

1 [Administrative Code - Social Impact Commitments in Contracting]

2
3 **Ordinance amending the Administrative Code to authorize the San Francisco Public**
4 **Utilities Commission to include Social Impact Commitment criteria as a qualitatively**
5 **scored element in solicitations for certain contracts at designated thresholds.**

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

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

14 Section 1. The Administrative Code is hereby amended by adding Chapter 21F,
15 consisting of Sections 21F.1-21F.9, to read as follows:

16 **CHAPTER 21F: SAN FRANCISCO PUBLIC UTILITIES COMMISSION SOCIAL**
17 **IMPACT PARTNERSHIP PROGRAM.**

18 **SEC. 21F.1. FINDINGS AND PURPOSE.**

19 *The City has a strong interest in protecting and promoting the local economy and natural*
20 *environment, and the health and wellbeing of persons in the City. The City seeks to be a good neighbor*
21 *to those impacted by the City's operations and projects, and desires that its contractors likewise be*
22 *good neighbors to the communities on whose behalf they are working and/or in the neighborhoods*
23 *impacted by their work for the City.*

24 *The purpose of this Chapter 21F is to encourage private contractors working under certain*
25 *contracts with the San Francisco Public Utilities Commission ("SFPUC") to engage in corporate*
social responsibility with a focus on delivering specific community outcomes aligned with demonstrated
community needs related to the work they are performing for the SFPUC. By evaluating prospective

1 contractors for these contracts based on their willingness to give back to communities affected by the
2 SFPUC's contracts, projects, and operations, the SFPUC can harness corporate resources for the
3 benefit of local residents and neighborhoods.

4 **SEC. 21F.2. DEFINITIONS.**

5 For purposes of this Chapter 21F, the following terms have the following meanings:

6 "Beneficiary" means an organization that is eligible to receive a Social Impact Commitment. A
7 Beneficiary may be: (1) a nonprofit corporation that has established and maintains valid nonprofit
8 status under Internal Revenue Code Section 501(c)(3), as amended, and all rules and regulations
9 promulgated under that section; (2) an organization that has a fiscal agent that is a nonprofit
10 corporation that has established and maintains valid nonprofit status under Internal Revenue Code
11 section 501(c)(3), as amended, and all rules and regulations promulgated under said section and which
12 provides that organization with fiduciary oversight, financial management, and administrative services
13 related to its operation; or (3) a public school, which may include a public school district, County
14 Office of Education, and/or a public college or university. The following are not eligible Beneficiaries:
15 any (1) City department, office, board, commission, or other entity, or (2) City official or employee or
16 Relative of a City official or employee, unless the resulting benefit is incidental to and not unique to the
17 City official or employee or Relative, but rather benefits the general public or a particular community
18 that is the focus or target of the Social Impact Commitment.

19 "Bonus" means a downward adjustment of the total bid price or upward adjustment of the total
20 rating score of a proposal, as applicable to the competitive process.

21 "City" means the City and County of San Francisco.

22 "Contractor" means any private person or entity that enters into a direct contract with the
23 SFPUC for a Covered Contract. Public entities shall not be considered Contractors.

24 "Covered Contract" means one or more of the following types of contracts: (1) professional
25 services contracts, procured under Chapters 6 and 21 of the Administrative Code, with an award value

1 of \$5 million or greater; (2) power procurement contracts, procured under Chapter 21 of the
2 Administrative Code, with an award value of \$5 million or greater, which includes (a) purchases from
3 projects constructed in San Francisco or on property owned by the City, (b) new projects where the
4 Contractor identifies an intent to construct a project, or add construction to an existing project, to
5 supply the product purchased under the contract, or (c) existing projects located in California where
6 the contract identifies a specific project that will supply the product being purchased and the purchase
7 does not support construction of a new project; and (3) public work or improvement contracts procured
8 under Chapter 6 of the Administrative Code with an award value of \$25 million or greater, including
9 but not limited to competitively bid (§ 6.20), design-build (§ 6.61), construction manager/general
10 contractor (§ 6.68), and best value (§6.74) procurements.

11 “Financial Interest” has the meaning set forth in the California Political Reform Act,
12 California Government Code Section 87103, and its implementing regulations.

13 “Relative” has the meaning set forth in Campaign and Governmental Conduct Code Section
14 3.610, as amended from time to time.

15 “Social Impact Commitment” means a Contractor’s commitment, as proposed by the
16 Contractor in response to a solicitation for a Covered Contract, to provide either volunteer hours or
17 direct financial contributions to one or more Beneficiaries during the term of the Covered Contract.
18 For the purposes of this Chapter 21F, a direct financial contribution is a monetary payment made to a
19 Beneficiary and to no other person or entity. An in-kind donation with potential monetary value, other
20 than volunteer hours, is not eligible as a Social Impact Commitment for any Covered Contract awarded
21 after the enactment of this Chapter 21F.

22 **SEC. 21F.3. RULES AND REGULATIONS; CONDUCT.**

23 (a) The SFPUC shall adopt Rules and Regulations for the implementation of the Social
24 Impact Partnership Program in conformance with the requirements of Charter Section 4.104, which
25 Rules and Regulations shall be consistent with this Chapter 21F and which may include procedures for

1 exemptions and waivers. The Rules and Regulations shall provide guidance to administering staff,
2 Contractors, and Beneficiaries for implementation and compliance with the Social Impact Partnership
3 Program.

4 (b) No City department, officer, or employee, including but not limited to the SFPUC, its
5 Commissioners, officers, and employees, shall direct or require any Contractor to donate time and/or
6 money to any particular individual or entity. This prohibition applies from the time a solicitation for a
7 Covered Contract is published until final payment under a Covered Contract is issued. Publicly
8 available SFPUC solicitation instructions for identifying potential Beneficiaries, information available
9 to all participants in a competitive process for a Covered Contract, or guidelines under the SFPUC
10 Social Impact Partnership Program Rules and Regulations shall not be considered a violation of this
11 prohibition.

12 **SEC. 21F.4. CONTRACTING PROCESS.**

13 **(a) Minimum Requirements for Social Impact Commitments.**

14 (1) The Contractor that receives a Covered Contract must fulfill the entirety of its
15 Social Impact Commitment in the value originally proposed by the Contractor in its response to the
16 Covered Contract solicitation by the Contractor in its response to the Covered Contract solicitation or
17 as modified under Section 21F.5 below.

18 (2) The Contractor shall perform its Social Impact Commitment at no cost to the City.
19 The Contractor may not charge the City, directly or indirectly, for any costs incurred in fulfilling or
20 implementing its Social Impact Commitment.

21 (3) The Contractor's funding or performance of its Social Impact Commitment may not
22 be conditioned upon, tied to, or dependent on funds or sources of funding receivable from the SFPUC
23 for the Covered Contract, including amounts held by the City in retention.

1 (4) The Contractor's obligation to provide a Social Impact Commitment is separate
2 from, and in addition to, any other regulatory or legal requirements under the Covered Contract,
3 including but not limited to, the requirements of Chapters 14B, 82, and 83 of the Administrative Code.

4 (5) The Contractor is solely responsible to fulfill its Social Impact Commitment. A
5 Contractor may not require a subcontractor, subconsultant, supplier, or anyone else to perform its
6 Social Impact Commitment. The Contractor may retain entities or individuals to assist the Contractor
7 in implementing its Social Impact Commitment so long as any cost incurred to pay those entities or
8 individuals is not charged or otherwise passed through to the SFPUC in accordance with subsection
9 (a)(2) above.

10 (6) The Contractor's Social Impact Commitment must be fulfilled during the term of the
11 Covered Contract. Actions taken by the Contractor before the term of the Covered Contract begins or
12 after it ends may not count towards the fulfillment of the Social Impact Commitment for that contract,
13 except as may be permitted under SFPUC Social Impact Partnership Program Rules and Regulations.

14 (7) The Contractor's Social Impact Commitment must be performed in the geographic
15 area(s) specified in the solicitation for the Covered Contract. The SFPUC may provide further
16 guidance or limitation on location in its Rules and Regulations and/or individual solicitations.

17 (b) **Social Impact Partnership Program Solicitation Requirements.** In its solicitations for
18 Covered Contracts, whether by advertisement for bids or proposals, the SFPUC is authorized to
19 include the Social Impact Partnership program. In any such solicitation, SFPUC shall include the
20 description and requirements for the program.

21 (c) **Evaluation and Scoring of Proposed Social Impact Commitments.** The SFPUC Social
22 Impact Partnership Program Rules and Regulations shall establish procedures for evaluation and
23 scoring of proposed Social Impact Commitments. Solicitations for Covered Contracts shall include
24 evaluation criteria for Social Impact Commitment proposals and the procedure for evaluation and
25 scoring as appropriate to the specific Covered Contract. A Social Impact Commitment proposal score

1 shall be applied as a Bonus to the total bid price or score to determine the apparent low bidder or
2 highest-ranked proposer as appropriate to the Covered Contract.

3 **SEC. 21F.5. CONTRACT REQUIREMENTS.**

4 **(a) Contract Requirements.** Every Covered Contract that includes a Social Impact
5 Commitment shall include provisions consistent with the following:

6 (1) The Contractor must save, keep, hold harmless, and fully indemnify the City and any
7 of its officers or employees from all damages, costs, or expenses in law or equity, or claims for same,
8 that may at any time arise from performance of Social Impact Commitments. The Contractor shall
9 bear sole responsibility and liability, if any, for any breach of the Social Impact Partnership Program
10 provisions of its Covered Contract or this Chapter 21F.

11 (2) Failure to comply with the requirements of this Chapter 21F shall constitute a
12 material breach by the Contractor of the terms of the Covered Contract. The SFPUC in its sole
13 discretion shall determine such failure.

14 (3) The SFPUC shall specify by Rule and Regulation and/or contract provision as
15 appropriate, procedures and remedies for non-compliance with the Social Impact Partnership Program
16 and for enforcement. Remedies may include but need not be limited to (A) revoke non-compliant
17 Contractor's eligibility for Social Impact Commitment Bonus on future Covered Contracts; (B) assess
18 liquidated damages; (C) withhold progress payments; (D) withhold release of retention; and/or (E)
19 suspend or terminate the Covered Contract.

20 **(b) Modifications.** The SFPUC Social Impact Partnership Program Rules and Regulations
21 shall provide procedures and requirements for modifications of Social Impact Commitments within the
22 following guidelines:

23 (1) **Contract Amendments or Modifications Over 10%.** When the SFPUC modifies or
24 amends a Covered Contract that will result in the cumulative increase of the total value of the Covered
25 Contract being 10% or more of its original value, the SFPUC shall require that the Contractor propose

1 an increase to its Social Impact Commitment for the Covered Contract. Such increase shall (A) be
2 proportional to the increase in contract value under the amendment or modification and (B) consistent
3 with Section 21F.4, not increase the costs to the SFPUC.

4 (2) **Modifications to Social Impact Commitments.** In the event that fulfillment of
5 Social Impact Commitments as provided in the Covered Contract becomes impossible or impracticable,
6 the Contractor may request a modification to its Social Impact Commitments by documenting the
7 impossibility or impracticability of proceeding with its existing Social Impact Commitments and
8 proposing one or more alternatives subject to review and approval by the SFPUC as provided in the
9 Covered Contract.

10 **SEC. 21F.6. MONITORING AND ENFORCEMENT.**

11 **(a) Reporting.**

12 (1) The SFPUC shall establish regular reporting procedures for Contractors to follow
13 for the purpose of monitoring compliance with this Chapter 21F. All records submitted by the
14 Contractor for this purpose shall be accompanied by a statement of compliance signed by an
15 authorized representative of the Contractor indicating that the records are correct and complete.

16 (2) The SFPUC shall publish and maintain a publicly available website dashboard
17 reporting information about Covered Contracts and the performance of associated Social Impact
18 Commitments.

19 **(b) Monitoring.** The SFPUC shall monitor the Contractor's compliance with fulfilling its
20 Social Impact Commitment.

21 (1) The SFPUC shall establish by Rules and Regulations an administrative procedure to
22 monitor compliance with this Chapter 21F and to address allegations of noncompliance. All
23 Contractors shall cooperate fully with the SFPUC in monitoring and compliance activities regarding
24 the Covered Contract.

1 (2) SFPUC shall issue a report for each Covered Contract before final payment is
2 issued to confirm compliance with the Social Impact Commitment contract requirements.

3 (c) **Enforcement.** The SFPUC shall establish by Rules and Regulations the procedures for
4 enforcement of Covered Contract Social Impact Commitments requirements, including informal
5 resolution and formal notice and action.

6 (d) **Appeals.** The Contractor may seek administrative appeal from the SFPUC's imposition
7 of a remedy for violation of the Social Impact Commitment. The SFPUC Rules and Regulations shall
8 provide for the administrative procedures for such appeals, with a final determination to be made by a
9 hearing officer appointed by the SFPUC General Manager who has not been involved in the
10 solicitation, award, administration, or management of the Covered Contract.

11 (e) **No Third Party Beneficiaries.** Only the City may enforce a Covered Contract and the
12 Social Impact Partnership Program requirements. A Beneficiary shall not be considered a third party
13 beneficiary under any Covered Contract; no party shall have a private right of action against the City
14 under this Chapter 21F.

15 (f) **Distribution of Damages.** If the SFPUC imposes actual or liquidated damages as a
16 remedy against a Contractor for non-compliance, the Controller shall withhold the damages assessed
17 until such time as either the Contractor has conceded to or acquiesced in the assessment or, in the
18 event of an appeal, there is a determination no longer subject to judicial review. The Controller shall
19 then deposit the amount withheld into a special account which shall be created for the sole purpose of
20 receiving such funds. The funds deposited into this account shall be distributed by the Controller in
21 accordance with the original Social Impact Commitments and by the process set forth in the SFPUC
22 Social Impact Partnership Rules and Regulations.

23 **SEC. 21F.7. PREEMPTION.**

24 Nothing in this Chapter 21F shall be interpreted or applied so as to create any requirement,
25 power, or duty in conflict with any federal or state law. In Covered Contracts that involve the use of

1 any funds furnished, given, or loaned by the United States or the State of California, all laws, rules, and
2 regulations of the United States or California or of any federal or State agencies relative to the use of
3 funds, and the conditions of any such grant, gift, or loan, or other furnishing of funds, shall prevail over
4 the requirements of this Chapter if such laws, rules, regulations, or conditions are in conflict with this
5 Chapter.

6 **SEC. 21F.8. UNDERTAKING FOR THE GENERAL WELFARE.**

7 In enacting and implementing this Chapter 21F, the City is assuming an undertaking only to
8 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
9 obligation for breach of which it is liable in money damages to any person who claims that such breach
10 proximately caused injury. In no event shall any person or entity have the right to bring an action
11 against the City based on any alleged failure to enforce or negligent enforcement of the requirements of
12 this Chapter.

13 **SEC. 21F.9. SEVERABILITY.**

14 If any section, subsection, sentence, clause, phrase, or word of this Chapter 21F, or any
15 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
16 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
17 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have
18 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not
19 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
20 application thereof would be subsequently declared invalid or unconstitutional.

21
22 Section 2. Effective and Operative Dates.

23 (a) This ordinance shall become effective 30 days after enactment. Enactment
24 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
25

1 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
2 overrides the Mayor's veto of the ordinance.

3 (b) This ordinance shall become operative 90 days after the effective date, and shall
4 apply only to Covered Contracts, as defined in Section 21F.2 of the Administrative Code, first
5 solicited on or after the operative date.

6 ///
7 APPROVED AS TO FORM:
8 DAVID CHIU, City Attorney

9 By: */s/ Sheryl L. Bregman*
10 Sheryl L. Bregman
11 Deputy City Attorney

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City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 221126

Date Passed: December 13, 2022

Ordinance amending the Administrative Code to authorize the San Francisco Public Utilities Commission to include Social Impact Commitment criteria as a qualitatively scored element in solicitations for certain contracts at designated thresholds.

December 05, 2022 Rules Committee - RECOMMENDED AS COMMITTEE REPORT

December 06, 2022 Board of Supervisors - PASSED ON FIRST READING


Ayes: 11 - Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

December 13, 2022 Board of Supervisors - FINALLY PASSED

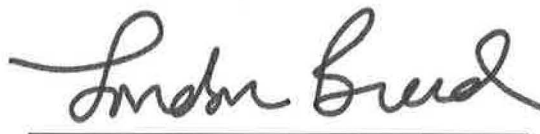
Ayes: 11 - Chan, Dorsey, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 221126

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/13/2022 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board



London N. Breed
Mayor

12/22/22

Date Approved