

LEGISLATIVE DIGEST

[Administrative, Labor and Employment Codes - City Contract Processes and Requirements]

Ordinance amending the Administrative Code to 1) create a procurement legislative analysis authority for the City Administrator; 2) revise or create threshold dollar amounts for application of various contract requirements tied to the statutory Minimum Competitive Amount or statutory federal Single Audit Standard; 3) reorganize, standardize, and narrow Chapter 12F (relating to the MacBride Principles concerning Northern Ireland; including sunset of ordinance in 2035); 4) repeal Chapter 12J (relating to City business with Burma); and 5) narrow coverage of, and reduce meeting requirements in, Chapter 12L (relating to certain non-profit organizations receiving funds from the City); and amending the Labor and Employment Code to 6) reorganize, standardize, revise exemptions and waivers narrowing coverage, create threshold dollar amount for application tied to the statutorily based Minimum Competitive Amount, and update Article 131 (relating to nondiscrimination under City contracts; including sunset of ordinance in 2035) and repeal Article 132 (relating to nondiscrimination under City property contracts), while incorporating some of its provisions under Article 131; 7) reorganize, standardize, revise exemptions and waivers narrowing coverage, create a threshold dollar amount for application tied to the statutorily based Minimum Competitive Amount and update Article 151 (relating to City procurement of sweatfree goods; including abolition of the Sweatfree Procurement Advisory Group and sunset of ordinance in 2035); and 8) repeal Article 141 (relating to salary history in the hiring process of City contractors), Article 142 (relating to criminal history in the hiring and employment process of City contractors), and Article 161 (relating to earned income credit forms for employees of City contractors).

Existing Law

I. Code Chapters and Articles Substantially Amended or Repealed by the Ordinance.

Article 131 of the Labor and Employment Code (Nondiscrimination in Contracts), which requires city contractors to abide by nondiscrimination provisions and provide equal benefits to couples in a domestic partnership as they would in a marital union.

Article 132 of the Labor and Employment Code (Nondiscrimination in Property Contracts). which requires nondiscrimination provisions to be included in property transactions where City property is being used.

Article 141 of the Labor and Employment Code (Salary History), which requires that City contractors take administrative actions to ensure that employees and potential employees are not discriminated against on the basis of their past salaries.

Article 142 of the Labor and Employment Code (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), which requires that City contractors take administrative actions to ensure that employees and potential employees are not unduly discriminated against on the basis of their past criminal convictions.

Article 151 of the Labor and Employment Code (Sweatfree Contracting), which requires the City, if feasible, to award contracts to contractors who do not use sweatshop labor, and which creates the Sweatfree Procurement Advisory Group.

Article 161 of the Labor and Employment Code (Earned Income Credit Information), which requires City contractors to provide specific IRS tax forms including W-5s to their employees within specific time frames.

Chapter 12F of the Administrative Code (Implementing the MacBride Principles – Northern Ireland), which requires that City contractors review and acknowledge the MacBride Principles designed to reduce employment discrimination in Northern Ireland.

Chapter 12J of the Administrative Code (City Business with Burma Prohibited), which prohibits the City from doing business with persons or entities that had investments or employees with Burma.

II. Other Code Provisions Revised by the Ordinance.

Section 10.6-1, Chapter 10, Article I of the Administrative Code (Monitoring of Nonprofits Contracting with the City), which requires that the City establish standards for departments to follow in contracting with nonprofit organizations, and that nonprofits receiving \$750,000 or more in funding in a fiscal year submit audited statements to the Controller.

Chapter 12L of the Administrative Code (Public Access to Records and Meetings of Nonprofit Organizations), which requires that certain nonprofit organizations receiving \$250,000 or more in funding per year allow access to financial records and attendance by the public at at least two open meetings.

Chapter 12N of the Administrative Code (Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth: Youth Services Sensitivity Training), which requires that contractors and prospective contractors providing services to youth provide lesbian, gay, bisexual, and transgender sensitivity training to employees who have direct contact with youth.

Chapter 12Y (San Francisco Slavery Disclosure Ordinance) of the Administrative Code, which requires that contractors providing insurance or insurance services, financial services, or textiles to the City search their records for evidence of participation in the slave trade, file an affidavit on the topic, and be encouraged to make a contribution to a City fund.

Chapter 101 of the Administrative Code (Restricting the Purchase, Sale, or Distribution of Sugar-Sweetened Beverages by or for the City), which requires that no City funds be used to purchase or distribute Sugar-Sweetened Beverages.

Amendments to Current Law

I. *Code Chapters and Articles Substantially Amended or Repealed by the Ordinance.*

a. Substantial Amendment of Code Chapters and Articles.

i. Generally Applicable Changes: Article 131, Article 151, and Chapter 12F

Article 131 of the Labor and Employment Code (Nondiscrimination in Contracts), Article 151 of the Labor and Employment Code (Sweatfree Contracting), and Chapter 12F of the Administrative Code (Implementing the MacBride Principles – Northern Ireland), would be comprehensively amended. The core aims and purpose of these three ordinances would remain the same, but would – unlike now – share common language relating to scope of the article, definitions, waivers, and exceptions. The most important changes:

- The ordinances would be limited to explicit contract authorizing chapters of the Administrative Code (Chapters 6, 21, 21G, and 23), though Article 151 would only apply to Chapter 21 agreements for commodities due to the nature of the ordinance.
- The ordinances would apply only to agreements valued at above the Minimum Competitive Amount, which is currently \$230,000; this would be an increase from the existing application threshold figures of \$5,000, \$25,000, and \$0 in Article 131, Article 151, and Chapter 12F respectively.
- Outmoded language regarding preexisting exception, waiver, non-application, and exemption concepts would be changed to language suited for modern practices.
- Objective circumstances would be classified as exemptions, while subjective decisions would be classified as waivers.
- The collective impact of the standard thresholds, exemptions, waivers, and exemptions would reduce the scope of application of all affected ordinances.
- Where transferrable, definitions would be updated to uniform language.
- The ordinances would include sunset language; with expiration in 2035 unless reenacted.

ii. Article 131: Additional Changes

Under the ordinance, Article 131 would be modified to remove sections and requirements related to: reasonable accommodation for disabled applicants and employees, parameters of required nondiscrimination programs, equal pay reporting, declarations relating to scope and budget assurances, detailed appellate processes, waiver of requirements by the

Board of Supervisors, and references to operative dates of 1997. References to the Human Rights Commission would be updated to also include the Contract Monitoring Division.

These changes are prompted by the evolution of Article 131. Since its enactment in 1966, originally as Chapter 12B of the Administrative Code, some of its provisions have become outdated and are no longer in use, notably the nondiscrimination program guidance and appeals process. Other sections are covered by alternative federal or California law, such as reasonable accommodation requirements and equal pay reporting requirements. Self-imposed restrictions of scope, assurances related to funding, and an effective date of 1997 now appear superfluous. And the role of the administration by the Human Rights Commission has largely been delegated to the Contract Monitoring Division in practice.

iii. Article 151: Additional Changes

Under the ordinance, Article 151 would be modified to remove provisions related to the following: detailed calculations for base hourly wages for workers in the United States and in other countries, a requirement of weekly certified payrolls of contractor and subcontractors to be submitted to the City upon request, initial phase-in period actions, and the City's right to hire nonprofits to assist with enforcement and monitoring. A section detailing a comprehensive process to award contracts absent a sweatfree proposal with limitations on contracts would be removed. Requirements to collect and post information on subcontractors would be reduced in scope. Requirements applicable to subcontractors would be changed to manufacturers or factories and reduced in scope. The scope of goods covered would be modified. The Sweatfree Procurement Advisory Group, and associated administrative authorizations and constraints, would no longer exist. The Purchaser would be authorized to create and maintain a prequalified list of manufacturers complying with Article 151.

These changes are prompted by the challenges the City has experienced in implementing Article 151, which was enacted in 2005. Modern supply chains, City collective bargaining agreements governing uniforms and garments, and challenges in obtaining fully compliant bids or proposals have led to substantial difficulties in application of Article 151, substantial expenditure of resources in the process, and substantial impairment of the procurement process.

iv. Chapter 12F

Under the ordinance, Chapter 12F would be modified to include common language relating to exemptions and waivers, resulting in a reduced scope of application. A declaration of intent would be removed. Commendation and encouragement to the retirement system (SFERS) would be removed. References to research, education, international correspondence, and letters to be sent by 1990 would be removed.

These changes are prompted by a desire to update Chapter 12F, which was enacted in 1989 and has never been modified. Chapter 12F lacks exceptions found in all other ordinances imposing requirements on City contractors, occasionally resulting in agreements being delayed or a failure to reach agreement. Some aspects of the ordinance were connected to events of the early 1990's, and those events have passed.

b. Repeal of Code Chapters and Articles.

Article 132 of the Labor and Employment Code (Nondiscrimination in Property Contracts). Article 132 largely duplicates Article 131. Repeal is a legislative clean-up measure to consolidate and eliminate redundancies. Nonduplicative elements of Article 132 are incorporated in Article 131.

Article 141 of the Labor and Employment Code (Salary History). Article 141 has significant overlap with Section 432.3 of the California Labor 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. Enforcement actions by San Francisco have historically been limited.

Article 142 of the Labor and Employment Code (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions). 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. Enforcement actions by San Francisco have historically been limited.

Article 161 of the Labor and Employment Code (Earned Income Credit Information). Article 161 has significant overlap with Section 19853(a) of the California Revenue and Taxation Code, and requires City contractors to provide IRS form W-5, which is no longer in existence. In the last decade, Article 161 has not been enforced by the City.

Chapter 12J of the Administrative Code (City Business with Burma Prohibited). Chapter 12J was suspended from enforcement in 2000, with no provision for withdrawal of the suspension. Repeal is a legislative clean-up measure with no material effect.

II. *Other Code Provisions Revised by the Ordinance.*

a. Nonprofit provisions.

Section 10.6-1, Chapter 10, Article I of the Administrative Code (Monitoring of Nonprofits Contracting with the City) would apply only to nonprofits receiving \$1,000,000 or more, which is the Federal Single Audit threshold. The existing threshold is \$750,000, though administratively aligned to the Federal Single Audit threshold.

Chapter 12L of the Administrative Code (Public Access to Records and Meetings of Nonprofit Organizations) would apply only to agreements valued at \$1,000,000 or more, which is the Federal Single Audit threshold. The existing threshold is \$250,000. In addition, the requirement to hold two open meetings per year would be reduced to one meeting per year.

The requirements for Section 10.6-1 and Chapter 12L currently attach at \$750,000 and \$250,000 respectively. To create consistency, the threshold for application will be tied to the Federal Single Audit standard, set at \$1,000,000 currently.

b. Low-value contract provisions.

Chapter 12N of the Administrative Code (Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Youth: Youth Services Sensitivity Training) would apply only to agreements valued at above the Minimum Competitive Amount, which is currently \$230,000; the existing threshold is \$50,000 received cumulatively per year.

Chapter 12Y (San Francisco Slavery Disclosure Ordinance) of the Administrative Code would apply only to agreements valued at above the Minimum Competitive Amount, which is currently \$230,000; the existing threshold is \$5,000.

Chapter 101 of the Administrative Code (Restricting the Purchase, Sale, or Distribution of Sugar-Sweetened Beverages by or for the City) would apply only to agreements valued at above the Minimum Competitive Amount, which is currently \$230,000; the existing threshold is \$5,000.

Agreements valued below the Minimum Competitive Amount, which is currently \$230,000, are considered low-value contracts. Despite the lower value, often complex contract requirements will attach. Additionally, City departments awarding contracts and contractors have a range of thresholds to consider when determining which contracting requirements apply. In an effort to ease the burden for low value contractors and departments awarding contracts, Chapters 12N, 12Y, and 101 would have thresholds tied to the Minimum Competitive Amount, consistent with the substantially amended Code chapters and articles (Article 131 and 151, and Chapter 12F).

III. *Procurement Legislative Analysis by City Administrator*

New Administrative Code Section 2A.25-1 would empower the City Administrator to offer analysis of legislation that may have a material impact on City procurement for goods and services. The City Administrator, in consultation as appropriate with subject matter experts, would analyze the legislation for numerous factors relating to City operations and procurement, and could provide recommendations for mitigation. The analysis generally would have to be completed within 60 days of introduction, and a Board committee hearing on the legislation could not occur before then. Prior to voting on new legislation, the Board will be informed of potential ramifications, such as:

- How the new requirements would affect the ability of suppliers and small businesses to access City contracting opportunities;
- How the new requirements would interact with existing laws;
- Whether the City has available resources to effectively administer and enforce new requirements;
- What changes to the City's business processes would need to be made to administer the new requirements, especially as they pertain to any tools, forms, or IT systems that need to be created or maintained; and
- When the change should be implemented, taking into consideration the communication and training that would be required for all City departments and suppliers, and the number of newly legislated changes that departments must build into their business processes.

Background Information

This ordinance represents a substantial step towards reconciling and standardizing the City's various contracting requirements. It incorporates some of the recommendations in the City Administrator's report, "Improving the Process for Chapter 21 Low-value Procurements," as well as input from subject matter experts in the City Administrator's Office, Government Operations Recovery Project, and various contracting departments. It is hoped that greater consistency and uniformity in contracting provisions, and reduction in unnecessary or infeasible requirements, will aid in the effective and efficient application of the City's contracting ordinances.