

BOARD of SUPERVISORS



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MEMORANDUM

TO: Naomi Kelly, City Administrator
Sailaja Kurella, Acting Director and Purchaser, Office of Contract
Administration

FROM: John Carroll, Assistant Clerk,
Government Audit and Oversight Committee, Board of Supervisors

DATE: August 26, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Haney on August 18, 2020:

File No. 200949

Ordinance amending the Administrative Code to prohibit the Mayor from designating the department head as the Mayor's designee regarding contracting decisions and other matters in which the Mayor has discretion to delegate a designee to review a department head's proposals.

If you have any 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.

c: Office of Chair Mar
Office of Supervisor Haney
Lynn Khaw, Office of the City Administrator
Lihmeei Leu, Office of the City Administrator
Taraneh Moayed, Office of Contract Administration

1 [Administrative Code - Mayor’s Selection of Designees in Matters Regarding Contracting and
2 Other Matters]

3 **Ordinance amending the Administrative Code to prohibit the Mayor from designating**
4 **the department head as the Mayor’s designee regarding contracting decisions and**
5 **other matters in which the Mayor has discretion to delegate a designee to review a**
6 **department head’s proposals.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

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

15 Section 1. Chapter 6 of the Administrative Code is hereby amended by revising Section
16 6.1 to read as follows:

17 **SEC. 6.1. DEFINITIONS.**

18 * * * *

19 **Integrated Furniture, Fixtures, and Equipment (IFF&E).** Furniture, fixtures, and/or
20 equipment that require integration that significantly affects the building design and/or the
21 design of interior renovation of a Public Work or Improvement due to physical dimension,
22 power connection, or data communication, and/or coordination with construction trades,
23 including but not limited to, electrical, plumbing, mechanical, or building controls.

24 *Mayor. The Mayor of the City and County of San Francisco or Mayor’s designee, provided*
25 *that the designee is not the Department Head of the department concerned in the particular matter that*
the Mayor is responsible for reviewing.

1 **Prevailing Wage or Prevailing Rate of Wage.** For purposes of this Chapter 6, the
 2 highest general prevailing rate of wage plus "per diem wages" and wages paid for overtime
 3 and holiday work paid in private employment in the City for the various crafts and kinds of
 4 labor employed in the performance of any Public Work or Improvement. "Per diem wages" are
 5 defined pursuant to Labor Code Section 1773.1, as amended from time to time.

6 * * * *

7
 8 Section 2. The Administrative Code is hereby amended by revising Chapter 6, as
 9 follows:

10 Whenever the terms "Mayor or the Mayor's designee" or "Mayor, the Mayor's designee"
 11 is used in the following sections, the words "or the Mayor's designee" or "the Mayor's
 12 designee" as applicable, shall be deleted:

13 6.1	6.22(h)(1)	6.40(d)
14 6.3(b)(1)	6.22(h)(2)	6.41(b)
15 6.6(a)	6.22(l)	6.41(c)
16 6.20(c)	6.23(c)(1)	6.42(a)
17 6.21(a)(2)	6.23(c)(2)	6.42(d)
18 6.22(d)	6.23(c)(3)	6.60(d)
19 6.22(h)	6.40(c)	6.73(a)

20
 21 Section 3. Chapter 8 of the Administrative Code is hereby amended by revising
 22 Sections 8.3 and 8.12.2, to read as follows:

23 **SEC. 8.3. RETENTION AND DESTRUCTION OF RECORDS GENERALLY.**

24 It shall be the duty of each department head to classify the department's records, using
 25 the classifications set forth in Section 8.4 of this Code, and to prepare a schedule for the

1 systematic retention and destruction of such records, which schedule shall comply with the
2 provisions of this Section and of Sections 8.4 and 8.9 of this Code and will be effective only
3 upon approval by the officers and boards specified below.

4 * * * *

5 If requested by the Retirement Board, payroll checks, time cards and related
6 documents shall be delivered to the Retirement Board instead of being destroyed. Current
7 records and storage records less than five years old may be destroyed or otherwise disposed
8 of if their destruction or other disposition within a shorter length of time will not be detrimental
9 to the City and County or defeat any public purpose and if a definitive description of such
10 records and the retention period applicable to them are set forth in a schedule for the
11 systematic retention and destruction of records that is prepared by the department head,
12 approved by the Mayor or the Mayor's designee (provided that the designee is not department
13 head of the department concerned), or the board or commission concerned, and approved by the
14 City Attorney as to records of legal significance, by the Controller as to records relating to
15 financial matters, by the Retirement Board as to time rolls, time cards, payroll checks and
16 related matters.

17 * * * *

18 **SEC. 8.12.2. COST OF PUBLICATION, ETC.**

19 When funds have been provided, the Purchaser of Supplies may publish such
20 manuals, documents, pamphlets, bulletins or other publications as may be deemed to be in
21 the best interests of the City and County, or for information, upon the recommendation of a
22 department head, and with the approval of the Mayor or the Mayor's designee (provided that
23 the designee is not department head of the department concerned), or the board or commission that
24 oversees the department.

1 The cost of handling and distribution by the Purchaser of Supplies in accordance
2 herewith shall be payable out of the departmental funds referred to in this Section.

3
4 Section 4. Chapter 10 of the Administrative Code is hereby amended by revising
5 Sections 10.24, 10.28-1, 10.100-233, 10.126, and 10.171, to read as follows:

6 **SEC. 10.24. CLAIMS IN FAVOR OF THE CITY AND COUNTY - SETTLEMENT.**

7 * * * *

8 (c) **Litigated Claim Under \$25,000.00.** Any litigated claim in favor of the City and
9 County in which the total claim does not exceed in amount the sum of \$25,000.00; may be
10 settled and compromised by the City Attorney upon written recommendation of the head of
11 the department in favor of which such claim is made, subject to the written approval of the
12 Mayor or the Mayor's designee with respect to the departments under the Mayor's jurisdiction
13 *(provided that the designee is not department head of the department concerned)*, and subject to the
14 approval by resolution of the board or commission having jurisdiction over such department in
15 other cases.

16
17 **SEC. 10.28-1. AUTHORIZATION AND AUTHORITY FOR USE OF PRIVATE**
18 **AUTOMOBILES.**

19 Subject to the fiscal and accounting procedures of the Charter, officers and
20 employees shall be allowed traveling and incidental expenses and compensation for the use
21 of privately owned automobiles in connection with official routine duty or service for or on
22 account of the City and County as provided by this Article.

23 When funds have been appropriated for such purpose, each elective officer in charge
24 of an administrative office, the Controller, the Mayor or the Mayor's designee and each board
25 or commission may authorize officers and employees within their respective jurisdictions to

1 use privately owned automobiles in connection with any official routine duty or service and to
2 be compensated for such use, on the basis of the actual number of miles traveled, at rates to
3 be established by the Controller. If the Mayor designates a City employee or officer to authorize the
4 use of privately owned automobiles under this Section 10.28-1, the Mayor's designee may not be the
5 officer or employee using the authorized automobile.

6
7 **SEC. 10.100-233. PUBLIC WORKS LITTER CONTROL FUND.**

8 (a) **Establishment of Fund.** The Public Works Litter Control Fund is hereby
9 established as a category six fund for the purpose of receiving all cash gifts, donations and
10 contributions of money that may from time to time be offered to the City and County through
11 any of its officers, boards or commissions for litter control.

12 (b) **Use of Fund.** All monies deposited into the fund shall, consistent with the gift,
13 donation, or contribution, be expended for litter control.

14 (c) **Exceptions to Fund Category.** All expenditures from the fund shall be made
15 upon the recommendation of the Director of Public Works and subject to the approval of the
16 Mayor or the Mayor's designee, provided that the Mayor's designee is not the Director of Public
17 Works or an employee in the Department of Public Works.

18
19 **SEC. 10.126. CASH REVOLVING FUNDS – PURPOSES.**

20 Expenditures may be made from departmental revolving funds for such classes of
21 transactions as may be in writing recommended by the department head, approved by the
22 Mayor or Mayor's designee (provided that the designee is not department head of the department
23 concerned), board, or commission, if any, and specifically concurred in by the Controller.

24
25 **SEC. 10.171. CODE ENFORCEMENT.**

1 The Director of Public Works is hereby empowered, authorized and directed, with the
2 approval of the Mayor or the Mayor's designee (provided that the Mayor's designee is not the
3 Director of Public Works or an employee in the Department of Public Works) to do any and all
4 things necessary to plan and carry out any program of concentrated Code enforcement
5 required by contract between the City and County and the Secretary of the Department of
6 Housing and Urban Development of the United States and for the assistance of which a Code
7 enforcement grant has been made to the City and County by said secretary pursuant to the
8 provisions of Section 117 of Title I of the Housing Act of 1949, as amended.

9
10 Section 5. The Administrative Code is hereby amended by revising Section 21.15, to
11 read as follows:

12 **SEC. 21.15. EMERGENCY PROCUREMENT PROCEDURES.**

13 (a) The Board of Supervisors hereby declares that an actual emergency shall exist
14 when it becomes necessary to immediately procure Commodities or Services to make repairs,
15 to safeguard the lives or property of the citizens or the property of the City or to maintain
16 public health or welfare as a result of extraordinary conditions created by war, epidemic,
17 weather, fire, flood, earthquake or other catastrophe, or the breakdown of any plant
18 equipment, structure, street or public work.

19 (b) For any Commodities or Services that would normally be procured by the
20 Purchaser, a contract may be executed by the Purchaser in the most expeditious manner, and
21 shall be promptly confirmed by issuance of a regular purchase order.

22 (c) The department head responsible for the operations for which Commodities or
23 Services are needed may also enter into a contract directly in the most expeditious manner
24 necessary in order to respond to the emergency; however, if the emergency permits, the
25 department head shall first secure the written approval of the president of the board or

1 commission concerned, or from the Mayor or the Mayor's designee for any department under
2 the Mayor's jurisdiction provided that the designee is not the department head of the department
3 concerned, and in all cases the approval of the Board of Supervisors must be obtained for any
4 contract in excess of \$100,000. If the emergency does not permit such approvals to be
5 obtained before the contract is executed, such approvals shall be obtained as soon thereafter
6 as it is possible to do so.

7 * * * *

8
9 Section 4. The Administrative Code is hereby amended by revising Sections 14B.7
10 and 14B.13, to read as follows:

11 **SEC. 14B.7. PRIME CONTRACTS**

12 (A) Good Faith Efforts by Awarding Authorities to Obtain LBE Bids on Prime
13 Contracts. Contract Awarding Authorities shall use good-faith efforts for all Contracts subject
14 to the Discount provisions of this Chapter to solicit and obtain Bids from the broadest possible
15 diversity of LBEs and to ensure that MBEs, WBEs, and OBEs are not arbitrarily excluded from
16 participation. Good faith efforts shall include the following:

17 (1) Arranging Contracts by size and type of work to maximize the opportunities for
18 LBEs to participate. This includes dividing projects into smaller parts.

19 (a) As soon as practical before soliciting Bids, Contract Awarding Authorities
20 shall submit Large Contract Proposals to the Director for review. The Director shall determine
21 whether the proposed Contract can be divided into smaller Contracts so as to enhance the
22 opportunity for participation by LBEs. For purposes of this paragraph, "Large Contract
23 Proposals" means any Public Works/Construction Contract estimated to cost more than
24 \$5,000,000, any Professional Services Contract estimated to cost more than \$1,000,000, and
25

1 any Commodities Contract with a term greater than one year, including any options to renew
2 or extend.

3 (b) If the Director determines, after consulting with the Contract Awarding
4 Authority, that the Contract can be divided into smaller Contracts, then the Director and the
5 Contract Awarding Authority shall confer regarding all of the costs and benefits of soliciting the
6 Contract as a single Contract or dividing it into smaller Contracts, including but not limited to
7 the potential for enhanced opportunities for LBE participation as Prime Contractors, the
8 potential for LBE participation as Subcontractors, suitability of procuring the work through
9 Micro-LBE Set-Aside under 14B.7(K), relative costs, administrative issues, and any other
10 matters relevant to the accomplishment of the purpose of the subject Contract or Contracts. If,
11 after exchanging information and conferring regarding these issues, the Contract Awarding
12 Authority and the Director are unable to agree on whether to divide the Contract into smaller
13 Contracts or how to divide the Contract, the Mayor or the Mayor's designee provided that the
14 designee is not the department head of the Contract Awarding Authority shall resolve the matter.

15 * * * *

16 **SEC. 14B.13. POWERS AND DUTIES OF CONTRACT AWARDING AUTHORITIES.**

17 * * * *

18 (D) Subject to the budgetary and fiscal provisions of the San Francisco Charter and to
19 any limitations or requirements associated with the issuance of municipal financings, including
20 but not limited to the use of tax-exempt financing and other long-term obligations, Contract
21 Awarding Authorities shall set aside the following percentage of the value of each Contract, to
22 be used solely to fund CMD's actual costs of administering and enforcing this Chapter. This
23 Section 14B.13(D) shall not apply to Contracts funded by bonds that were authorized prior to
24 June 10, 2006.

1 (1) For Contracts having an estimated value under \$1 million, the Contract
2 Awarding Authority shall set aside two percent (2%) of the value of the Contract for the
3 purpose described in this Section.

4 (2) For Contracts having an estimated value of at least \$1 million but less than
5 \$10 million, the Contract Awarding Authority shall set aside one percent (1%) of the value of
6 the Contract for the purpose described in this Section.

7 (3) For Contracts having an estimated value of at least \$10 million but less than
8 \$50 million, the Contract Awarding Authority shall set aside one half of one percent (0.5%) of
9 the value of the Contract for the purpose described in this Section.

10 (4) For Contracts having an estimated value of \$50 million or more, the Director, in
11 consultation with the Contract Awarding Authority, shall determine the level of funding
12 necessary to administer and enforce this Chapter with respect to the subject Contract,
13 provided that the funding shall not exceed one half of one percent (0.5%) of the value of the
14 Contract. The Contract Awarding Authority shall set aside the designated funds to be used
15 solely for the purpose described in this Section.

16 (5) Notwithstanding Sections 14B.13(D)(1), (2), (3) and (4), with respect to each
17 Contract to be issued by the Port of San Francisco, the San Francisco Public Utilities
18 Commission, the San Francisco Department of Public Works, and the San Francisco
19 International Airport, each such Contract Awarding Authority shall confer with the Director and
20 jointly shall estimate the costs of administering and enforcing this Chapter with respect to
21 each Contract. The Contract Awarding Authority shall set aside the agreed-upon funds to be
22 used solely for the purpose described in this Section.

23 If, after exchanging information regarding the nature of the Contract and the
24 administrative activities required, the Contract Awarding Authority and the Director do not
25 agree on the cost of administering and enforcing this Chapter, the Mayor or the Mayor's

1 designee provided that the designee is not the department head of the Contract Awarding Authority,
2 shall determine the appropriate amount to be set aside for the purpose described in this
3 Section.

4 The Director shall report on compliance by Contract Awarding Authorities with
5 set-asides determined under this Section 14B.13(D)(5) and on the agreed upon funds for
6 Contract Awarding Authorities under 14B.13(D)(5) in the CMD's annual report under Section
7 14B.15(A).

8
9 Section 6. The Administrative Code is hereby amended by revising Section 21C.1, to
10 read as follows:

11 **SEC. 21C.1. PREVAILING RATE OF WAGES IN MOTOR BUS SERVICE**
12 **CONTRACTS.**

13 In the case of any contract for Services wherein motor bus service is to be rendered
14 to the general public on any facility owned by the City, or in the case of any contract for the
15 transportation within the boundaries of the City of any Commodities owned or in the
16 possession of the City, the Purchaser, on recommendation of the department head concerned
17 and approval of the Mayor or the Mayor's designee provided that the designee is not the
18 department head of the department concerned or the board or commission in charge of such
19 department upon the ground that the public interest would be best served by requiring the
20 inclusion of such a provision in the contract, may require that any person performing labor
21 thereunder shall be paid not less than the highest general prevailing rate of wages, including
22 fringe benefits or the matching equivalents thereof, paid in private employment for similar
23 work in the area in which the contract is being performed, as determined by the Civil Service
24 Commission; provided, however, if such a provision is to be included in the contract the notice
25

LEGISLATIVE DIGEST

[Administrative Code - Mayor's Selection of Designees in Matters Regarding Contracting and Other Matters]

Ordinance amending the Administrative Code to prohibit the Mayor from designating the department head as the Mayor's designee regarding contracting decisions and other matters in which the Mayor has discretion to delegate a designee to review a department head's proposals

Existing Law

For departments under the Mayor that do not have a commission or board, the Administrative Code requires that the Mayor or the Mayor's designee approve certain contracting actions or decisions. Similarly, Chapters 8, 10, 14B and 21C of the Administrative Code provide the Mayor with discretion to delegate a designee to review certain department decisions.

Amendments to Current Law

This ordinance would prohibit the Mayor from designating the department head of the department concerned in the particular matter that the Mayor is responsible for reviewing or approving.

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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):

Haney

Subject:

Administrative Code - Mayor's Selection of Designees in Matters Regarding Contracting and Other Matters

The text is listed:

Ordinance amending the Administrative Code to prohibit the Mayor from designating the department head as the Mayor's designee regarding contracting decisions and other matters in which the Mayor has discretion to delegate a designee to review a department head's proposals.

Signature of Sponsoring Supervisor: /s/ Matt Haney

For Clerk's Use Only