

1 [Administrative Code - Requiring City Contractors to Submit Equal Pay Report and
2 Establishing Equal Pay Advisory Board]

3 **Ordinance amending the Administrative Code to require certain City contractors and**
4 **subcontractors with 20 or more employees to submit an Equal Pay Report regarding**
5 **compensation paid to employees; and establishing the Equal Pay Advisory Board to**
6 **analyze and recommend the best methods of data collection that will identify wage**
7 **gaps, and setting forth the membership and duties of the Advisory Board.**

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

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

17 Section 1. The Administrative Code is hereby amended by revising Section 12B, to
18 read as follows:

19 **SECTION 12B.2. NONDISCRIMINATION PROVISIONS.**

20 Every contract and property contract for or on behalf of the City shall incorporate by
21 reference and require the contractor to comply with the provisions of Section 12B.2. In
22 addition, all contractors must incorporate by reference in all subcontracts and require
23 subcontractors to comply with the requirements set forth in Sections 12B.2(a) and 12B.2(c)
24 through 12B.2(k), and failure to do so shall constitute a material breach of contract.

25 In the performance of a contract the contractor agrees as follows:

1 (a) The contractor or subcontractor will not discriminate against any employee, City
2 and County employee working with such contractor or subcontractor, or applicant for
3 employment with such contractor or subcontractor on the basis of the fact or perception of that
4 person's race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender
5 identity, domestic partner status, marital status, disability, weight, height, AIDS/HIV status, or
6 association with members of classes protected under this chapter or in retaliation for
7 opposition to any practices forbidden under this chapter. Discrimination on the basis of sex
8 includes sexual harassment as defined in Section 16.9-25(b) of this Code. The contractor or
9 subcontractor will take action to ensure that applicants are employed, and that employees are
10 treated equally during employment, without regard to the fact or perception of their race, color,
11 creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity,
12 domestic partner status, marital status, disability or AIDS/HIV status. Such action shall
13 include, but not be limited to, the following: Employment, upgrading, demotion or transfer;
14 recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of
15 compensation; and selection for training, including apprenticeship. Nothing in this Chapter
16 shall require or prohibit the establishment of new classifications of employees in any given
17 craft. The provisions of this Section with respect to age shall not apply to (1) termination of
18 employment because of the terms or conditions of any bona fide retirement or pension plan,
19 (2) operation of the terms or conditions of any bona fide retirement or pension plan which has
20 the effect of a minimum service requirement, and (3) operation of the terms or conditions of
21 any bona fide group or insurance plan. The contractor or subcontractor agrees to post in
22 conspicuous places, available to employees and applicants for employment, notices in such
23 form and content as shall be furnished or approved by the awarding authority setting forth the
24 provisions of this Section.

25

1 (b) The prime contractor shall state that the prime contractor does not, and will not
2 during the term of the contract discriminate in the provision of bereavement leave, family
3 medical leave, health benefits, membership or membership discounts, moving expenses,
4 pension and retirement benefits or travel benefits as well as any benefits other than
5 bereavement leave, family medical leave, health benefits, membership or membership
6 discounts, moving expenses, pension and retirement benefits or travel benefits between
7 employees with domestic partners and employees with spouses, and/or between the domestic
8 partners and spouses of such employees, where the domestic partnership has been
9 registered with a governmental entity pursuant to State or local law authorizing such
10 registration, subject to the following conditions. In the event that the contractor's actual cost of
11 providing a certain benefit for the domestic partner of an employee exceeds that of providing it
12 for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for
13 the spouse of an employee exceeds that of providing it for the domestic partner of an
14 employee, the contractor shall not be deemed to discriminate in the provision of benefits if the
15 contractor conditions providing such benefit upon the employee agreeing to pay the excess
16 costs. In addition, in the event a contractor is unable to provide a certain benefit, despite
17 taking reasonable measures to do so, the contractor shall not be deemed to discriminate in
18 the provision of benefits if the contractor provides the employee with a cash equivalent. The
19 Director shall be the final arbiter of a contractor's or property contractor's compliance or
20 substantial compliance with this Chapter and the Director's determination shall not be
21 appealable to the Commission. Contractors shall treat as confidential to the maximum extent
22 allowed by law or the requirements of contractor's insurance provider any request by an
23 employee or applicant for employment for domestic partner or spousal benefits or any
24 documentation of eligibility for domestic partner or spousal benefits submitted by an employee
25 or applicant for employment.

1 In adopting this Section 12B.2(b), the intent of the Board of Supervisors is to
2 equalize to the maximum extent legally permitted the total compensation between similarly
3 situated employees with spouses and employees with domestic partners.

4 In particular, consistent with the severability clause set forth in Section 12B.6
5 below, the Board of Supervisors intends that if a court or agency of competent jurisdiction
6 finds that a State or federal law, rule or regulation invalidates (1) the application of this Section
7 to any business, person, type of compensation or benefit, or location; or (2) any other
8 requirement of this Section, then the court or agency should sever the invalid clause and
9 leave in effect the remainder of this Section.

10 (c) The contractor or subcontractor shall provide reasonable accommodation for
11 qualified disabled applicants for employment and for qualified disabled employees. Said
12 contractor or subcontractor need not provide reasonable accommodation if such would
13 present an undue hardship. An undue hardship may include but not be limited to more than a
14 de minimus cost, violation of the seniority rights of other co-workers as established by a bona
15 fide seniority system, or a health or safety risk to the employee or co-employees. The burden
16 of establishing an undue hardship rests on the employer.

17 (d) The contractor or subcontractor will in all solicitations or advertisements for
18 employees placed by or on his or her behalf, state that qualified applicants will receive
19 consideration for employment without regard to the fact or perception of their race, creed,
20 religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic
21 partner status, marital status, disability, weight, height or AIDS/HIV status.

22 (e) The contractor or subcontractor will send to each labor union or representative of
23 workers with which he or she has a collective bargaining agreement or other agreement or
24 understanding, a notice, in such form and content as shall be furnished or approved by the
25 awarding authority, advising the said labor union or workers' representative of the contractor's

1 or subcontractor's commitments under this Section, and shall post copies of the notice in
2 conspicuous places available to employees and applicants for employment.

3 (f) The contractor or subcontractor *shall*:

4 (1) will Pp permit access to its records of employment, employment advertisements,
5 application forms, and other pertinent data and records by the Commission, the City's
6 awarding authority or the Fair Employment and Housing Commission, for the purposes of
7 investigation to ascertain compliance with the nondiscrimination provisions of this Chapter,
8 and upon request shall provide evidence that the contractor has complied or will comply with
9 the nondiscrimination provisions of this Chapter.

10 (2) Submit an Equal Pay Report if the contractor or subcontractor has at least 20 employees
11 worldwide and, for a contract or subcontract, the agreement has a value equal to or in excess of the
12 Threshold Amount set forth in Administrative Code Chapter 6 or the Minimum Competitive Amount set
13 forth in Administrative Code Chapter 21, as applicable, or, for a grant, the agreement has a value
14 equal to or in excess of \$50,000.

15 (A) The Equal Pay Report shall provide summary information on compensation paid to
16 employees identified by sex, race, sex and race, and data points the Commission has adopted by
17 regulation.

18 (B) Each contractor or subcontractor shall file a complete and accurate Equal Pay
19 Report with the Commission commencing on a date set by the Commission but no later than September
20 30, 2015. Thereafter, each contractor or subcontractor shall file a Equal Pay Report annually.

21 (C) The Equal Pay Report requirements of this Subsection (f)(2) shall apply to all
22 qualifying contracts, subcontracts and grants first advertised for bid, request for qualification or
23 proposal is issued, or initiated on a date set by the Commission but no later than September 30, 2015.

24 (D) To the extent any information in the Equal Pay Report qualifies as
25 proprietary financial data or trade secret, the City shall not disclose the information unless

1 required by law, including the California Public Records Act and the San Francisco Sunshine
2 Ordinance.

3 (g) A contractor or subcontractor shall be deemed to have breached the
4 nondiscrimination provisions of this Chapter upon:

5 (1) A finding by the Director or such other official who may be designated by the
6 Commission, that the contractor or subcontractor has willfully violated such nondiscrimination
7 provisions; or

8 (2) A finding by the California Fair Employment and Housing Commission that a
9 contractor or subcontractor has violated any provision of the California Fair Employment and
10 Housing Act or the nondiscrimination provisions of this Chapter, provided that the California
11 Fair Employment and Housing Commission has issued a final order pursuant to Section
12 12970 of the Government Code, or has obtained a judgment and order enforcing the final
13 order pursuant to Section 12973 of the Government Code; provided further, that for the
14 purposes of these provisions, an order or injunction shall not be considered final during the
15 period within which (1) appeal may be taken, or (2) the same has been stayed by order of
16 court, or (3) further proceedings for vacation, reversal or modification are in progress before a
17 competent administrative or judicial tribunal.

18 (3) Upon such finding by the Director or other official designated by the
19 Commission, or the California Fair Employment and Housing Commission, the awarding
20 authority shall notify the contractor or subcontractor that unless the contractor or
21 subcontractor demonstrates to the satisfaction of the Director or other official designated by
22 the Commission, within such reasonable period as the Commission shall determine, that the
23 violation has been corrected, action will be taken as set forth in Subparagraphs (h) and (i)
24 hereof.

1 (4) The Commission shall, within 10 days of the date of issuance of any finding by
2 the Director or other official designated by the Commission for the enforcement of this
3 Chapter, mail to any person or persons affected by said finding, a copy of said finding,
4 together with written notice of the right to appeal such finding. Notice of appeal must be filed
5 in writing with the Chairperson of the Commission within 20 days of the date of mailing said
6 copy and notice.

7 (5) For purpose of appeal proceedings under this Section, a quorum shall consist
8 of eight members of the Commission. The vote of the majority of the full Commission shall be
9 necessary to affirm, reverse or modify such decisions, order or other action rendered
10 hereunder. Should a member of the Commission be designated under Section 12B.2(g)(1) of
11 this Chapter, that Commissioner may not participate in an appeal under this Section except as
12 a witness.

13 (6) The presiding officer of the Commission shall have the power to administer
14 oaths to witnesses in appeals before the Commission under this Section. In the event that any
15 person shall fail or refuse to appear as a witness in any such proceeding after being
16 requested to do so, and if it shall appear to the Commission that his or her testimony, or
17 books, records, documents or other things under his or her control are material and relevant
18 as evidence in the matter under consideration by the Commission in the proceeding, the
19 presiding officer of the Commission may subpoena such person, requiring his or her presence
20 at the proceeding, and requiring him or her to bring such books, records, documents or other
21 things under his or her control.

22 (7) All appeals to the Commission shall be open to the public. Records and
23 minutes shall be kept of such proceedings and shall be open to public inspection. Upon
24 reaching a decision in any appeal, the Commission shall give written notice thereof to the
25 Director or other official designated by the Commission, and the appellant or appellants. The

1 decision of the Commission shall be final unless within 15 days of the filing and service of
2 written notice thereof appropriate legal proceedings are filed in a court of competent
3 jurisdiction by any party to the contract, property contract or subcontract.

4 (8) If any contractor or subcontractor shall fail to appear at an appeal proceeding
5 of the Commission after having been given written notice to appear, such failure to appear
6 shall be grounds for termination of the contract, property contract or subcontract and such
7 contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges
8 thereunder.

9 (9) The Commission shall promulgate rules and regulations for the implementation
10 of the nondiscrimination provisions of this Chapter.

11 (h) The awarding authority may deduct from the amount payable to the contractor or
12 subcontractor by the City under any contract or property contract subject to this Chapter, or
13 may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each
14 calendar day during which such person was discriminated against in violation of the provisions
15 of this Chapter. In addition to any other penalties provided for the violation of the
16 nondiscrimination provisions of this Chapter or for the failure of any contractor or
17 subcontractor to abide by the rules and regulations of the Commission, the contract, property
18 contract or subcontract may be terminated or suspended, in whole or in part, by the awarding
19 authority upon the basis of a finding as set forth in Section 12B.2(g) that the contractor has
20 discriminated contrary to the provisions of this Chapter, and all moneys due or to become due
21 hereunder may be forfeited to, and retained by, the City.

22 (i) A breach of the nondiscrimination provisions in the performance of a contract,
23 property contract or subcontract shall be deemed by the City to be material breach of contract
24 and the basis for determination by the awarding authority that the contractor or subcontractor
25 is an irresponsible bidder as to all future contracts or property contracts for which such

1 contractor or subcontractor may submit bids. Such contractor or subcontractor shall not for a
2 period of up to two years thereafter, or until it shall establish and carry out a program in
3 conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a
4 contractor or subcontractor under any contract or property contract.

5 (j) If a finding of discrimination is made by either the Director or the Commission, the
6 contract awarding department shall submit a report to the Board of Supervisors, the Mayor's Office,
7 and the Commission that provides details of what actions, if any, the contract awarding department
8 undertook under this Chapter.

9 (k) The Commission shall provide an annual report to the Board of Supervisors summarizing
10 the effectiveness of the information obtained from the Equal Pay Reports, recommendations for
11 legislative change if needed, and a summary of the investigations, if any, that stem from the Equal Pay
12 Reports. The Commission's recommendations shall include drafts of one or more ordinances if
13 legislative change is necessary or desirable to implement the recommendations.

14 (l) Nothing contained in this Chapter shall be construed in any manner so as to
15 prevent the City from pursuing any other remedies that may be available at law, equity or
16 under any contract or property contract.

17 (m) The contractor or subcontractor will meet the following standards for compliance:

18 (1) If the contractor or subcontractor has been held to be an irresponsible bidder
19 under Section 12B.2(i) hereof, the contractor or subcontractor shall furnish evidence that it
20 has established and is carrying out a program in conformity with the nondiscrimination
21 provisions of this Chapter.

22 (2) The contractor or subcontractor may be required to file with the Commission a
23 basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report
24 as determined by the Commission. Willful false statements made in such reports shall be
25 punishable as provided by law. No contractor or subcontractor shall be held in noncompliance

1 for not filing such a report with the Commission unless it has been specifically required to do
2 so in writing by the Commission.

3 (3) Personally, or through its representatives, the contractor or subcontractor
4 shall, through negotiations with the unions with whom it has collective bargaining or other
5 agreements requiring the contractor or subcontractor to obtain or clear its employees through
6 the union, or when the contractor or subcontractor otherwise uses a union as an employment
7 resource, attempt to develop an agreement which will:

8 (A) Define and outline responsibilities for nondiscrimination in hiring, referral,
9 upgrading and training;

10 (B) Otherwise implement a nondiscrimination program in terms of the unions'
11 specific areas of skill and geography, such as an apprenticeship program, to the end that
12 minority workers will be available and given an equal opportunity for employment.

13 (4) The contractor or subcontractor shall notify the awarding authority of opposition to
14 the nondiscrimination provisions of a contract by individuals, firms or organizations during the
15 term of the contract.

16 Section 2. The Administrative Code is hereby amended by revising Section 12B, to
17 add Sections 12B.2-1, 12B.2-2, 12B.2-3, 12B.2-4, 12B.2-5, and 12B.2-6, to read as follows:

18 **SECTION 12B.2-1. EQUAL PAY ADVISORY BOARD.**

19 (a) There is hereby established an Equal Pay Advisory Board (“Advisory Board”) consisting of
20 seven voting members, with the Board of Supervisors appointing Seats 1, 2, and 3; the Mayor
21 appointing Seats 4 and 5; and the Commission on the Status of Women appointing Seats 6
22 and 7 with the following qualifications: ~~who shall be appointed as follows:~~

- 23 ~~—— (1) three persons appointed by the Board of Supervisors;~~
- 24 ~~—— (2) two persons appointed by the Mayor; and~~
- 25 ~~—— (3) two persons appointed by the Commission on the Status of Women.~~

1 (1) Seat 1: A person who works in or represents workers in an industry where
2 wage discrimination is common.

3 (2) Seat 2: A person who has worked as a discrimination or employment
4 lawyer with an emphasis on gender equity.

5 (3) Seat 3: A person with expertise on discrimination against women of color.

6 (4) Seat 4: A person who works in human resources responsible for diversity.

7 (5) Seat 5: A person who owns a small or medium size business that has
8 contracted with the City and County of San Francisco.

9 (6) Seat 6: A person who has worked in quantitative gender analysis, including
10 statistics.

11 (7) Seat 7: A person employed by a nonprofit organization that contracts with
12 the City with experience advocating for equal pay for equal work.

13 (b) Appointing authorities shall appoint members within 60 days of the effective date of this
14 Section 12B.2-1. If the appointing authority fails to act within the aforementioned 60 days, or if at any
15 subsequent time there has been a vacancy on the Advisory Board for more than 60 days, the Director of
16 the Human Rights Commission shall have the power to make an appointment to fill any such vacancy.
17 But so long as the Director of the Human Rights Commission has not made such an appointment, the
18 appointing authority retains the power to fill the vacancy.

19 (c) The members of the Advisory Board shall be broadly representative of the diversity of San
20 Francisco. All members of the Advisory Board shall be residents of the City and County of San
21 Francisco. In making appointments to the Advisory Board, the appointing authorities shall
22 appoint persons from varying backgrounds who have demonstrated abilities, skills, or
23 experience or expertise in at least one of the following areas: women's studies or history,
24 discrimination or employment law, equal pay advocacy, or working in an industry where wage
25 discrimination according to sex and/or race is common.

1 (d) All members of the Advisory Board serve at the pleasure of their appointing authority.
2 Even if a member has been appointed by the Director of the Human Rights Commission under
3 subsection (b), the member serves at the pleasure of the member's appointing authority; provided,
4 however, that the appointing authority may remove a member appointed by the Director of the Human
5 Rights Commission only if the appointing authority replaces that member with another person.

6 **SECTION 12B.2-2. ORGANIZATION AND MEETINGS.**

7 (a) The initial meeting of the Advisory Board shall be held within 30 days from the date the
8 Board of Supervisors completes its appointments to Seats 1, 2, and 3, provided that a majority of all
9 the members of the Advisory Board have been appointed. There shall be ten days' public notice of the
10 inaugural meeting of the Advisory Board. Such notice shall be posted on the City's website, at a
11 minimum on the website of the Human Rights Commission and the Commission on the Status of
12 Women, and also filed at the Main Branch of the Public Library. Such notice need not include a
13 detailed agenda, which must be published at least three days before the meeting, in accordance with
14 the requirements of the Brown Act and the Sunshine Ordinance. For purposes of this subsection (a),
15 completion of the Board of Supervisors' appointments includes appointments made by the Director of
16 the Human Rights Commission in the event of a vacancy lasting more than 60 days, as specified in
17 Section 12B.2-1(b).

18 (b) The members of the Advisory Board shall designate the Chair of the Advisory Board.

19 **SECTION 12B.2-3. POWERS AND DUTIES.**

20 (a) The Advisory Board shall analyze and recommend the best method or methods of data
21 collection that will identify wage gaps between men and women of the same or different races and
22 among members of different races, and that will minimize the burden on City contractors and
23 subcontractors in providing the data. The Advisory Board shall also analyze and recommend data
24 points that may include but are not limited to employees' education, years of work experience, and
25 specialized skills, that would aid in the analysis of wage disparities. The Advisory Board's

1 recommendations shall include drafts of one or more recommendations for additional ordinances
2 if legislative change is necessary or desirable to implement the recommendations.

3 (b) The Advisory Board shall make its recommendation to the Human Rights Commission
4 within six months of its inaugural meeting. Thereafter, the Advisory Board shall meet at least once
5 every four months to evaluate the effectiveness of the data collection methods used and make further
6 recommendations as appropriate.

7 **SECTION 12B.2-4. COMPENSATION.**

8 Members of the Advisory Board shall not be compensated, nor shall they be reimbursed for
9 expenses, if any.

10 **SECTION 12B.2-5. STAFFING.**

11 (a) The Human Rights Commission shall provide in-kind professional and administrative staff
12 to the Advisory Board.

13 (b) All City officials and departments, boards, and commissions, including but not limited to
14 contracting departments, shall cooperate with the Advisory Board in the performance of its duties.

15 **SECTION 12B.2-6. SUNSETTING.**

16 (a) The Advisory Board and sections pertaining thereto (Sections 12B.2-1 through 12B.2-6)
17 shall expire by operation of law on October 1, 2017, unless the Board of Supervisors adopts an
18 ordinance continuing the existence of the Advisory Board.

19 (b) The Advisory Board shall submit a report to the Board of Supervisors by May 1, 2017
20 recommending whether the Advisory Board should continue to operate, and if so, whether the Board of
21 Supervisors should consider legislative changes that would enhance the capacity of the Advisory Board
22 to achieve its goals.

23 (c) Upon expiration of the Advisory Board as specified in subsection (a), the City Attorney shall
24 cause Sections 12B.2-1, 12B.2-2, 12B.2-3, 12B.2-4, 12B.2-5, and 12B.2-6 to be removed from the
25 Municipal Code.

1 Section 3. 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
4 of Supervisors overrides the Mayor’s veto of the ordinance.

5 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
6 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
7 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
8 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
9 additions, and Board amendment deletions in accordance with the “Note” that appears under
10 the official title of the ordinance.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 Alicia Cabrera
16 Deputy City Attorney

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