

File No. 221147

Committee Item No. 6

Board Item No. 3

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date Feb 13, 2023

Board of Supervisors Meeting

Date March 21, 2023

### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- Memorandum of Understanding (MOU)
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 - Ethics Commission
- Award Letter
- Application
- Form 700
- Information/Vacancies (Boards/Commissions)
- Public Correspondence

### OTHER (Use back side if additional space is needed)

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Completed by: Victor Young

Date Feb 9, 2023

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

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

3 **Ordinance amending the Administrative Code to remove agreements let under Chapter**  
4 **6 for Public Works or Improvement from the prohibitions in Chapter 12X on the City’s**  
5 **entering into a contract with a contractor that has its United States headquarters in a**  
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7 **or has voter suppression laws, or where any or all of the contract would be performed**  
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16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Findings.

18 The Board of Supervisors finds that due to the COVID-19 pandemic, its aftermath, and supply  
19 chain limitations, the construction sector lacks availability of bidders. Increasing the number of  
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21 infrastructure projects.

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

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

25 \* \* \* \*

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

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10 agreement is in the interest of soundly investing public assets; or

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

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

15           \* \* \* \*

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

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6 Article II, Chapter 12X, including amendments to existing Contracts.

7 \* \* \* \*

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

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1 Section 2. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
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6 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
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9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
10 additions, and Board amendment deletions in accordance with the "Note" that appears under  
11 the official title of the ordinance.

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

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

17 N:\LEGANA\AS2022\2300114\01637281

## LEGISLATIVE DIGEST

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

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

### Existing Law

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

### Amendments to Current Law

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

### Background Information

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

N:\LEGAN\AS2022\2300114\01637280

BOARD of SUPERVISORS



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

## MEMORANDUM

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

FROM: Victor Young, Assistant Clerk

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

DATE: November 17, 2022

SUBJECT: LEGISLATION INTRODUCED

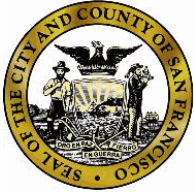
The Board of Supervisors' Rules Committee received the following proposed legislation:

**File No. 221147**

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

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



# City and County of San Francisco

## Master Report

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

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

**Enacted:** \_\_\_\_\_ **Effective:** \_\_\_\_\_

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

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

**Requester:** \_\_\_\_\_ **Cost:** \_\_\_\_\_ **Final Action:** \_\_\_\_\_

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

**Sponsor:** Safai

### History of Legislative File 221147

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



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

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

18  
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Print Form

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

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

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

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

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

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

Sponsor(s):

Safai

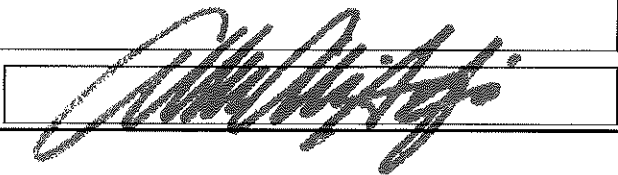
Subject:

Amendments to Administrative Code Chapter 12X

The text is listed:

Please see attached legislation.

Signature of Sponsoring Supervisor:



For Clerk's Use Only

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

---

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

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

Thanks,

**BILL BARNES** *(he/him/his)*

Chief of Staff

Supervisor Ahsha Safaí

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

415.554.7896 (direct)

415.554.6975 (main line)

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

---

Yes, the electronic signature is valid.

Gus

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

**CONFIDENTIAL - ATTORNEY CLIENT PRIVILEGE**

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

---

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

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Thanks,

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Chief of Staff  
Supervisor Ahsha Safaí  
1 Dr. Carlton B. Goodlett Place, Room 244  
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415.554.7896 (direct)  
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11 "Contract" means an agreement between a Contracting Department and any person or  
12 entity that provides, at the expense of the City, ~~for public works or public improvements to be~~  
13 ~~purchased under Chapter 6 of the Administrative Code, or~~ for commodities or services to be  
14 purchased under Chapter 21 of the Administrative Code. Notwithstanding the foregoing,  
15 "Contract" shall not include:

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

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

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

25 \* \* \* \*

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

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

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

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

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# Chapter 12X of the Administrative Code

## Policy Alternatives



**CITY & COUNTY OF SAN FRANCISCO**

February 10, 2023  
City Administrator's Office

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# Executive Summary

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

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

In response to this inquiry, this report finds that:

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

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

# Executive Summary

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

## **Alternative 1: Repeal the Entirety of 12X**

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

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

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

## **Alternative 3: Exempt Chapter 6 Contracts from 12X**

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

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

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

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

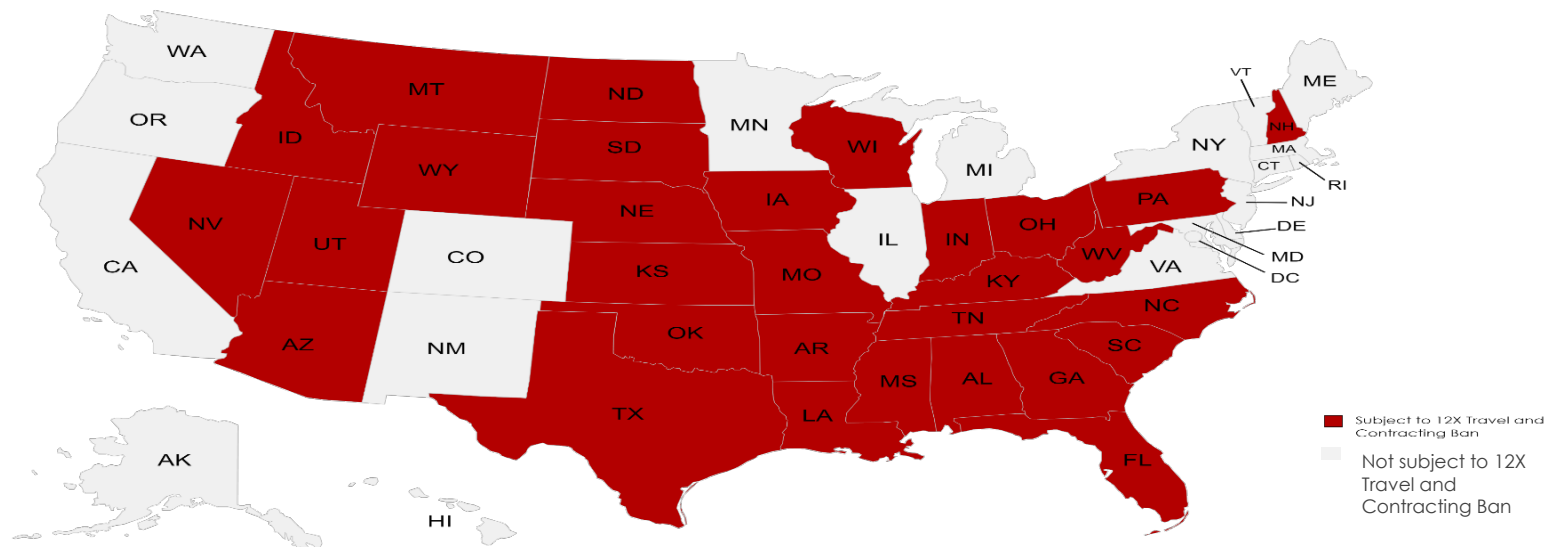
This alternative would allow the City to contract with businesses in banned states if they achieve individual, firm-level compliance. This alternative is likely to create the highest level of administrative cost and burden because of the new requirements that would need to be developed to implement it.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



## Summary of 12X Legislation

- **The current 12X legislation contains three articles:** Article I was passed in 2016 to dissociate the City from states that restrict LGBTQ rights. Articles II and III were added in 2019 and 2021, respectively, to dissociate the City from states that restrict abortion access and voting rights.
- More specifically, **12X has two separately administered components:** It bans nearly all City-funded travel to states with restrictive rights, identified through a list that the City Administrator compiles and updates semiannually; and it bans construction (Chapter 6), commodity and services (Chapter 21) contracting with companies headquartered in those states. Under limited circumstances, City staff can seek waivers for contracting, but they must provide proper justification and receive approval from their departmental leadership. (See Appendix 2 for a brief explanation of 12X exemptions, waivers, and applicability).

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



## Efficacy of 12X

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

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

## Impact on City Operations

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

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

# Alternative 1: Repeal the Entirety of 12X

## What Would This Look Like?

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

## Considerations

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

## What Would This Look Like?

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

## Considerations

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

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

# Alternative 3: Exempt Chapter 6 Contracts from 12X

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## What Would This Look Like?

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

## Considerations

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

## What Would This Look Like?

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

## Considerations

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

# Alternative 5: Create “Off-ramps” for 12X

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## What Would This Look Like?

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

## Considerations

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



# Appendix 1: Currently Banned States List

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

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

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

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

	Travel Ban	Contracting Ban
<b>Applicability</b>	The 12X Travel Ban applies to <u>any</u> expense paid by City funds with respect to travel to a 12X State by City employees, contractors or grantees, unless the travel purpose falls into one of 7 exemption categories.	The 12X Contracting Ban applies solely to Contracts, Purchase Orders and Direct Vouchers that fall under Administrative Code Chapter 6 or Chapter 21.
<b>Exemptions</b>	<p>City-funded travel to a banned state is exempt if it falls into one of the seven categories below:</p> <ol style="list-style-type: none"> <li>1. Travel is necessary for the enforcement of any state or City law;</li> <li>2. Travel is necessary for the defense of any legal claim against the City;</li> <li>3. Travel is required by law.</li> <li>4. Travel is required to meet contractual obligations incurred by the City.</li> <li>5. Travel is necessary for the protection of public health, welfare, or safety.</li> <li>6. Where the funding source of the Employee, Contractor or Grantee travel prohibits City from applying the 12X Travel Ban (e.g., Federal Funds).</li> <li>7. Employee, Contractor or Grantee travel that requires landing in or going through a 12X State to complete the travel.</li> </ol>	<ul style="list-style-type: none"> <li>• Chapter 21G Agreements</li> <li>• Chapter 23 Agreements</li> <li>• Employee Expenses and Reimbursements</li> <li>• Contracts for the Investment of Trust Money</li> <li>• Contracts for Underwriting Services</li> <li>• Contracts Advertised, Solicited or Initiated prior to the Applicable Article’s Operative Date</li> </ul>
<b>Waiver Eligibility (documentation required)</b>	The travel ban <u>cannot be waived</u> . Travel to a banned state may only occur if it is considered exempt.	<p>If a contract is not exempt, it can still be waived under the following circumstances:</p> <ul style="list-style-type: none"> <li>• Sole Source</li> <li>• Declared Emergency</li> <li>• Only One Responsive Contractor</li> <li>• Adverse Impact/Substantial Interest</li> <li>• Bulk Purchasing (i.e., Piggybacking)</li> <li>• Conflicting Grant Terms</li> <li>• SFPUC Bulk Water, Power and Gas</li> </ul>

# Appendix 3: Other Jurisdictions' Policies

## What other jurisdictions have tried travel or business boycotts?

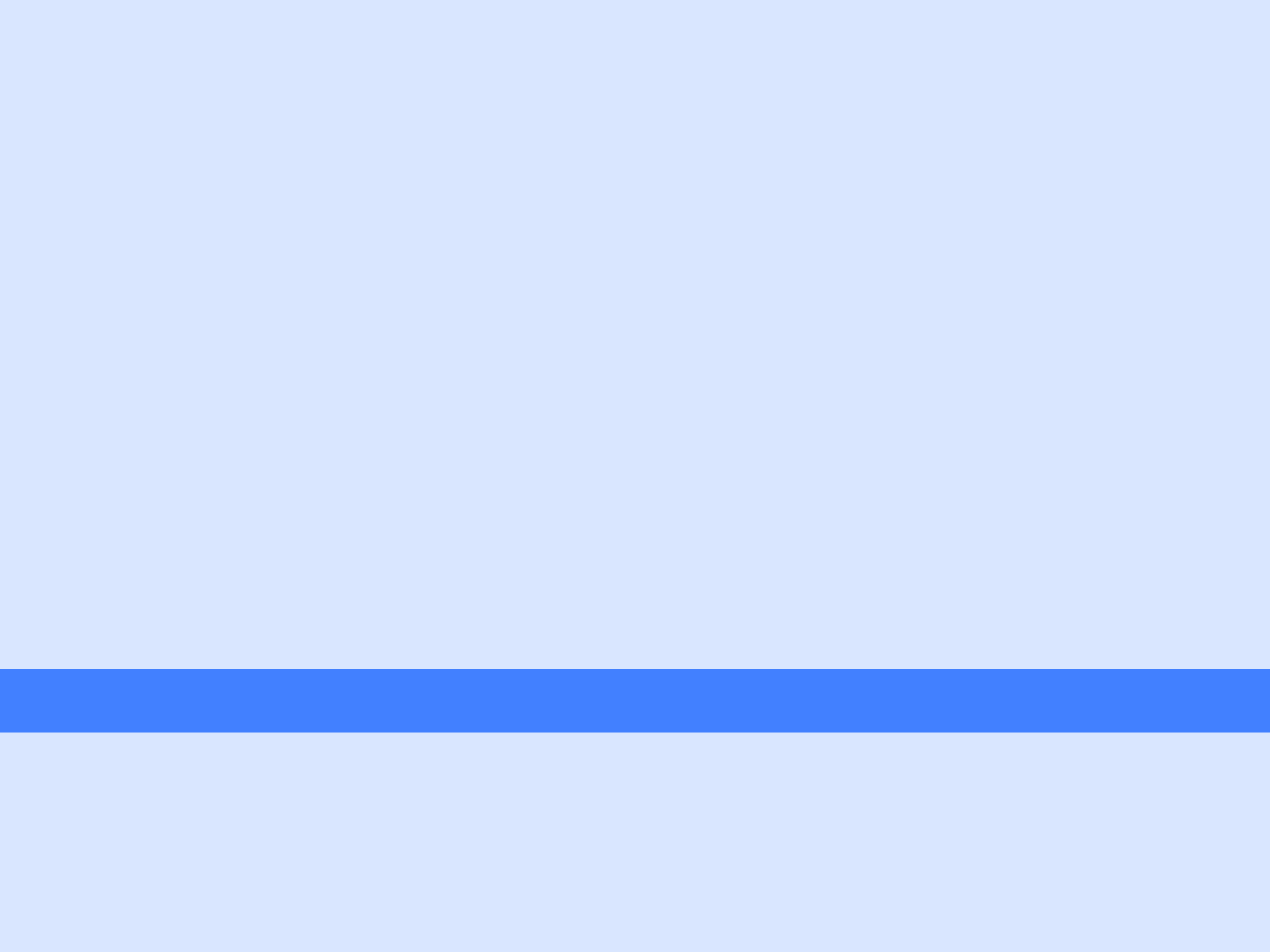
It is difficult to quantify the number of jurisdictions that have enacted travel and/or contracting bans, as this would require a detailed analysis of governing codes and executive orders for 50 states and over 300 municipalities.<sup>1</sup> However, a recent Wall Street Journal article<sup>2</sup>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

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

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

<sup>1</sup>If the analysis were limited to cities with population size >100,000.

<sup>2</sup>Mai-Duc, Christine (2022). "San Francisco Reconsiders Business Ban that Targets States' Social Values." *Wall Street Journal*. Retrieved at: <https://www.wsj.com/articles/san-francisco-reconsiders-business-ban-that-targets-states-social-values-11666789223>



## SFO Design & Construction Division

### 2023 Anticipated Upcoming Contracts Over \$5M

#	Project No.	Project Title	Target Advertisement Date	Contract Amount	FAA Grant
1	11431.41	PMSS: Recycled Water System	21-Mar-23	\$6,000,000	
2	11431.66	DB: Recycled Water System	21-Apr-23	\$140,000,000	X
3	11470.61	DBB: BA/TRTS 12kV Power Distribution Replacement Ph1	21-Mar-23	\$22,000,000	X
4	11806	As-Needed Airfield Electrical Engineering Support Services	21-Apr-23	\$6,000,000	
5	11807	As-Needed Electrical Engineering Support Services	21-Apr-23	\$6,000,000	
6	11918.41	PMSS Cargo Building 626 - Phase 1	3-May-23	\$11,030,000	
7	11918.66	DB: Cargo Building 626 - Phase 1 and Cargo Building 720 - Phase 1/GSI Building 742	3-May-23	\$200,514,000	
8	11917.41	PMSS West Field Garage 675 and Area Improvements	22-Mar-23	\$15,750,000	
9	11917.66	DB: West Field Garage 675 and Area Improvements	22-Mar-23	\$286,410,000	
10	11997	Micro As-Needed Project Management Support Services	4-May-23	\$12,000,000	
11	11985.41	PMSS West Field Office Building 670	4-Oct-23	\$17,320,000	
12	11985.66	DB: West Field Office Building 670	5-Oct-23	\$286,340,000	
13	11751.61	DBB: Generator Bldg. Replacement at Field Lighting Building No. 1	5-Sep-23	\$25,000,000	X
14	11812.61	DBB: ITB HVAC System Upgrade	5-Sep-23	\$40,000,000	X
15	11710.61	DBB: Natural Gas Leak Detection System at Central Utility Tunnel Phase 2	3-Oct-23	\$6,200,000	
16	11757.61	DBB: Traffic Signals - Standardization and Upgrades	3-Oct-23	\$12,000,000	
17	8522.61	DBB: Effluent Pipeline Replacement to SSF WQCP	5-Sep-23	\$13,000,000	
18	11984.41	PMSS Cargo Building 720 - Phase 1 and GSE Bldg. 742	3-May-23	\$8,710,000	
19	11984.66	DB: Cargo Building 720 - Phase 1 and GSE Bldg. 742	3-May-23	\$158,286,000	



## **Resolution Opposing Repeal of SF Administrative Code 12X**

Whereas the San Francisco Board of Supervisors is considering a rollback of the San Francisco Administrative Code Chapter 12X which prohibits City-funded employee travel to states with anti-LGBTQ laws or restrictive abortion laws or voter suppression laws; and

Whereas Chapter 12X also prohibits the City from entering into any contract with a contractor that has its United States headquarters in a state on the Covered State List or where any or all of the work on the Contract will be performed in a state on the Covered State List; and

Whereas Chapter 12X currently provides for exceptions in the case where services needed are only available from one source or related to an emergency or where there are no qualified responsive bidders that comply or where compliance would have an adverse impact on services or a substantial adverse financial impact; and

Whereas the City and County of San Francisco sets an example for the region, state, country, and the world with respect to protections for immigrants, workers, local and small businesses, and public investment; and

Whereas many on the Covered State List have also enacted laws against workers, unions, and immigrants and in fact spend corporate political action committee money at the state and federal level to oppose laws championed first in California and San Francisco, specifically

Therefore, be it resolved the affiliates of the San Francisco Labor Council oppose the repeal of Chapter 12X and stand in solidarity with LGBTQIA siblings, workers, immigrant communities, and our local small businesses; and

Be it finally resolved this resolution be transmitted to the Board of Supervisors, City Administrator, Mayor, and the California Labor Federation, AFL-CIO.

Adopted by the Executive Committee of the San Francisco Labor Council on February 27, 2023.



February 13, 2023

SF BOARD OF SUPERVISORS  
RULES COMMITTEE  
Board Members Dorsey, Walton, Safai

RE: TEM 6 221147 ADMINISTRATIVE CODE: REMOVING CONSTRUCTION AGREEMENT FROM PROHIBITING ON CONTRACTING IN STATES WITH CERTAIN TYPES OF DISCRIMINARY LAWS

The San Francisco Latino & Black Builder's Association is in opposition to Item 6. We request that the data be provided to justify the change. We are opposed to the elimination of I2X until the data is presented to justify the elimination. We are opposed to any changes in any economic, equity and social criteria included any ordinance or construction contracts before consulting the small local business community in Construction and Professional Services.

We write to express our concerns over the proposed amendment and respectfully request that you considered the following questions during your deliberation.

What "problem" are we trying to resolve with the amendment? Is there data that shows that there has been a decrease in efficiency of work or an increase in costs associated with the ordinance as it exists? And specifically, if there have been recent cost increases, are they because of the ordinance or because of the recent market conditions? Have the Chapter 6 departments experienced bids in which fewer than three bidders have participated? Have any documented changes in efficiency or cost been compared with other public agencies in the Bay Area that do not have the same ordinance in place? If there have been impacts directly related to the ordinance as it exists, why create an exemption for only Chapter 6 departments?

We support the intent of the original ordinance and the support that it offers to LGBTQ communities throughout the country. We also agree with the notion of supporting local and California businesses.

We also ask how much outreach has been performed to small businesses in San Francisco, particularly those in the BIPOC communities to determine what the impacts of the change might be.

With respect,  
Anne Cervantes, AIA  
Founder & Co-chair San Francisco Latino Black Builders Association

- cc. Miguel Galarza, CO CHAIR SFLBBA leadership
- Nicole Burgess, SFLBBA leadership
- Nick Colina, SFLBBA leadership
- Alfonso Fillon, SFLBBA leadership
- Tricia Gregory, SFLBBA leadership
- Tana Harris, SFLBBA leadership
- LaSonia Mansfield, SFLBBA leadership
- Oronde Sterling, SFLBBA leadership