprofit organizations that received a total of at least \$750,000 \$1,000,000 in funding from the City in a fiscal year must submit to the City an audited balance sheet and the related statement of income and cash flows for that fiscal year within six months after the end of the fiscal year, certified by an independent accounting firm as accurately presenting the financial position of the organization. The Controller shall establish procedures and deadlines for submission of such audit materials to the City and distribution of such audit materials to City departments, provided that March 31, 2026 shall be the deadline for the submission of the audit materials for Fiscal Year 2024-2025. This subsection (e) does not limit the authority of the City, through the Controller or any other part

of City government, as otherwise authorized by law, to conduct a fiscal review or require alternate documents demonstrating sound financial controls in the absence of an audit, including for nonprofit organizations receiving less than a total of \$750,000 \$1,000,000 from the City within a fiscal year. The amount of \$1,000,000 is based upon the Federal Single Audit standard found in 2 CFR 200.501(b). Should the amount of the -Federal Single Audit standard threshold for application be changed, the \$1,000,000 application threshold in this section shall be administratively interpreted to match the revised threshold.

(f) The Controller shall publicly issue on its website a draft version of any proposed policy, standard, or guidance required in subsections (a), (b), and (e) of this Section 10.6-1, and shall provide an opportunity for members of the public to review and provide written comments about the draft for at least 15 days prior to final adoption. In the public review process, the Controller shall make good-faith efforts to ensure community involvement and racial equity in its outreach efforts. Outreach and engagement for public review shall include engaging organizations, regardless of size, with a focus on fostering the growth of new, smaller institutions reflecting the experiences of historically underserved communities, including but not limited to African American communities, Asian American communities, disabled communities, Latinx communities, LGBTQIA+ communities, Native American communities, Pacific Islander communities, and women.

Section 12. Chapter 12L of the Administrative Code is hereby amended by revising Sections 12L.3 and 12L.4, to read as follows:

CHAPTER 12L: PUBLIC ACCESS TO RECORDS AND MEETINGS OF NONPROFIT ORGANIZATIONS

24

25

SEC. 12L.3. DEFINITIONS.

As used in this Chapter <u>12L</u>, the following words and phrases shall have the meanings indicated herein:

- (a) "Board of Directors" *shall* mean<u>s</u> the Board of Directors, the Board of Trustees, or other principal decision_making body of any nonprofit organization.
 - (b) "City" shall means the City and County of San Francisco.
- (c) "Contract" *shall* means an agreement (however titled, including without limitation a memorandum of understanding) to grant or otherwise provide funds to a nonprofit organization including funds from another governmental entity administered through the City or any City commission, City board, City agency, or City department, for such organization's operation, new or existing programs, events, performances, capital improvements, or for goods or services provided by or through such organization, to all or any portion of the public. "Contract" shall not include: (1) an agreement to provide goods to the City pursuant to bids or requests for proposals, where the City is the end user of the goods, θ (2) an agreement to provide services or benefits to City employees and/or to their family members, dependents, or their other designated beneficiaries; or (3) agreements in which the Nonprofit organization will receive less than \$1,000,000 in total City funding per fiscal year and are not subject to the audit requirements of Chapter 10, Article I, Section 10.6.-1(e) of the Administrative Code. The amount of \$1,000,000 is based upon the Federal Single Audit standard found in 2 CFR 200.501(b). Should the amount of the -Federal Single Audit standard threshold for application be changed, the \$1,000,000 application threshold in this section shall be administratively interpreted to match the revised threshold.
- (d) "Cost-neutral" *shall* means that a nonprofit organization's reasonable costs of complying with this Chapter <u>12L</u> (not including direct costs of duplication, or mailing costs, of financial documents which are paid by a member of the public pursuant to Section 12L.5(a)

herein) shall not exceed <u>\$500</u> five hundred dollars per year.

- (e) "Nonprofit organization" *shall* mean*s* any corporation formed pursuant to California Corporations Code Sections 5000 et seq. for any public or charitable purpose, and/or any organization described within 26 USC Section 501(c), *which receives a cumulative total per year of at least \$250,000 in City provided or City-administered funds.*
- (f) "Designated public meeting" *shall* means any regular or special meeting of the Board of Directors of a nonprofit organization which the Board of Directors designates as open to all members of the public pursuant to Section 12L.4(a)(1) of this Chapter.

SEC. 12L.4. PUBLIC ACCESS TO MEETINGS.

- (a) **Meetings Open to the Public.** Except as provided in \underline{Ss} ubsections (a)(2) or (a)(3), the following requirements shall be included in all City contracts with nonprofit organizations:
- designated public meetings per year. Issues addressed by the Board of Directors at designated public meetings shall be of approximately the same general nature and significance to the nonprofit organization as issues typically addressed by the Board of Directors at its other regular or special meetings. These issues may include adoption of the nonprofit organization's budget, nomination of members of the organization's Board of Directors, and evaluation of the organization's contract(s) with the City. *In a*4t least one designated public meeting the public shall have an opportunity to address the Board of Directors on membership on the Board of Directors and to propose candidates for membership on the Board of Directors as provided in Section 12L.6(b).
- (2) Section 12L.4(a)(1) shall apply to the full extent allowed by State and federal law.

- (3) Section 12L.4(a)(1) shall not apply to nonprofit organizations engaged primarily in the provision of abortion counseling or services, domestic violence sheltering services, or suicide prevention counseling services.
- (b) **Closed Meetings.** The Board of Directors may choose to close a portion of a designated public meeting:
- (1) When discussing any matters pertaining to the particular recipients of the nonprofit organization's goods or services or donors of in-kind or monetary contributions to the nonprofit organization where the discussion would necessarily reveal the identity of clients or donors;
- (2) When discussing any matters pertaining to litigation; real estate negotiations; the appointment, employment, evaluation of performance, or dismissal of an employee of the nonprofit organization; or labor negotiations in which the nonprofit organization is involved; when hearing complaints or charges against an employee of the nonprofit organization; or when discussing attorney-client privileged information, or information which constitutes a trade secret;
- (3) Under any circumstances where admitting members of the public is prohibited by State or federal law;
- (4) Under any other circumstances where the Board of Supervisors has approved the closing of a portion of a designated public meeting by the nonprofit organization.

(c) Public Comment.

- (1) At every designated public meeting the public shall have an opportunity to directly address the Board of Directors on any item of interest to the public relating to the operations of or services provided by the nonprofit organization.
- (2) At any designated public meeting, the Board of Directors may adopt reasonable regulations to <u>ie</u>nsure that the intent of this Section <u>12L.4</u> is carried out, provided

that the Board of Directors allows for at least 30 minutes of public comment at each designated public meeting.

(d) Notice.

- (1) Each nonprofit organization shall provide the public with notice of each designated public meeting at least 30 days in advance of the meeting.
- (2) The Board of Directors shall cause a written notice of the date, time, and location of each designated public meeting to be submitted to the Clerk of the Board of Supervisors who shall post the written notice where notices of meetings of the Board of Supervisors are posted, and to the San Francisco Main Library Government Information Center which shall post the written notice where notices of meetings of City boards and commissions are posted. In addition, upon inquiry by a member of the public, the nonprofit organization shall disclose the date, time and location of the designated public meeting.

Section 13. Chapter 12N of the Administrative Code is hereby amended by revising Section 12N.1, to read as follows:

CHAPTER 12N: LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND QUESTIONING YOUTH: YOUTH SERVICES SENSITIVITY TRAINING

SEC. 12N.1. DEFINITIONS.

As used in this Chapter <u>12N</u>, the following words and phrases shall have the meanings indicated herein:

- (a) "City" shall mean the City and County of San Francisco.
- (b) "Contract" shall mean an agreement (however titled, including, without limitation, a memorandum of understanding) to grant or otherwise provide funds to an organization for

youth services, including funds from another governmental entity administered through the City or any City commission, board, agency_ or department. "Contract" shall not include (1) an agreement to provide goods to the City pursuant to bids or requests for proposals, where the City is the end user of the goods_ or (2) an agreement to provide services or benefits to City employees and/or to their family members, dependents, or their other designated beneficiaries; or (3) agreements valued below the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.

- (c) "Organization" shall mean any corporation formed under California law for any private, public or charitable purpose, or any collaborative, which receives a cumulative total per year of at least \$50,000 in City-provided or City-administered funds.
- (d) "Sensitivity training" shall mean any program provided from a list of providers whose programs have been reviewed and approved by a joint Human Rights Commission and Youth Commission committee and shall include, but is not limited to, training regarding issues faced by disabled, HIV positive, immigrant, persons of color, sexually abused, runaways from non-accepting households, and homeless lesbian, gay, bisexual, transgender, queer, and questioning youth.
- (e) "Youth Services" shall mean child care, including after school care; job readiness, training, and placement; health, including mental health and substance abuse; social services; homeless prevention, housing or shelter programs or services; education; recreation; delinquency prevention; and library services programs directed at or designed to serve children or youth between the ages of ten and eighteen years old, or older as defined by the organization.
- Section 14. Chapter 12Y of the Administrative Code is hereby amended by revising Section 12Y.3, to read as follows:

CHAPTER 12Y: SAN FRANCISCO SLAVERY DISCLOSURE ORDINANCE

SEC. 12Y.3. EXCEPTIONS.

This Chapter <u>12Y</u> shall not be applicable to the following:

- (a) Contracts for: (1) the receipt, administration, management, or investment of monies held in trust by the City in the Retirement Fund or the Health Service System Trust Fund; (2) the provision of medical or dental insurance to City employees; (3) the issuance, sale, management, or administration of City bonds, notes or lease financings, or other similar obligations, and related credit, liquidity, payment exchange, and other agreements; (4) the safeguard, deposit, and investment of City funds by the City Treasurer in accordance with Charter Section 6.106; and (5) the subordination or reorganization of debt held by the City.
- (b) Contracts, loans, or grant agreements with a federal or <u>sS</u>tate agency, if the application of this Chapter <u>12Y</u> would violate, or be inconsistent with, the terms or conditions of any such grant, loan, or contract, or with the instructions or directions of the applicable <u>Ff</u>ederal or State agency.
 - (c) Contracts for urgent litigation expenses, and agreements entered into pursuant to the settlement of legal proceedings.
- (d) Contracts for needed goods or services where the Director finds that such goods or services are available from only one source that is: (1) willing to enter into a contract with the City on the terms and conditions established by the City and (2) not currently disqualified from doing business with the City.
- (e) Contracts entered into in emergency situations in which it is necessary to immediately procure commodities or services, or to make repairs to safeguard the lives or property of the citizens of the City, or the property of the City, or to maintain public health or welfare as a result of extraordinary conditions created by war, epidemic, natural disaster, or

the breakdown of any plant, equipment, or structure in the City.

(f) Contracts valued below the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code. for a cumulative amount of \$5,000.00 or less per vendor in each fiscal year.

Section 15. Chapter 101 of the Administrative Code is hereby amended by revising Section 101.2, to read as follows:

CHAPTER 101: RESTRICTING THE PURCHASE, SALE, OR DISTRIBUTION OF SUGAR-SWEETENED BEVERAGES BY OR FOR THE CITY

SEC. 101.2. DEFINITIONS.

For purposes of this Chapter 101,

"Contract" means any agreement between the City and a person to provide or procure labor, materials, equipment, supplies, or services to, for, or on behalf of the City for a price to be paid out of monies deposited in the City Treasury or out of trust monies under the control of or collected by the City, but excluding agreements valued below the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code. for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

22

23

24

25

Section 16. 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.

Section 17. Effective and Operative Dates.

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. The ordinance shall become operative on July 1, 2025. Section 2 of this ordinance shall become operative upon enactment. Section 3 and 4 of this ordinance shall become operative on April January 1, 2026. Sections 5-15 of this ordinance shall become operative on January October 1, 20256.

APPROVED AS TO FORM: DAVID CHIU, City Attorney

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

n:\legana\as2025\2400322\01869263.docx



City and County of San Francisco Tails

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

Ordinance

File Number: 250192 Date Passed: October 07, 2025

Ordinance amending the Administrative Code to 1) create a procurement legislative analysis authority for the City Administrator; 2) revise or create threshold dollar amounts for application of various contract requirements tied to the statutory Minimum Competitive Amount or statutory federal Single Audit Standard; 3) reorganize, standardize, and narrow Chapter 12F (relating to the MacBride Principles concerning Northern Ireland; including sunset of ordinance in 2036); 4) repeal Chapter 12J (relating to City business with Burma); and 5) narrow coverage of, and reduce meeting requirements in, Chapter 12L (relating to certain non-profit organizations receiving funds from the City); and amending the Labor and Employment Code to 6) reorganize, standardize, revise exemptions and waivers narrowing coverage, create threshold dollar amount for application tied to the statutorily based Minimum Competitive Amount, and update Article 131 (relating to nondiscrimination under City contracts; including sunset of ordinance in 2036) and repeal Article 132 (relating to nondiscrimination under City property contracts), while incorporating some of its provisions under Article 131; 7) reorganize, standardize, revise exemptions and waivers narrowing coverage, create a threshold dollar amount for application tied to the statutorily based Minimum Competitive Amount and update Article 151 (relating to City procurement of sweatfree goods); 8) repeal Article 141 (relating to salary history in the hiring process of City contractors), Article 142 (relating to criminal history in the hiring and employment process of City contractors), and Article 161 (relating to earned income credit forms for employees of City contractors).

June 04, 2025 Budget and Finance Committee - CONTINUED

July 09, 2025 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

July 09, 2025 Budget and Finance Committee - DUPLICATED AS AMENDED

July 09, 2025 Budget and Finance Committee - RECOMMENDED AS AMENDED

July 15, 2025 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Chan, Chen, Dorsey, Engardio, Fielder, Mahmood, Mandelman, Melgar, Sauter, Sherrill and Walton

July 15, 2025 Board of Supervisors - RE-REFERRED AS AMENDED

Ayes: 6 - Chan, Chen, Engardio, Fielder, Melgar and Walton

Noes: 5 - Dorsey, Mahmood, Mandelman, Sauter and Sherrill

September 17, 2025 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

September 17, 2025 Budget and Finance Committee - RECOMMENDED AS AMENDED

September 30, 2025 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Chan, Chen, Dorsey, Engardio, Fielder, Mahmood, Mandelman, Melgar, Sauter, Sherrill and Walton

October 07, 2025 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Chen, Dorsey, Engardio, Fielder, Mahmood, Mandelman, Melgar, Sauter, Sherrill and Walton

File No. 250192

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 10/7/2025 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Daniel Lurie Mayor OCT 16,2025

Date Approved