

1 [Sweatfree Contracting Ordinance Amendments.]

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3 **Ordinance amending Sections 12U.2, 12U.3, and 12U.9 of the Administrative Code, and**
 4 **adding Section 12U.9.5, to (1) provide a system for awarding contracts to a bidder or**
 5 **proposer most substantially in compliance, but not in full compliance, with the**
 6 **Sweatfree Contracting Ordinance, when no bids or proposals are in full compliance;**
 7 **and (2) make other changes in the Sweatfree Contracting Ordinance, including revising**
 8 **and simplifying the monetary threshold triggering coverage of certain subcontracts;**
 9 **relaxing the ban on mandatory overtime; referencing retirement benefits in calculation**
 10 **of wages; and relaxing the requirement for contractors' providing information as to**
 11 **amounts to be paid to subcontractors by providing that amounts be reported within a**
 12 **monetary range rather than as an exact dollar figure.**

13 Note: Additions are *single-underline italics Times New Roman*;
 14 deletions are *strikethrough italics Times New Roman*.
 15 Board amendment additions are double underlined.
 Board amendment deletions are ~~strikethrough normal~~.

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

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18 Section 1. The San Francisco Administrative Code is hereby amended by amending
19 Sections 12U.2 and 12U.3, to read as follows:

20 **SEC. 12U.2. DEFINITIONS.**

21 For the purposes of this Chapter, the following definitions shall apply to the terms used
22 herein.

23 (a) "Abusive Forms of Child Labor" shall mean the following: work performed by a
 24 person under the age of 18 when the person does not voluntarily seek the work or the person
 25 is threatened by the person's employer with physical, mental or emotional harm for

1 nonperformance; (2) work performed by a person under the age of 18 in violation of any
2 applicable law of the country of manufacture or assembly governing the minimum age of
3 employment, compulsory education, or occupational health and safety; or (3) the use of a
4 person under the age of 18 for illegal activities, including but not limited to the production or
5 trafficking of illicit drugs or for prostitution.

6 (b) "Contract" shall mean an agreement for Goods for an amount greater than
7 \$25,000 and having a term in excess of three months to be purchased or provided at the
8 expense of the City and County or to be paid out of moneys deposited in the treasury or out of
9 trust moneys under the control of or collected by the City and County. "Contract" shall also
10 mean any amendment to a contract entered into after the effective date of this Chapter that
11 causes the amount of the contract to exceed \$25,000 or causes the term to exceed three
12 months.

13 (c) "Contractor" shall mean any person or persons, association, cooperative, firm,
14 partnership, corporation, company, venture, trustee, trustee in bankruptcy, receiver, or
15 combination thereof who enters into a Contract with the City and County.

16 (d) "Director" shall mean the Director of the Office of Contract Administration.

17 (e) "Foreign Convict or Forced Labor" shall mean any form of labor used to produce
18 or manufacture goods prohibited from importation into the United States under 19 U.S. C. §
19 1307, which includes Abusive Forms of Child Labor and Slave Labor.

20 (f) "Good" shall mean any good, including without limitation, any material, supply,
21 or equipment.

22 (g) "Slave Labor" shall mean any form of slavery, sale and trafficking of persons,
23 debt bondage, indentured servitude, serfdom, or forced or compulsory labor.

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1 (h) "Subcontract" shall mean any subcontract agreement or arrangement directly
2 with a Contractor for any work under a Contract (first tier subcontract) and shall mean any
3 subcontract agreement or arrangement between subcontractors, at any tier, except for any
4 agreement or arrangement between subcontractors if the amount of the agreement or
5 arrangement is less than ~~the lesser of (1) 10 percent of the amount of the higher tier subcontractor's~~
6 ~~work; or (2) \$25,000~~ \$20,000. "Subcontract" also shall mean any subcontract agreement or
7 arrangement that any Contractor or Subcontractor creates by dividing work into smaller
8 increments for award to any subcontracting entity created for the purpose of awarding a
9 subcontract that is not subject to this Chapter on the basis that it fails to meet ~~either of~~ the
10 monetary thresholds of \$20,000 for a Subcontract set ~~above~~ in this subsection (h).

11 (i) "Subcontractor" shall mean any person or persons, association, cooperative,
12 firm, partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof
13 including without limitation any subcontractor, entering into a Subcontract.

14 (j) "Sweatshop Labor" shall mean work performed by any Worker under terms or
15 conditions that seriously or repeatedly violate laws of the jurisdiction within which the work is
16 performed governing: (i) wages; (ii) employee benefits; (iii) health and safety, including without
17 limitation exposure to hazardous or toxic substances; (iv) labor, including without limitation
18 collective bargaining rights; (v) environmental conditions; (vi) nondiscrimination, harassment,
19 or retaliation, including without limitation all laws prohibiting workplace and employment
20 discrimination; (vii) freedom of association; or (viii) building or fire codes. "Sweatshop Labor"
21 also shall mean any work performed by any person contributing to the provision of Goods to
22 the City and County under a Contract or Subcontract that constitutes Foreign Convict or
23 Forced Labor, or Abusive Forms of Child Labor or Slave Labor.

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

4 **SEC. 12U.3. PROHIBITION ON SWEATSHOP CONDITIONS.**

5 Each Contractor and Subcontractor shall comply with each of the following
6 requirements:

7 (a) Each Contractor and Subcontractor, regarding any Worker, shall comply with all
8 human and labor rights and labor standards imposed by treaty or law on the country in which
9 the Goods are made or assembled, and shall not engage in Sweatshop Labor.

10 (b) Each Contractor and Subcontractor shall pay at least the following minimum
11 wages to Workers: (1) to Workers working in the United States a base hourly wage, to be set
12 and adjusted annually by the Director, to produce for 2,080 hours worked, an annual income
13 equal to or greater than the U.S. Department of Health and Human Services most recent
14 poverty guidelines for a family of three plus an additional 20 percent of the wage level paid,
15 including without limitation amounts paid as hourly wages or health benefits *or retirement*
16 *benefits*; and (2) for Workers working in countries other than the United States, a wage, to be
17 set and adjusted annually by the Director, that shall be comparable to the wage for domestic
18 manufacturers established above, adjusted to reflect the country's level of economic
19 development by using the World Bank's most recent Gross National Income per capita
20 Purchasing Power Parity Index.

21 (c) This Chapter specifies a minimum level of compensation to be paid Workers and
22 shall not be construed to preempt or otherwise limit any other applicable law, regulation or
23 requirement that requires a higher level of compensation.

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

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

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

20 (g) All Contractors and Subcontractors shall comply with the overtime laws and
21 regulations applicable to their Workers. In the absence of a law setting overtime compensation,
22 overtime hours shall be compensated at the rate of one-and-one-half times the regular hourly
23 compensation rate. All overtime hours worked beyond 48 hours of working time per work week shall
24 be worked voluntarily, except mandatory overtime above that 48-hour mark is permitted if each of the
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1 following conditions is satisfied: (1) the law of the country of manufacture permits mandatory overtime,
2 (2) the manufacturing facility is party to a collective bargaining agreement that permits mandatory
3 overtime, and (3) the mandatory overtime hours are worked in conformance with the collective
4 bargaining agreement.

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

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

11 (j) Before commencing any work under the Contract, the Contractor shall provide
12 the City and County a list of the names and addresses of each Subcontractor to be utilized in
13 the performance of the Contract, the Contractor's and each Subcontractor's applicable state
14 tax identification number and the address of each manufacturing or other facility or operation
15 of the Contractor and its Subcontractors for the performance of the Contract. The Office of
16 Contract Administration shall post this information on its internet website before a Contractor
17 or any of its Subcontractors may commence work under the Contract. Contractor shall update
18 the list to show any changes in the Subcontractors or the facilities or operation during the term
19 of the Contract. Before commencing any work under the Contract, the Contractor also shall
20 provide the City and County a written statement showing the amount to be paid each
21 Subcontractor and shall update this information in writing to show changes in the amount to
22 be paid any Subcontractor or amounts to be paid Subcontractors added after submittal of the
23 most recent statement to the City and County. Amounts to be paid to subcontractors may be
24 reported in ranges of \$20,000 to \$50,000; \$50,001 to \$100,000; \$100,001 to \$250,000; \$250,001 to
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1 \$500,000; above \$500,000; or such other ranges as the Director, after consultation with the Office of
2 Labor Standards Enforcement and Sweatfree Procurement Advisory Group, deems appropriate to
3 effectively implement this Chapter. Updates in the amount to be paid a Subcontractor or
4 Subcontractors after submittal of the most recent statements to the City and County need only be
5 submitted if the changed amount would fall into a different range.

6 (k) During each year of the term of a Contract, the Director, the Office of Labor
7 Standards Enforcement, or the Director's designee may request a written assurance from the
8 Contractor and each of its Subcontractors that the Contractor or Subcontractor is in
9 compliance with this Chapter. The request may seek confirmation of compliance with some or
10 all of the requirements of this Chapter, and may require the response to be submitted under
11 penalty of perjury. The Contractor or Subcontractor shall provide the written assurance within
12 the time period specified by the Director, the Office of Labor Standards Enforcement, or the
13 Director's designee, which shall not be less than 14 days from receipt of the request.

14 (l) Each Contractor and Subcontractor shall be responsible for ensuring the
15 Subcontractor's compliance with this Chapter.

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

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1 Section 2. The San Francisco Administrative Code is hereby amended by amending
2 Section 12U.9 to read as follows:

3 **SEC. 12U.9. EXCEPTIONS.**

4 This Chapter shall not apply in the following circumstances:

5 (a) When a Contract involves the expenditure of funds received by the City and
6 County and the application of this Chapter would violate or be inconsistent with the terms or
7 conditions of the applicable grant agreement, subvention or agreement or the instructions of
8 an authorized representative of any such agency with respect to any such grant agreement,
9 subvention or agreement.

10 (b) When the Director or the Director's designee determines that there is only one
11 responsible contractor available to provide the Goods and that contractor is unable to comply
12 with this Chapter, or the City and County department, commission, office or other City and
13 County entity seeking to enter into the contract certifies in writing to the Director, and the
14 Director finds that there are no qualified responsive bidders or proposers or prospective
15 contractors that would comply with the requirements of this Chapter and the Contract is for
16 Goods that are essential to the City or the public. This subsection (b) is subject to the provisions
17 of Section 12U.9.5.

18 (c) When the Contract is with a public entity.

19 (d) When the acquisition of Goods is only incidental to the other purchases under
20 the Contract. The acquisition of Goods shall be incidental if the amount paid by the City for the
21 Goods is 10 percent or less than the total amount of the Contract.

22 (e) If the department recommending the Contract certifies in writing to the Director
23 that pursuant to Administrative Code Section 6.60 or 21.15 that the Contract is necessary to
24 respond to an emergency which endangers the public health or safety and no entity which
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1 complies with the requirements of this Chapter capable of responding to the emergency is
2 immediately available.

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4 Section 3. The San Francisco Administrative Code is hereby amended by adding
5 Section 12U.9.5 to read as follows:

6 **SEC. 12U.9.5. AWARD OF CONTRACT ABSENT A SWEATFREE-COMPLIANT BID OR**
7 **PROPOSAL.**

8 *(a) It is the City's goal to achieve full compliance with this Chapter. But, in the absence of*
9 *bids or proposals that are fully compliant with the provisions of this Chapter, the City should have*
10 *authority to award Contracts to the bidder or proposer that is most compliant with this Chapter. If, in*
11 *response to a solicitation for bids or a request for proposals, the City receives no bids or proposals that*
12 *are fully compliant with the provisions of this Chapter, the Director is authorized to enter into a*
13 *Contract with a noncompliant bidder or proposer, according to the following principles.*

14 *(b) Notwithstanding the determination of low bid or highest ranked proposal, the Director*
15 *shall have authority to determine which bidder or proposer most substantially complies with this*
16 *Chapter, and shall award the Contract to that bidder or proposer.*

17 *(c) No Contract awarded pursuant to subsection (b) may exceed two years in term unless*
18 *the Director determines, no later than six months prior to the expiration of the original term of the*
19 *Contract, that the Contractor has achieved an additional level or levels of compliance with the*
20 *provisions of this Chapter that warrants exercise of an option to extend the Contract for up to an*
21 *additional year.*

22 *(d) Any Contract awarded pursuant to subsection (b) shall be terminated by the Director*
23 *during the original term of the Contract or any extension of the original term if the Director determines*
24 *that the Contractor (i) is not making a good faith effort to achieve an additional level or levels of*
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1 compliance with the provisions of this Chapter or (ii) has not corrected within a reasonable time, as
2 defined by the Director, a specific violation of this Chapter that the City discovers after award of the
3 Contract. In addition, the Director shall include in any Contract awarded pursuant to subsection (b) a
4 condition or conditions designed to achieve an additional level or levels of compliance with the
5 provisions of this Chapter, and failure of the Contractor to satisfy said condition or conditions may
6 serve as the basis for the Director to terminate the Contract.

7 (e) Standards for determining most substantial compliance under subsection (b) and
8 additional level or levels of compliance under subsections (c) and (d) shall be adopted by the Director
9 following consultation with the Office of Labor Standards Enforcement and the Sweatfree Procurement
10 Advisory Group, and a public hearing. Such standards shall give due consideration to the City's need
11 to receive information from bidders and Contractors to enable the City to monitor compliance with this
12 Chapter; the degree to which a particular requirement of the Ordinance is not being complied with by
13 a bidder or Contractor; the number of requirements of the Ordinance that are not being complied with
14 by a bidder or Contractor; practical difficulties faced by bidders and/or Contractors generally in
15 complying with a particular requirement of the Ordinance; the relative importance, if ascertainable, of
16 the different labor standards set forth in Section 12U.3; and such other factors as may be relevant to
17 achieving maximum compliance with this Chapter.

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

21 In addition, the Director has authority to adopt rules and procedures that implement this
22 Section.

23 (f) Neither subsection (b) nor any other provision in this Section shall override the
24 Director's authority to reject all bids or proposals or take other action within his or her legal authority.

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1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: _____
4 PAUL ZAREFSKY
5 Deputy City Attorney
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