

## **LEGISLATIVE DIGEST**

[Administrative Code - Agreements with Government Entities]

**Ordinance amending the Administrative Code to allow City departments to enter into and amend agreements for construction, goods, and services, and real property leases, with government entities without complying with solicitation requirements that would otherwise apply, and without adhering to provisions in the Municipal Code that impose obligations on contracting parties as a condition to agreement with the City.**

### **Existing Law**

Parties that enter into an agreement with the City of San Francisco are often required to adhere to specialized obligations imposed by virtue of contracting with the City that are not generally found in commercial agreements. The obligations can be affirmative steps to be taken, or restrictions imposed on the contractor's practices. The non-commercial special obligations are usually imposed by power found San Francisco's participation in the market economy as a buyer, not the City's police power. The obligations are found in various chapters of the Administrative, Environment, Labor and Employment, and Police Codes. Some sections apply widely, some are for very limited circumstances. Some of the codes have expansive waivers or exemptions, while others do not. The exemptions are not uniform or consistent.

The City may enter into agreements with other government entities such as other cities or universities. Agreements may include payment, or may be for joint purposes and cooperation. There is limited law governing such agreements, though Administrative Code 21.04(a)(2) allows some direct purchasing by departments entering into expenditure agreements.

### **Amendments to Current Law**

This legislation removes contracting barriers with agreements with other government entities. Chapters 2A Article IX (Airport Agreements), 6 (Public Works), 21 (Goods and Services) and 23 (Real Property) now address the potential for an agreement with government entities and eliminates the requirement of competitive procurement for such agreements.

In addition, obligations and requirements that the City imposes on contractors, including but not limited to those found in the following sections:

- Admin. Code Chapter 6
- Admin. Code Chapter 12E (Ban on City Use of Gas-Powered Landscaping Equipment)
- Admin. Code Chapter 12F (MacBride Principles);
- Admin. Code Chapter 12G (Prohibition on Use of Public Funds for Political Activity by Recipients of City Contracts, Grants, and Loans);

- Admin. Code Chapter 12L (Public Access to Meetings and Records of Nonprofit Organizations);
- Admin. Code Chapter 12M (Protection of Private Information);
- Admin. Code Chapter 12N (Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth: Youth Services Sensitivity Training);
- Admin. Code Chapter 12Y (San Francisco Slavery Disclosure Ordinance);
- Admin. Code Chapter 14B (Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance);
- Admin. Code Chapter 21 (Acquisition of Commodities and Services), Sections 21.1, 21.17, 21.18, 21.19, 21.20, 21.21, 21.22, 21.23, 21.28, and 21.35;
- Admin. Code Chapter 23;
- Admin. Code Chapter 83 (First Source Hiring Program);
- Admin. Code Chapter 101 (Restricting the Purchase, Sale, or Distribution of Sugar-Sweetened Beverages by or for the City);
- Admin. Code Chapter 104 (Collection of Sexual Orientation And Gender Identity Data);
- Environ. Code Chapter 5 (Resource Conservation Ordinance);
- Environ. Code Chapter 8 (Tropical Hardwood and Virgin Redwood Ban);
- Environ. Code Chapter 16 (Food Service Waste Reduction);
- Labor and Employment Code Article 111 (Minimum Compensation Ordinance);
- Labor and Employment Code Article 121 (Health Care Accountability Ordinance);
- Labor and Employment Code Article 131 (Nondiscrimination in Contracts);
- Labor and Employment Code Article 141 (Consideration of Salary History in Hiring);
- Labor and Employment Code Article 142 (Consideration of Criminal History in Hiring); and
- Labor and Employment Code Article 151 (Sweatfree Contracting)

shall not be in effect. Waivers and documentation are not required so long as the contracting party meets the definition of a government entity as specified in the new Administrative Code Section 1.25.

The City Administrator is authorized to publish and update a list of obligations imposed on contractors, such as the one above. The list may not be exhaustive.

A definition of government entity has been created. The definition is meant to be interpreted very broadly to encompass all types of government entities and public bodies.

Approval of mutual indemnity agreements, commonly found in agreements with government entities, no longer require Risk Manager approval.

#### Background Information

The City often enters into agreements with other government entities generally for non-commercial purposes. There are many reasons for such agreements. The parties may desire to cooperate in joint concerns (such as regional security), may wish to use other entity's resources (such as in emergency prevention and management), may be part of a multi-party agreement (such as for water use and apportion), may need specific expertise (such as working with the United States Geological Service in federal lands), may wish to improve the public health (such as an agreement with a medical school), or may be required to contract with a designated entity (such as security at the Airport). The City has varying degrees of leverage, and negotiating agreements while attempting to require government entities to abide by San Francisco specific obligations can significantly delay or derail the process. Other government entities are not always willing to submit required paperwork or take steps required, or have their own governing law in the subject matter.

This ordinance allows the City to enter into an agreement with a government entity using the other government entity's terms if necessary, so long as it is legally acceptable. Procurement is not required. The process should be significantly simplified and shortened for this subset of agreements.

The City's regular internal procedures relating to contracting such as budgeting, delegation of contracting authority, approval, are still in effect.

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