Legal Services for Prisoners with Children
4400 Market Street, Oakland, CA 94608

Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

October 6, 2025

Re: Public Comment on File No. **250192**
(Administrative, Labor and Employment Codes –
City Contract Processes and Requirements)

Dear President Rafael Mandelman, Supervisors, and To Whom It May Concern,

Bill file number 250192 passed its first reading on September 30th unanimously. It occupied the Board for a total of *sixteen seconds* at that session. Given the sweeping range of reforms the bill would institute, it is imperative that the Board give it greater consideration. If some of the details of the bill were carefully examined, they would be found to be highly objectionable.

The repeal of Article 142 of the Labor and Employment Code is especially concerning, as it would mark a retreat from San Francisco's role of statewide and national leadership in fair chance employment, or ban-the-box style principles in hiring. The rationale proponents have provided for such a drastic rollback of local protection is wholly inadequate to justify the repeal. Article 142 is discussed in Part II, infra. Fairness of opportunity results from placing constraints on employers' prejudicial utilization of background checks. A thriving economy alleviates the social dislocation caused by mass incarceration and decades of discriminatory policing of communities of color. Public policy can accomplish this by preventing exclusions from work opportunities based solely on records of criminal legal system interactions. Exclusionary hiring and employment practices create barriers for persons reentering the non-carceral workforce after periods of incarceration. Article 142 shields applicants and employees from unfair processes of exclusion. While not perfect, Art. 142 provides protections that *complement* the provisions of state statutes and are consistent with, even when extending protection further than, the latter. To repeal Art. 142 merely because they overlap in part would be a mistake that ignores the complementary functioning of local and state laws.

I. An Omnibus, Yet Erratic, Wrecking Ball in the Guise of Efficiency

This bill[1] would amend or repeal numerous provisions of local law, with the purported aim of streamlining city contracts. These changes range from repealing a ban on business with Burma/Myanmar, which prohibition (Admin. Code Ch. 12J) has been in suspension for a quarter century and so is "a legislative clean-up measure with no material effect" (Revised Legislative Digest, 9/17/25 [hereinafter "Digest"], p. 5) to limiting the application of the Nondiscrimination in Contracting rules to contracts valued over a threshold of $230K (Labor and Employment Code, Art. 131, Sec. 131.2; Digest, p. 3). Thankfully, much of the latter's protections against discrimination will remain in force as a consequence of state or federal antidiscrimination laws. However, the message the City and County of San Francisco is sending to the world is that, as far as its own contracting and subcontracting is concerned, it does not care whether the contractors practice discrimination on the basis of "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" *as long as the contract clocks in for* (say) a mere $229,999. That message is not helping small businesses; it is encouraging them to adopt a lackadaisical attitude toward vital principles of civil rights.

Other sections of the bill would do such things as reaffirm the "MacBride Principles", concerning doing business in Northern Ireland, albeit emphasizing the plainly hortatory, nonbinding character of the principles and despite concerns that such principles are in conflict with First Amendment principles.[2]

The most extensive discussion of the bill at the Board level transpired on July 15 of this year. While the proponents of the bill touted the benefits of the bill as streamlining the contracting process, fostering competitive bidding and making San Francisco an attractive city in which to do business, several Supervisors rightly raised concerns with the bill's elimination of

[1] Unless otherwise stated, or implied by context, references to the bill or to 250192 denotes the fourth version, as amended in committee on September 17, 2025.

[2] Sec. 12F.4(c)(3) of the Admin. Code (corresponding to the old 12F.3.C) would call on businesses to commit to "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." The new version adds that this is merely an exhortation, not an obligation (Sec. 12F.5(b)).

the Sweatshop Advisory Group, a commission long tasked with monitoring compliance with the existing requirements of Art. 151 of the Labor and Employment Code. Due to the objections of these Supervisors, and the advocacy of organized labor groups, upon a narrow vote the bill returned to committee for further review of its sweatshop-related provisions.

What happened subsequently was that the Sweatshop Advisory Group was retained in form, while the *substance* of the sweatfree ordinance will be gutted by this bill. In versions both before and after July 15th, the scope of the anti-sweatshop ordinance had been severely curtailed. Existing law applies to all "goods," as well as materials and equipment. Bill 250192 limits the coverage solely to garments and apparel ("Covered Goods", Sec 151.3). Are signs or the materials for roads and buildings generated through systematically onerous working conditions for sub-poverty wages or child labor (Sec. 151.4(b))? No problem. Are the food and beverages purchased by the City from contractors running establishments that compel employee pregnancy tests (Ibid.)? Not a problem. Is Slave Labor used to extract materials for municipal infrastructure (Ibid.; see also Sec. 151.3)? Again, no problem. None of that is covered under the new sweatshop law's prohibitions. Only apparel and garments – and not even all apparel and garments. The exclusions carved out of the Covered Goods are wide: "goods […] 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." (Sec. 151.3.) What the Board is effectively stating with this exclusion is that if you've got to run a sweatshop to produce PPE, so be it. What's a bit of workplace sexual harassment if the products being produced are firefighting gear or ballistic vests? Accordingly, bill 250192 does much more than define the role of a Sweatshop Advisory Group. In its current form, it *condones sweatshops* as long as they are not in the business of producing (non-safety equipment) clothing.

II. Repealing Art. 142 is Counterproductive

At the July 15th session, when this Board as a whole most extensively discussed the proposed ordinance, Supervisor Mahmood characterized the bill as primarily about "small value contracts."[3] Though it is true that some sections of the bill differentiate the regulations at play depending on threshold of monetary value at stake in the contract, as already stated, some of them do not so restrict the scope. The straight repeal of Article 142 of the Labor and Employment Code is one such component.

[3] https://sanfrancisco.granicus.com/player/clip/50412

Existing Article 142 does not apply to cumulative transactions below a threshold of $5,000 per annum (existing Sec. 142.1). It applies to "all" contracts with the City and County above that threshold (existing Sec. 142.3). The new Labor and Employment Code would thus move toward the creation of a *laissez faire* hiring regime for all contractors, be they small, medium, or large.

Section 142.2, as it currently exists, is overall a coherent, and reasonably limited, scheme of employment regulation. Current law states that "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." Section 142.3 mandates compliance by Contractors and Subcontractors for such work arrangements. Section 142.4 lays out the procedure for the compliant use of criminal history information. Subdivision (a) of that Section prohibits inquiry, required disclosure, or adverse actions based on: (1) arrests not leading to conviction (except when a case is still pending); (2) participation in diversion or deferral of judgment programs; (3) expunged, dismissed, or invalidated convictions; (4) juvenile adjudications; (5) convictions more than seven years after sentencing; (6) infractions unless related to a motor vehicle record in situations where the job involves driving; and (7) offenses since decriminalized, such as certain cannabis-related offenses. The Contractors and Subcontractors are prohibited from communicating to the effect that any and every arrest or conviction disqualifies an applicant (Sec 142.4(j)). They can conduct background checks and are not prohibited from using convictions not contained in the list of (a)(1) through (7) for adverse action decisions but *only after* a conditional offer has been made (subd. (c)). Individualized assessments are required to ensure that only accurate and "Directly Related"[4] convictions are considered for the job (subd. (f)). Furthermore, in the event of an adverse action decision, the applicant or employee must be notified, given a copy of the background report, and given reasonable time to reply with challenges of inaccuracy or to offer mitigating factors or evidence of rehabilitation (subd. (g)-(h)). This helps to ensure that unnecessary exclusions from work, based on prejudicial attitudes, do not operate in the employment process. Record-keeping requirements (Sec. 142.7) allow for accountability while maintaining personnel's interests in privacy.

The bill's proponents have given no convincing reasons for a need or even benefit of eliminating Art. 142's coherent, and reasonably limited, scheme of employment regulation . In fact, they have given almost no explanation at all.

The explanations they have offered make little sense. The Office of the City Administrator's July 9, 2025presentation on the "Open for Business Contract Streamlining Act of 2025" focused almost entirely on other sections of the bill. A mere *sentence fragment* on slide 9 reports that Article 142 has "Significant overlap with California state law" and posits, without

[4] "Directly Related Convictions" is cross-referenced to the Police Code, Sec 4903.

further argument, that this overlap justifies repeal. The *overlap justifies repeal* position is replicated in the Digest, this time getting two sentences within a short paragraph:

> Article 142 has significant overlap with Section 12952 of the California Government Code. In effect, it requires contractors to determine whether to apply San Francisco law or California law or both, making contracting with the City more difficult. (Digest, p.5)

The Digest also buttresses the argument with an assertion that "Enforcement actions by San Francisco have historically been limited." (Ibid.) That's basically the extent of the official rationale. The enforcement argument will be addressed in the next Part of this Comment.

The overlap problem is a non-issue; the bill's overlap with state law is neither inconsistency nor incompatibility. That one level in a multilevel system of government may have greater or lesser restrictions in a particular area of law and policy is not a novel situation; it is a ubiquitous feature of federalism and of local government's interaction with a central state. The proponents have not pointed to any conflict or contradiction created by the ordinance. Article 142 is logically compatible with CA Government Code Section 12952.

There is no inconsistency where stronger rights, and corresponding duties, are imposed at a local level than at the state level. Unless state preemption applies, both the local protection and the state protection are applicable. If preemption applies, the state prevails to the exclusion of the local. Here, the state law, which the Digest cited, expressly addresses the issue. There is no difficulty for contractors to "determine whether to apply San Francisco law or California law or both" (Digest, p. 5) because the state law already gives the answer: *both*.

Subdivision (e) of Government Code §12952 says: "The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance." State regulations specify that in this context "applicant" typically includes existing employees. 2 C.C.R. § 11017.1(j). Accordingly, this means that the state level protection of workers and prospective workers is intended to be supplemented by protections at the local level. Conversely, a local ordinance that offers less protection to those workers is superseded by the state law. This is clear and poses no logical difficulty. If employers are confused, it is through an ignorance of the law that can be easily remedied through the provisions of the contract instruments themselves and accompanying documentation. That some employers may not be *pleased* by the requirements they are expected to comply with, is not the same thing as the requirements being unclear. They are clear.

A few examples illustrate how this functions. The ordinance gives the worker seven days (Sec. 142.4(h)), from receiving notice about the intended adverse action, in which to notify the employer of the worker's intent to challenge the decision. The state statute gives them at least five business days. Gov. Code §12952(c)(3). If the occurrence of a holiday implies that five business days renders the deadline later than seven (calendar) days, then the person gets the longer period of the two. Subsequent to the notice of intent to challenge the decision, the worker gets a minimum of another five business days under state law (Ibid.) to proffer their evidence or explanation, etc. The equivalent stage of the ordinance affords them a "reasonable" period of time (Sec. 142.4(h)). In the event that the submission in question would reasonably take longer than five plus five business days to complete – say, if a government record has been requested and is estimated to take longer to process – it may be that a reasonable time is longer. In that instance, the ordinance provides greater protection to the worker/applicant and should prevail, according to the rule of the statute (Gov. Code §12952(e)). A reasonableness standard is a common feature of life under the civil law and does not create any untoward paradox or burden.

Ironically, other situations of overlap are recognized by other parts of the bill, as well as by the existing ordinance, raising further questions about the legitimacy of this argument by its proponents. The current Sec. 142.4(e) recognizes overlap between the ordinance's background check provisions and federal and state consumer reporting laws, FRCA and ICRAA respectively, and specifies that compliance with *all of the above* is necessary. Elsewhere in the bill under consideration, in the portion on sweatshops,[5] Sec. 151.4(b)(1)(C) defines its minimum standards such that they do "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." A race to the top, then, not a race to the bottom, is what workers want and what good governance gives.

III. How to Fix the Bill

There are ways to enhance, rather than repeal, Article 142. An express provision (added to Sec. 142.1) stating that the local protections against discrimination in employment based on criminal record history are in addition to the protections at the state level would achieve this. Contractors and subcontractors are expected to rise up to the ideal of fairness, not race to the bottom.

As noted previously, the Digest also indicated that local enforcement of Article 142 has been "limited." What exactly this means, and whether it needs remedying, could usefully be explored by returning the bill to committee for practical analysis. It could be that employers are complying with Article 142 and it is working as intended: hardly a reason to get rid of it. It could also mean that the OLSE's resources or will for enforcement are deficient. Again, that is not a reason to scrap the ordinance but it might be a reason to creatively find ways to strengthen that Office. Finally, it could mean that there is a need for greater public education about the provisions of the ordinance. These possibilities deserve serious examination, which they have not received.

[5] See Part II, supra. for discussion of the sweatshop law.

Sending the bill back to committee[6] would be preferable to repealing Art. 142. Perhaps a more streamlined approach to the overall legislation, however, would be to remove all those portions of the bill that repeal the sections of Article 142.

For the foregoing reasons, **bill file 250192 should *not* be passed in its present form.** Workers deserve respect for their rights and their dignity. The people of the City and County of San Francisco deserve an economy where fairness reigns and where regulation is sensible, not a policy of pursuing deregulation merely for the sake of deregulation.

Respectfully,

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[6] The Committee would also be advised to reconsider the sweatshop provisions as discussed in Part II, supra.