

BOARD of SUPERVISORS



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MEMORANDUM

TO: Carmen Chu, City Administrator, Office of the City Administrator
Katy Tang, Director, Office of Small Business
Greg Wagner, Controller, Office of the Controller
Patrick Mulligan, Director, Office of Labor Standards Enforcement
Sailaja Kurella, Director and Purchaser, Office of Contract Administration
Stephanie Tang, Director, Contract Monitoring Division
Mawuli Tugbenyoh, Acting Executive Director, Human Rights Commission
Dennis Herrera, General Manager, Public Utilities Commission
José Cisneros, Treasurer, Treasurer, Office of the Treasurer and Tax
Collector
Andrico Penick, Director, Real Estate Division

FROM: Brent Jalipa, Assistant Clerk, Budget and Finance Committee

DATE: March 3, 2025

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Supervisor Rafael Mandelman:

File No. 250192

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).

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. Sophie Hayward, Office of the City Administrator
- Vivian Po, Office of the City Administrator
- Angela Yip, Office of the City Administrator
- Kerry Bimbach, Office of Small Business
- ChiaYu Ma, Office of the Controller
- Ayeesha Hossain, Office of the Controller
- Angela Chiu, Office of Labor Standards Enforcement
- Taraneh Moayed, Office of Contract Administration
- Rachel Cukierman, Office of Contract Administration
- Rochelle Fretty, Contract Monitoring Division
- Masood Ordikhani, Public Utilities Commission
- Jeremy Spitz, Public Utilities Commission
- Amanda Fried, Office of the Treasurer and Tax Collector

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

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

25 **NOTE: Unchanged Code text and uncodified text are in plain Arial font.**

1 **Additions to Codes** are in *single-underline italics Times New Roman font*.
2 **Deletions to Codes** are in ~~*single-underline italics Times New Roman font*~~.
3 **Board amendment additions** are in double-underlined Arial font.
4 **Board amendment deletions** are in ~~Arial font~~.
5 **Asterisks (* * * *)** indicate the omission of unchanged Code
6 subsections or parts of tables.

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

8 Section 1. Background, Findings, and Purpose.

9 (a) In order to better serve the public, the City and County of San Francisco
10 contracts for necessary goods, programs, and services.

11 (b) Over time, the City has enacted contract-related ordinances that seek to use the
12 City's market participant powers to advance various social noncommercial social policy
13 priorities, often without consideration of how these requirements interact with other existing
14 laws or impact the efficiency of the City's procurement processes.

15 (c) Such ordinances are rarely, if ever, repealed or even reviewed for effectiveness
16 or cost.

17 (d) In 2016, for example, the City enacted Administrative Code Chapter 12X in
18 response to the proliferation of laws in states across the country that discriminated against the
19 LGBTQ community; Chapter 12X prohibited the City from contracting with businesses based
20 in states with such laws.

21 (i) Between 2016 and 2023, the Board of Supervisors and Mayor expanded
22 the reach of Chapter 12X to include businesses in states with restrictive abortion and voting
23 rights laws, bringing the total number of banned states to 30.

24 (ii) In 2023, the Board of Supervisors repealed Chapter 12X after analyses
25 by the Budget and Legislative Analyst and City Administrator concluded that Chapter 12X
 increased the City's contracting costs and required significant City resources to administer,
 yet failed to impact legislative activity of banned states; furthermore, they found that limiting

1 free and open competition for contracts increases the costs of those contracts by as much as
2 20%.

3 (iii) The review and repeal of Chapter 12X drew heightened attention to the
4 costs and benefits of the array of social policies the City has sought to advance through its
5 contracts, and in 2022, Supervisor Mandelman submitted a Letter of Inquiry asking the Office
6 of the City Administrator to make recommendations for a new more-transparent, streamlined,
7 and less-costly procurement process for low-value Chapter 21 contracts to encourage greater
8 competition and support the City’s small businesses.

9 (e) In May 2024, City Administrator Carmen Chu released her response to
10 Supervisor Mandelman’s Letter of Inquiry, a report entitled “Improving the Process for Chapter
11 21 Low-value Procurements,” which found as follows:

12 (i) The City’s contracting processes create a high level of administrative
13 burden for both City staff and suppliers, making it more difficult for the City to fulfill its mission
14 and serve the public;

15 (ii) City staff spend an excessive amount of time navigating complicated
16 procurement processes and guiding suppliers through compliance requirements, which can
17 take time away from strategic or performance management activities;

18 (iii) The City’s contracting requirements make doing business with the City
19 confusing and cost-prohibitive for some suppliers, and small and local businesses are
20 especially impacted by high barriers to entry, which can run counter to the City’s goals of local
21 investment and equitable contracting;

22 (iv) Low-value contracts are subject to the same contracting requirements as
23 higher-value contracts, making executing a \$100,000 contract just as difficult as executing a
24 \$5,000,000 contract;

25

1 (v) In the past five years, the City awarded thousands of contracts for
2 \$200,000 or less accounting for 59% of the City’s contract volume but only 1.8% of the City’s
3 total contract spending, meaning that that City staff and suppliers are spending
4 disproportionate time, energy, and effort on a relatively small share of the City’s spending; and

5 (vi) The complexity of the City’s contracting processes may also be limiting
6 competition to provide City goods and services; for example, in Fiscal Year 2023, nearly half
7 of the solicitations that the Office of Contract Administration issued received a single response
8 or no response.

9 (f) The City Administrator’s report presents five recommendations to help address
10 these challenges:

11 (i) Improve the informal procurement process, which refers to procurements
12 under the City’s “Minimum Competitive Amount” (Currently \$230,000 but reset every five
13 years using the Consumer Price Index);

14 (ii) Simplify the City’s standard contract terms and conditions, which are
15 significantly longer than those in other cities and municipalities;

16 (iii) Amend the City’s procurement requirements to update and reconcile
17 inconsistencies in processes, thresholds, and triggers;

18 (iv) Standardize future procurement legislation; and

19 (v) Increase inter-departmental coordination in contracting and align policy
20 and administrative processes across departments.

21 (g) The purpose of this legislation, the Open for Business Contract Streamlining Act
22 of 2025, is to simplify the City’s procurement processes and promote competition, especially
23 for low-value contracts under the Minimum Competitive Amount, by doing the following:

24 (i) Creating a common structure and terminology to inform and model any
25 future contracting ordinances, as well as existing ordinances that may be amended;

- 1 (ii) Requiring a City Administrator analysis for future proposed ordinances
2 that may materially impact procurement processes;
- 3 (iii) Updating sections of the Municipal Code to align with current terminology
4 and government functions;
- 5 (iv) Repealing sections of the Municipal Code that are no longer in use or are
6 duplicative of state law; and
- 7 (v) Revising sections of the Municipal Code to standardize their triggering
8 thresholds at the Minimum Competitive Amount.
- 9

10 Section 2. Chapter 2A of the Administrative Code is hereby amended by adding
11 Section 2A.25-1, to read as follows:

12 **SEC. 2A.25-1. ANALYSIS OF LEGISLATION IMPACTING PROCUREMENT.**

13 (a) The City Administrator's Office (the "City Administrator") shall identify and report on
14 all legislation introduced at the Board of Supervisors that may have a material impact on City
15 procurement processes for goods and services as determined by the City Administrator.

16 (b) In preparing this analysis, the City Administrator shall analyze the legislation for
17 factors such as but not limited to: (1) the impact on City operations; (2) the impact on contracting
18 parties that may wish to contract with the City; (3) oversight responsibilities and procedures; (4)
19 consistency in procurement policies; and (5) implementation considerations. The City Administrator
20 may solicit assistance from the Purchaser, the Board of Supervisors' Budget Analyst, the Controller,
21 the Office of Labor Standards Enforcement ("OLSE"), the Contract Monitoring Division ("CMD"),
22 impacted departments, and other public and private stakeholders as the City Administrator deems may
23 be appropriate in the development of the analysis.

24 (c) The City Administrator's analysis shall: (1) summarize the impact of the legislation
25 based on factors such as those outlined above; (2) analyze the feasibility of the proposed operative date

1 of the legislation given its anticipated impact; and (3) recommend ways the proposed legislation could
2 be improved to mitigate adverse impacts or unintended consequences on City procurement processes.

3 (d) The City Administrator shall submit its analysis to the Board of Supervisors within 60
4 days of receiving the legislation from the Clerk of the Board, unless the President of the Board grants
5 an extension for legislation of unusual scope or complexity. The City Administrator's analysis shall be
6 submitted to the Board prior to the legislation being heard in committee.

7
8
9 Section 3. The Labor and Employment Code is hereby amended by revising Article
10 131 consisting of existing Sections 131.1 to 131.7, by replacing it with a new Article 131,
11 consisting of Sections 131.1 to 131.9 that incorporate parts of existing Articles 131 and 132, to
12 read as follows:

13
14 **ARTICLE 131: NONDISCRIMINATION IN CONTRACTS**
15 **AND EQUAL BENEFITS REQUIREMENTS**

16
17 **~~SEC. 131.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE~~**
18 **~~NONDISCRIMINATION PROVISIONS; DEFINITIONS.~~**

19 ~~—(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of~~
20 ~~the City and County, shall include in all contracts and property contracts hereinafter executed or~~
21 ~~amended in any manner or as to any portion thereof, a provision obligating the contractor not to~~
22 ~~discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national~~
23 ~~origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status,~~
24 ~~disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height,~~
25 ~~association with members of classes protected under this Article or in retaliation for opposition to any~~

1 ~~practices forbidden under this Article against any employee of, any City employee working with, or~~
2 ~~applicant for employment with such contractor and shall require such contractor to include a similar~~
3 ~~provision in all subcontracts executed or amended thereunder.~~

4 ~~—(b) No contracting agency of the City, or any department thereof, acting for or on behalf of~~
5 ~~the City and County, shall execute or amend any contract or property contract with any contractor that~~
6 ~~discriminates in the provision of bereavement leave, family medical leave, health benefits, membership~~
7 ~~or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well~~
8 ~~as any benefits other than bereavement leave, family medical leave, health benefits, membership or~~
9 ~~membership discounts, moving expenses, pension and retirement benefits or travel benefits between~~
10 ~~employees with domestic partners and employees with spouses, and/or between the domestic partners~~
11 ~~and spouses of such employees, where the domestic partnership has been registered with a~~
12 ~~governmental entity pursuant to State or local law authorizing such registration, subject to the~~
13 ~~following conditions. In the event that the contractor's actual cost of providing a certain benefit for the~~
14 ~~domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the~~
15 ~~contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of~~
16 ~~providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate~~
17 ~~in the provision of benefits if the contractor conditions providing such benefit upon the employee~~
18 ~~agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain~~
19 ~~benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate~~
20 ~~in the provision of benefits if the contractor provides the employee with a cash equivalent.~~

21 ~~—(c) Definitions. As used in this Article 131, the following words and phrases shall have the~~
22 ~~meanings indicated herein:~~

23 ~~—“Age” shall mean the age of any employee or applicant for employment who has attained~~
24 ~~the age of 40 years. For the purposes of this Article, discrimination because of age shall mean~~
25 ~~dismissal from employment of, or refusal to employ or rehire any person because of their age, if such~~

1 *person has attained the age of 40 years, if the person is physically able and mentally competent to*
2 *perform the services required. Age limitations of apprenticeship programs in which the State or its*
3 *political subdivisions participate shall not be considered discriminatory within the meaning of this*
4 *Article.*

5 *—“Amend” shall mean to substantively change the terms of a pre-existing contract, and shall*
6 *not include amendments to decrease the scope of work or the amount to be paid under a contract.*
7 *Construction change orders shall not be construed as contract amendments for the purposes of this*
8 *Article.*

9 *—“City” shall mean the City and County of San Francisco.*

10 *—“Commission” shall mean the Human Rights Commission of the City and County of San*
11 *Francisco.*

12 *—“Contract” shall mean an agreement for public works or improvements to be performed, or*
13 *for goods or services to be purchased or grants to be provided, at the expense of the City and County or*
14 *to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected*
15 *by the City and County, and does not include property contracts, agreements entered into after June 1,*
16 *1997 pursuant to settlement of legal proceedings, contracts for urgent litigation expenses, or contracts*
17 *for a cumulative amount of \$5,000 or less per vendor in each fiscal year.*

18 *—“Contractor” means any person or persons, firm, partnership, corporation, or combination*
19 *thereof, who enters into a contract or property contract with a department head or officer empowered*
20 *by law to enter into contracts or property contracts on the part of the City and County.*

21 *—“Director” shall mean the Director of the Human Rights Commission.*

22 *—“Disability” shall mean a physical or mental impairment which limits one or more major*
23 *life activities, and includes being regarded as having such an impairment, or having a record of such*
24 *an impairment.*

1 —“Domestic partner” shall mean any person who has a currently registered domestic
2 partnership with a governmental body pursuant to State or local law authorizing such registration.

3 —“Gender Expression” shall mean the outward expression of one’s gender identity, which
4 may include, but is not limited to, clothing, hair styles, gestures, makeup, or behavior which may or
5 may not conform to societal expectations typically related to traits associated with a person’s gender
6 identity, sexual orientation, or assigned sex at birth.

7 —“Gender identity” shall mean how a person self-identifies their gender, or their internal
8 understanding of their gender. A person’s gender identity may or may not correspond with social
9 norms or stereotypes related to the sex they were assigned at birth. There are many terms related to
10 gender with which a person may identify, including but not limited to: agender; androgynous;
11 bigender; cisgender; cisgender man; cisgender woman; gender fluid; gender non-conforming; gender-
12 expansive; genderqueer, non-binary, pangender, Two-Spirit, transgender, trans, transgender man,
13 transgender woman, masculine, and feminine. One’s gender identity may be described through any
14 number of ever-expanding terms or definitions, and one’s gender identity may be subject to change by
15 the individual.

16 —“Property contract” shall mean a written agreement for the exclusive use or occupancy of
17 real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative
18 instrument, (i) for the operation or use by others of real property owned or controlled by the City for
19 the operation of a business, social, or other establishment or organization, including leases,
20 concessions, franchises and easements, or (ii) for the City’s use or occupancy of real property owned
21 by others, including leases, concessions, franchises and easements. For the purposes of this Article,
22 “exclusive use” means the right to use or occupy real property to the exclusion of others, other than the
23 rights reserved by the fee owner. “Property contract” shall not include a revocable at-will use or
24 encroachment permit for the use of or encroachment on City property regardless of the ultimate
25 duration of such permit, except that “property contract” shall include such permits granted to a private

1 *entity for the use of City property for the purpose of a for-profit activity. “Property contract” shall also*
2 *not include street excavation, street construction or street use permits, agreements for the use of City*
3 *right-of-way where a contracting utility has the power of eminent domain, or agreements governing the*
4 *use of City property which constitutes a public forum for activities that are primarily for the purpose of*
5 *espousing or advocating causes or ideas and that are generally recognized as protected by the First*
6 *Amendment to the U.S. Constitution, or which are primarily recreational in nature.*

7 *—“Qualified disabled employee” shall mean a person able to perform the essential functions*
8 *of a job with reasonable accommodation.*

9 *—“Sex” shall mean one’s anatomical, physiological, genetic, or physical attributes, and the*
10 *variation in these attributes that may or may not indicate male, female, or a different sex such as*
11 *intersex. These attributes may include but are not limited to both primary and secondary sex*
12 *characteristics, including internal and external reproductive organs, hormone levels, hormone*
13 *receptors, chromosomes and genes, all of which may change over time. A person’s sex may or may not*
14 *align with their gender identity.*

15 *—“Sexual orientation” shall mean one’s physical, emotional, romantic, or sexual attraction to*
16 *people of a particular gender or multiple genders, or lack thereof, and is distinct from their gender*
17 *expression or gender identity. A person’s sexual orientation may be identified by terms including, but*
18 *not limited to, asexual, bisexual, gay, lesbian, heterosexual, homosexual, pansexual, and queer.*

19 *—“Subcontract” shall mean an agreement to (i) provide goods and/or services, including*
20 *construction labor, materials or equipment, to a contractor, if such goods or services are procured or*
21 *used in the fulfillment of the contractor’s obligations arising from a contract with the City, or (ii) to*
22 *transfer the right to occupy or use all or a portion of a real property interest subject to a property*
23 *contract to a subcontractor and pursuant to which the contractor remains obligated under the property*
24 *contract.*

1 —“Subcontractor” means any person or persons, firm, partnership, corporation or any
2 combination thereof, who enters into a subcontract with a contractor. Such term shall include any
3 person or entity who enters into an agreement with any subcontractor for the performance of 10
4 percent or more of any subcontract.

5 —(d) The requirements of this Article shall apply to (i) any of a contractor’s operations within
6 San Francisco; (ii) a contractor’s operations on real property outside of San Francisco owned by the
7 City or which the City has a right to occupy if the contractor’s presence at that location is connected to
8 a contract or property contract with the City; (iii) where the work is being performed by a contractor
9 for the City within the United States; and (iv) any of a contractor’s operations elsewhere within the
10 United States.

11 **SEC. 131.2. NONDISCRIMINATION PROVISIONS.**

12 —Every contract and property contract for or on behalf of the City shall incorporate by
13 reference and require the contractor to comply with the provisions of Section 131.2. In addition, all
14 contractors must incorporate by reference in all subcontracts and require subcontractors to comply
15 with the requirements set forth in this Section 131.2, and failure to do so shall constitute a material
16 breach of contract.

17 —In the performance of a contract the contractor agrees as follows:

18 —(a) The contractor or subcontractor will not discriminate against any employee, City and
19 County employee working with such contractor or subcontractor, or applicant for employment with
20 such contractor or subcontractor on the basis of the fact or perception of that person’s race, color,
21 religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner
22 status, marital status, disability, weight, height, AIDS/HIV status, or association with members of
23 classes protected under this Article or in retaliation for opposition to any practices forbidden under
24 this Article. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-
25 25(b) of the Administrative Code. The contractor or subcontractor will take action to ensure that

1 ~~applicants are employed, and that employees are treated equally during employment, without regard to~~
2 ~~the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual~~
3 ~~orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status. Such~~
4 ~~action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer;~~
5 ~~recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of~~
6 ~~compensation; and selection for training, including apprenticeship. Nothing in this Article shall require~~
7 ~~or prohibit the establishment of new classifications of employees in any given craft. The provisions of~~
8 ~~this Section with respect to age shall not apply to (1) termination of employment because of the terms~~
9 ~~or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of~~
10 ~~any bona fide retirement or pension plan which has the effect of a minimum service requirement, and~~
11 ~~(3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor or~~
12 ~~subcontractor agrees to post in conspicuous places, available to employees and applicants for~~
13 ~~employment, notices in such form and content as shall be furnished or approved by the awarding~~
14 ~~authority setting forth the provisions of this Section.~~

15 ~~—(b) The prime contractor shall state that the prime contractor does not, and will not during~~
16 ~~the term of the contract discriminate in the provision of bereavement leave, family medical leave,~~
17 ~~health benefits, membership or membership discounts, moving expenses, pension and retirement~~
18 ~~benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave,~~
19 ~~health benefits, membership or membership discounts, moving expenses, pension and retirement~~
20 ~~benefits or travel benefits between employees with domestic partners and employees with spouses,~~
21 ~~and/or between the domestic partners and spouses of such employees, where the domestic partnership~~
22 ~~has been registered with a governmental entity pursuant to State or local law authorizing such~~
23 ~~registration, subject to the following conditions. In the event that the contractor's actual cost of~~
24 ~~providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the~~
25 ~~spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of~~

1 ~~an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall~~
2 ~~not be deemed to discriminate in the provision of benefits if the contractor conditions providing such~~
3 ~~benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is~~
4 ~~unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall~~
5 ~~not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a~~
6 ~~cash equivalent. The Director shall be the final arbiter of a contractor's or property contractor's~~
7 ~~compliance or substantial compliance with this Article and the Director's determination shall not be~~
8 ~~appealable to the Commission. Contractors shall treat as confidential to the maximum extent allowed~~
9 ~~by law or the requirements of contractor's insurance provider any request by an employee or applicant~~
10 ~~for employment for domestic partner or spousal benefits or any documentation of eligibility for~~
11 ~~domestic partner or spousal benefits submitted by an employee or applicant for employment.~~

12 ~~—In adopting this Section 131.2(b), the intent of the Board of Supervisors is to equalize to the~~
13 ~~maximum extent legally permitted the total compensation between similarly situated employees with~~
14 ~~spouses and employees with domestic partners.~~

15 ~~—In particular, consistent with the severability clause set forth in Section 131.7 below, the~~
16 ~~Board of Supervisors intends that if a court or agency of competent jurisdiction finds that a State or~~
17 ~~federal law, rule or regulation invalidates (1) the application of this Section to any business, person,~~
18 ~~type of compensation or benefit, or location; or (2) any other requirement of this Section, then the court~~
19 ~~or agency should sever the invalid clause and leave in effect the remainder of this Section.~~

20 ~~—(c) The contractor or subcontractor shall provide reasonable accommodation for qualified~~
21 ~~disabled applicants for employment and for qualified disabled employees. Said contractor or~~
22 ~~subcontractor need not provide reasonable accommodation if such would present an undue hardship.~~
23 ~~An undue hardship may include but not be limited to more than a de minimus cost, violation of the~~
24 ~~seniority rights of other co-workers as established by a bona fide seniority system, or a health or safety~~

1 *risk to the employee or co-employees. The burden of establishing an undue hardship rests on the*
2 *employer.*

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

8 ~~—(e) The contractor or subcontractor will send to each labor union or representative of~~
9 ~~workers with which he or she has a collective bargaining agreement or other agreement or~~
10 ~~understanding, a notice, in such form and content as shall be furnished or approved by the awarding~~
11 ~~authority, advising the said labor union or workers' representative of the contractor's or~~
12 ~~subcontractor's commitments under this Section, and shall post copies of the notice in conspicuous~~
13 ~~places available to employees and applicants for employment.~~

14 ~~—(f) The contractor or subcontractor shall:~~

15 ~~—(1) Permit access to its records of employment, employment advertisements, application~~
16 ~~forms, and other pertinent data and records by the Commission, the City's awarding authority or the~~
17 ~~Fair Employment and Housing Commission, for the purposes of investigation to ascertain compliance~~
18 ~~with the nondiscrimination provisions of this Article, and upon request shall provide evidence that the~~
19 ~~contractor has complied or will comply with the nondiscrimination provisions of this Article.~~

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

1 ~~—(A) The Equal Pay Report shall provide summary information on compensation paid to~~
2 ~~employees identified by sex, race, sex and race, and data points the Commission has adopted by~~
3 ~~regulation.~~

4 ~~—(B) Each contractor or subcontractor shall file a complete and accurate Equal Pay~~
5 ~~Report with the Commission commencing on a date set by the Commission but no later than July 3,~~
6 ~~2017. Thereafter, each contractor or subcontractor shall file a Equal Pay Report annually.~~

7 ~~—(C) The Equal Pay Report requirements of this Subsection (f)(2) shall apply to all~~
8 ~~qualifying contracts, subcontracts and grants first advertised for bid, request for qualification or~~
9 ~~proposal is issued or initiated on a date set by the Commission but no later than July 3, 2017.~~

10 ~~—(D) If any information in the Equal Pay Report constitutes proprietary financial data, or~~
11 ~~confidential trade secret, or is protected by the right of privacy under the U.S. or California~~
12 ~~Constitution, the City shall not disclose such information unless required by law, including under the~~
13 ~~California Public Records Act and the San Francisco Sunshine Ordinance.~~

14 ~~—(g) A contractor or subcontractor shall be deemed to have breached the nondiscrimination~~
15 ~~provisions of this Article upon:~~

16 ~~—(1) A finding by the Director or such other official who may be designated by the~~
17 ~~Commission, that the contractor or subcontractor has wilfully violated such nondiscrimination~~
18 ~~provisions; or~~

19 ~~—(2) A finding by the California Fair Employment and Housing Commission that a~~
20 ~~contractor or subcontractor has violated any provision of the California Fair Employment and Housing~~
21 ~~Act or the nondiscrimination provisions of this Article, provided that the California Fair Employment~~
22 ~~and Housing Commission has issued a final order pursuant to Section 12970 of the Government Code,~~
23 ~~or has obtained a judgment and order enforcing the final order pursuant to Section 12973 of the~~
24 ~~Government Code; provided further, that for the purposes of these provisions, an order or injunction~~
25 ~~shall not be considered final during the period within which (1) appeal may be taken, or (2) the same~~

1 *has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are*
2 *in progress before a competent administrative or judicial tribunal.*

3 *— (3) Upon such finding by the Director or other official designated by the Commission, or*
4 *the California Fair Employment and Housing Commission, the awarding authority shall notify the*
5 *contractor or subcontractor that unless the contractor or subcontractor demonstrates to the*
6 *satisfaction of the Director or other official designated by the Commission, within such reasonable*
7 *period as the Commission shall determine, that the violation has been corrected, action will be taken as*
8 *set forth in Subparagraphs (h) and (i) hereof.*

9 *— (4) The Commission shall, within 10 days of the date of issuance of any finding by the*
10 *Director or other official designated by the Commission for the enforcement of this Article, mail to any*
11 *person or persons affected by said finding, a copy of said finding, together with written notice of the*
12 *right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the*
13 *Commission within 20 days of the date of mailing said copy and notice.*

14 *— (5) For purpose of appeal proceedings under this Section, a quorum shall consist of eight*
15 *members of the Commission. The vote of the majority of the full Commission shall be necessary to*
16 *affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member*
17 *of the Commission be designated under Section 131.2(g)(1) of this Article, that Commissioner may not*
18 *participate in an appeal under this Section except as a witness.*

19 *— (6) The presiding officer of the Commission shall have the power to administer oaths to*
20 *witnesses in appeals before the Commission under this Section. In the event that any person shall fail*
21 *or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall*
22 *appear to the Commission that his or her testimony, or books, records, documents or other things under*
23 *his or her control are material and relevant as evidence in the matter under consideration by the*
24 *Commission in the proceeding, the presiding officer of the Commission may subpoena such person,*
25

1 ~~requiring his or her presence at the proceeding, and requiring him or her to bring such books, records,~~
2 ~~documents or other things under his or her control.~~

3 ~~— (7) All appeals to the Commission shall be open to the public. Records and minutes shall~~
4 ~~be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any~~
5 ~~appeal, the Commission shall give written notice thereof to the Director or other official designated by~~
6 ~~the Commission, and the appellant or appellants. The decision of the Commission shall be final unless~~
7 ~~within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed~~
8 ~~in a court of competent jurisdiction by any party to the contract, property contract or subcontract.~~

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

13 ~~— (9) The Commission shall promulgate rules and regulations for the implementation of the~~
14 ~~nondiscrimination provisions of this Article.~~

15 ~~— (h) The awarding authority may deduct from the amount payable to the contractor or~~
16 ~~subcontractor by the City under any contract or property contract subject to this Article, or may impose~~
17 ~~upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during~~
18 ~~which such person was discriminated against in violation of the provisions of this Article. In addition to~~
19 ~~any other penalties provided for the violation of the nondiscrimination provisions of this Article or for~~
20 ~~the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission,~~
21 ~~the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by~~
22 ~~the awarding authority upon the basis of a finding as set forth in Section 131.2(g) that the contractor~~
23 ~~has discriminated contrary to the provisions of this Article, and all moneys due or to become due~~
24 ~~hereunder may be forfeited to, and retained by, the City.~~

1 —(i) ~~A breach of the nondiscrimination provisions in the performance of a contract, property~~
2 ~~contract or subcontract shall be deemed by the City to be material breach of contract and the basis for~~
3 ~~determination by the awarding authority that the contractor or subcontractor is an irresponsible bidder~~
4 ~~as to all future contracts or property contracts for which such contractor or subcontractor may submit~~
5 ~~bids. Such contractor or subcontractor shall not for a period of up to two years thereafter, or until it~~
6 ~~shall establish and carry out a program in conformity with the nondiscrimination provisions of this~~
7 ~~Article, be allowed to act as a contractor or subcontractor under any contract or property contract.~~

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

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

17 —(l) ~~Nothing contained in this Article shall be construed in any manner so as to prevent the~~
18 ~~City from pursuing any other remedies that may be available at law, equity or under any contract or~~
19 ~~property contract.~~

20 —(m) ~~The contractor or subcontractor will meet the following standards for compliance:~~

21 —(1) ~~If the contractor or subcontractor has been held to be an irresponsible bidder under~~
22 ~~Section 131.2(i) hereof, the contractor or subcontractor shall furnish evidence that it has established~~
23 ~~and is carrying out a program in conformity with the nondiscrimination provisions of this Article.~~

24 —(2) ~~The contractor or subcontractor may be required to file with the Commission a basic~~
25 ~~compliance report, which may be a copy of the federal EEO-1, or a more detailed report as determined~~

1 *by the Commission. Wilful false statements made in such reports shall be punishable as provided by*
2 *law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with*
3 *the Commission unless it has been specifically required to do so in writing by the Commission.*

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

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

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

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

17 ***SEC. 131.3. HUMAN RIGHTS COMMISSION EMPOWERED.***

18 ~~—The San Francisco Human Rights Commission, its presiding officer and its director are~~
19 ~~hereby granted the power to do all acts and exercise all powers referred to in Section 131.2 hereof.~~

20 ***SEC. 131.4. NONDISCRIMINATION GUIDELINES.***

21 ~~—The following nondiscrimination guidelines shall apply to all contracts and property contracts~~
22 ~~subject to this Article.~~

23 ~~—In order to be eligible to submit a bid or proposal or to have a bid or proposal considered by~~
24 ~~the awarding authority, the prospective contractor shall agree to abide by a nondiscrimination~~
25 ~~program which conforms to the requirements of the Commission.~~

1 ~~—The Commission may also require contractors and subcontractors to take part in a pre-bid or~~
2 ~~pre-award conference in order to develop, improve or implement a qualifying nondiscrimination~~
3 ~~program.~~

4 ~~—(a) Nondiscrimination programs developed pursuant to this Section shall be effective for a~~
5 ~~period of 12 months from the date of approval by the Commission. Contractors or subcontractors who~~
6 ~~are members in good standing of a trade association which has negotiated a nondiscrimination~~
7 ~~program with the Commission may make this association program their commitment for the specific~~
8 ~~contract or property contract upon approval of the Commission without the process of a separate pre-~~
9 ~~bid or pre-award conference. Such an association agreement shall be effective for a period of 12~~
10 ~~months from the date of approval by the Commission. Trade associations shall provide the Commission~~
11 ~~with a list of members in good standing in such association. The Commission shall annually supply~~
12 ~~contracting agencies of the City and County with a list of contractors and subcontractors who have~~
13 ~~developed approved nondiscrimination programs.~~

14 ~~—(b) The awarding authority shall be responsible for notifying all prospective bidders or~~
15 ~~proposers of the requirements of this Section and, when requested by the Commission, for notifying the~~
16 ~~Commission of each contract or property contract which is being proposed to be put to public bid.~~

17 ~~—(c) The proposed nondiscrimination program described by this Section, and the pre-bid or~~
18 ~~pre-award conference which may be required by the Commission, shall, without limitation as to the~~
19 ~~subject or nature of employment activity, be concerned with such employment practices as:~~

20 ~~—(1) Apprenticeship where approved programs are functioning, and other on-the-job~~
21 ~~training for nonapprenticeable occupations;~~

22 ~~—(2) Classroom preparation for the job when not apprenticeable;~~

23 ~~—(3) Pre-apprenticeship education and preparation;~~

24 ~~—(4) Upgrading training and opportunities;~~

1 —(5)—*Encouraging the use of contractors and subcontractors of all ethnic groups, provided,*
2 *however, that any contract or property contract subject to this Article shall require the contractor or*
3 *subcontractor to provide not less than the prevailing wage, working conditions, and practices generally*
4 *observed in private industries in the City for such work; and*

5 —(6)—*The entry of qualified minority journeypersons into the industry.*

6 —(d)—*Nondiscrimination agreements resulting from the proposed nondiscrimination programs*
7 *or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the*
8 *Commission at its discretion. In addition, the Commission may report to the Board of Supervisors,*
9 *either on request of the Board or on its own initiative, on the progress or the problems which attend the*
10 *implementation of these agreements or any other aspect of enforcement of this Article.*

11 —(e)—*Any job training or education program using the funds, facilities, or staff of the City*
12 *which, in the judgment of the Board of Supervisors or the Commission, can make a contribution to the*
13 *implementation of this Article shall submit reports to the Commission as requested and shall be*
14 *required to cooperate with the contractors, subcontractors and unions and with the Commission for the*
15 *effectuation of the nondiscrimination programs developed under this Article.*

16
17 ***SEC. 131.5. ARTICLE APPLIES ONLY TO DISCRIMINATORY EMPLOYMENT***

18 ***PRACTICES.***

19 —(a)—*This Article shall not confer upon the City and County of San Francisco or any agency,*
20 *board or commission thereof any power not otherwise provided by law to determine the legality of any*
21 *existing collective bargaining agreement and shall have application only to discriminatory employment*
22 *practices by contractors or subcontractors engaged in the performance of City and County contracts or*
23 *property contracts.*

1 ~~—(b) The Board of Supervisors shall appropriate such funds from the General Fund of the~~
2 ~~City, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for the~~
3 ~~enforcement of this Article.~~

4
5 **~~SEC. 131.6. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.~~**

6 ~~—(a) The Director shall waive the requirements of this Article under the following~~
7 ~~circumstances:~~

8 ~~—(1) Whenever the Director finds, upon the advice of the awarding authority, that there is~~
9 ~~only one prospective contractor willing to enter into a property contract with the City for use of City~~
10 ~~property on the terms and conditions established by the City, or that the needed goods, services,~~
11 ~~construction services for a public work or improvement, or interest in or right to use real property are~~
12 ~~available only from a sole source and the prospective contractor is not currently disqualified from~~
13 ~~doing business with the City, or from doing business with any governmental agency based on any~~
14 ~~contract compliance requirements;~~

15 ~~—(2) If the contracting department, board or commission certifies in writing to the Director~~
16 ~~that pursuant to Administrative Code Sections 6.30 or 21.25 the contract or property contract is~~
17 ~~necessary to respond to an emergency which endangers the public health or safety and no entity which~~
18 ~~complies with the requirements of this Article capable of responding to the emergency is immediately~~
19 ~~available; provided that such certification must be made prior to the Controller's contract~~
20 ~~certification;~~

21 ~~—(3) Where the City Attorney certifies in writing to the Director that the contract involves~~
22 ~~specialized litigation requirements such that it would be in the best interests of the City to waive the~~
23 ~~requirements of this Article.~~

24 ~~—(b) This Article shall not apply where the prospective contractor is a public entity and the~~
25 ~~Director finds that goods, services, construction services for a public work or improvement or interest~~

1 ~~in or right to use real property of comparable quality or accessibility as are available under the~~
2 ~~proposed contract or property contract are not available from another source, or that the proposed~~
3 ~~contract or property contract is necessary to serve a substantial public interest.~~

4 ~~—(c) This Article shall not apply where the contracting officer finds that the requirements of~~
5 ~~this Article will violate or are inconsistent with the terms or conditions of a grant, subvention or~~
6 ~~agreement with a public agency or the instructions of an authorized representative of any such agency~~
7 ~~with respect to any such grant, subvention or agreement, provided that the contracting officer has made~~
8 ~~a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to~~
9 ~~authorize application of this Article.~~

10 ~~—(d) Upon the request of a potential contractor or upon the contracting officer's own~~
11 ~~initiative, after taking all reasonable measures to find an entity that complies with the law, the~~
12 ~~contracting officer may waive any or all of the requirements of this Article for any contract, property~~
13 ~~contract or bid package advertised and made available to the public, or any competitive or sealed bids~~
14 ~~received by the City as of the date of the enactment of this ordinance under the following~~
15 ~~circumstances:~~

16 ~~—(1) Where the contracting officer determines that there are no qualified responsive bidders~~
17 ~~or prospective contractors who could be certified by the Commission as being in compliance with the~~
18 ~~requirements of this Article and that the contract or property contract is for goods, a service or a~~
19 ~~project that is essential to the City or City residents; or~~

20 ~~—(2) Where the contracting officer determines that transactions entered into pursuant to~~
21 ~~bulk purchasing arrangements through federal, State or regional entities which actually reduce the~~
22 ~~City's purchasing costs would be in the best interests of the City; or~~

23 ~~—(3) Where the contracting officer determines that the requirements of this Article would~~
24 ~~result in the City's entering into a contract with an entity that was set up, or is being used, for the~~
25

1 ~~purpose of evading the intent of this Article, which is to prohibit the City from entering into contracts~~
2 ~~with entities that discriminate based on the criteria set forth in this Article;~~

3 ~~— (4) The waiver authority granted to contracting officers in this Section 131.6(d) shall be~~
4 ~~subject to the requirements that:~~

5 ~~— (i) All proposed waivers must be submitted to the Director and the Clerk of the Board of~~
6 ~~Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the~~
7 ~~waiver, what steps were taken to find an entity that complies with this Article and why the waiver does~~
8 ~~not defeat the intent of this Article, which is to prohibit the City from entering into contracts with~~
9 ~~entities that discriminate based on the criteria set forth in this Article. Such waivers shall be subject to~~
10 ~~the prior approval of the Director, who shall take action approving or denying a proposed waiver~~
11 ~~within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30~~
12 ~~days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved.~~
13 ~~The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next~~
14 ~~available Board agenda, and~~

15 ~~— (ii) Contracting officers report to the Director whenever such a waiver is granted within~~
16 ~~five days of granting the waiver, and~~

17 ~~— (iii) For any contract subject to approval by the Board, the contracting officer shall state~~
18 ~~in the approving resolution whether any waiver under this Section 131.6(d) has been or is proposed to~~
19 ~~be granted for that contract, and~~

20 ~~— (iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver~~
21 ~~authority by departments and shall make a report to the Board of Supervisors. Contracting officers who~~
22 ~~have exercised waiver authority under this Section 131.6(d) in the previous quarter must appear before~~
23 ~~a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds~~
24 ~~abuse of waiver authority by a department under this Section 131.6(d), either as a result of a report of~~
25 ~~the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for~~

1 ~~that department to the Director, to be exercised by the Director upon recommendation of the~~
2 ~~contracting officer under any or all of the circumstances enumerated in this Section 131.6(d);~~

3 ~~— (5) Nothing in this Section 131.6(d) shall limit the right of the Board of Supervisors to~~
4 ~~waive the provisions of this Article.~~

5 ~~— (e) This Article shall not apply to (i) the investment of trust moneys or agreements relating to~~
6 ~~the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-~~
7 ~~existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:~~

8 ~~— (1) No person, entity or financial institution doing business in the City and County which is~~
9 ~~in compliance with this Article is capable of performing the desired transactions(s); or~~

10 ~~— (2) The City will incur a financial loss which in the opinion of the Treasurer would violate~~
11 ~~his or her fiduciary duties.~~

12 ~~— This subparagraph (e) shall be subject to the requirement that City moneys shall be~~
13 ~~withdrawn or divested at the earliest possible maturity date if deposited or invested with a person,~~
14 ~~entity or financial institution other than the U.S. government which does not comply with this Article.~~

15 ~~— (f) The General Manager of the Public Utilities Commission may waive the requirements of~~
16 ~~this Article where the contractor is providing wholesale or bulk water, power or natural gas, the~~
17 ~~conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or~~
18 ~~loading scheduling, as required for assuring reliable services in accordance with good utility practice,~~
19 ~~to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same~~
20 ~~may not practically be accomplished through the City's standard competitive bidding procedures; and~~
21 ~~further provided that this exemption shall not apply to contractors or franchisees providing direct,~~
22 ~~retail services to end users within the City and County of San Francisco.~~

23 ~~— (g) Sections 131.1(b) and 131.2(b) shall not apply to any contracts or property contracts~~
24 ~~executed or amended prior to June 1, 1997, or to bid packages advertised and made available to the~~
25 ~~public, or any competitive or sealed bids received by the City, prior to June 1, 1997, unless and until~~

1 ~~such contracts or property contracts are amended after June 1, 1997, and would otherwise be subject~~
2 ~~to this Article.~~

3 **SEC. 131.7. SEVERABILITY.**

4 ~~—This Article shall be construed so as not to conflict with applicable federal or State laws, rules~~
5 ~~or regulations. Nothing in this Article shall authorize any City agency to impose any duties or~~
6 ~~obligations in conflict with limitations on municipal authority established by federal law at the time~~
7 ~~such agency action is taken.~~

8 ~~—In the event that a court or agency of competent jurisdiction holds that the State or federal~~
9 ~~law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the~~
10 ~~application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the~~
11 ~~court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article~~
12 ~~shall remain in effect.~~

13
14 **SEC. 131.1. GENERAL PROVISIONS.**

15 (a) Name of Article. This Article shall be known as the “Nondiscrimination in Contracts
16 and Equal Benefits Ordinance.”

17 (b) Findings. In adopting Section 131.4-2, the intent of the Board of Supervisors is to
18 equalize to the maximum extent legally permitted the total compensation between similarly situated
19 employees with spouses and employees with domestic partners.

20
21 **SEC. 131.2. SCOPE OF ARTICLE.**

22 (a) Authority. This Article 131 governs the obligations of a person or entity entering into an
23 agreement with the City at the expense of the City or to be paid out of moneys deposited in the Treasury
24 or out of trust moneys under the control of or collected by the City, or agreements for the exclusive use
25 of City-owned property.

1 **(b) Agreements Subject to this Article.** *Except as stated in subsection (c), the requirements*
2 *of this Article 131 apply to the following:*

3 **(1) Agreements entered into under Chapter 6 of the Administrative Code valued**
4 *above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.*

5 **(2) Agreements entered into under Chapter 21 of the Administrative Code valued**
6 *above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.*

7 **(3) Agreements entered into under Chapter 21G of the Administrative Code valued**
8 *above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.*

9 **(4) A Lease, as defined in Section 23.2 of the Administrative Code, for the exclusive**
10 *use of City property for more than 29 consecutive calendar days.*

11 **(c) Agreements not Subject to this Article 131.** *Notwithstanding subsection (b), an*
12 *agreement is exempt from all requirements of this Article under one or more of the following*
13 *circumstances:*

14 **(1) Government Entity.** *This Article shall not apply where the prospective*
15 *contractor is a Government Entity, as defined in Administrative Code Section 1.25(d).*

16 **(2) Employee Benefits.** *This Article shall not apply to agreements where the services*
17 *are related to employee benefits, including, without limitation, health plans, retirement or deferred*
18 *compensation benefits, insurance and flexible accounts, provided by or through the San Francisco*
19 *Health Service System, the Retirement Board, or the Retiree Health Care Trust Fund.*

20 **(3) Legal Services.** *This Article shall not apply to agreements entered into pursuant*
21 *to settlement of legal proceedings; or to agreements for urgent or specialized advice, consultation, or*
22 *litigation services for the City Attorney's Office.*

23 **(4) Finance.** *This Article shall not apply to agreements entered into for purposes of*
24 *issuing or causing the issuance of bonds, notes, bond anticipation notes, commercial paper, certificates*
25 *of participation or other obligations for borrowed money including without limitation any lease,*

1 installment purchase or sale agreement, or other similar financing agreements or ancillary
2 arrangements including, but not limited to, Issue and Paying Agent agreements, Trustee agreements,
3 Forward Purchase and Sale agreements, and Interest Rate Swap agreements.

4 (5) **Emergency.** This Article shall not apply to agreements entered into pursuant to
5 an emergency as declared under the authority of Charter Section 3.100 (14), Administrative Code
6 Section 6.60, or Administrative Code Section 21.15.

7 (6) **Real Property.** This Article shall not apply to:

8 (A) an agreement that gives a public entity or public utility the right to use or
9 occupy real property owned or controlled by the City;

10 (B) a revocable at-will permit regardless of the ultimate duration of such permit,
11 unless the permittee engages in a for-profit activity on the City property;

12 (C) a regulatory permit, authorization, or approval, or franchise agreement;

13 (D) an agreement to use City property which constitutes a public forum for
14 activities that are primarily for the purpose of espousing or advocating causes or ideas and that are
15 generally recognized as protected by the First Amendment to the U.S. Constitution;

16 (E) an agreement for activities which are primarily recreational in nature, unless
17 the user engages in a for-profit activity on the City property;

18 (F) an easement, month-to-month Lease, or revocable Lease; or

19 (G) a Lease for 1,000 square feet or less of property owned or controlled by the
20 City.

21 (d) **Subcontracts.** Where a single Subcontractor is compensated to directly perform greater
22 than 50% of the value for the Contract, they are subject to the requirements of this Article 131, even
23 when phrased as requirements applicable to “Contractors.” If a Property Contract involves a sublease
24 of more than 50% of the area, the that sublessee is a Subcontractor and subject to the requirements of
25 this Article.

1 (e) **Amendment.** *If an agreement is amended to increase the compensation in a manner that*
2 *the cumulative new value exceeds the applicability thresholds in subsection (b), the new agreement as*
3 *modified will be subject to this Article 131 unless otherwise exempted under subsection (c).*

4 (f) **Geographic Limitations.** *The requirements of this Article 131 shall apply to: (1) any of*
5 *a Contractor’s operations within San Francisco; (2) a Contractor’s operations on real property outside*
6 *of San Francisco owned by the City or which the City has a right to occupy if the contractor’s presence*
7 *at that location is connected to a contract or property contract with the City; and (3) where the work is*
8 *being performed by a contractor for the City within the United States.*

9
10 **SEC. 131.3. DEFINITIONS.**

11 *As used in this Article 131, the following words and phrases shall have the meanings indicated*
12 *herein:*

13 “Age” *means the age of any employee or applicant for employment who has attained the age of*
14 *40 years. For the purposes of this Article 131, discrimination because of age means dismissal from*
15 *employment or refusal to employ or rehire any person because of their age, if such person has attained*
16 *the age of 40 years and is physically able and mentally competent to perform the services required. Age*
17 *limitations for apprenticeship programs in which the State or its political subdivisions participate shall*
18 *not be considered discriminatory within the meaning of this Article.*

19 “Benefits” *means bereavement leave, family medical leave, health benefits, membership or*
20 *membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as*
21 *any similar employment benefits.*

22 “City” *means the City and County of San Francisco.*

23 “Commission” *means the Human Rights Commission. The Commission may revocably delegate*
24 *the administration of this Article 131 to the Contract Monitoring Division within the City*
25 *Administrator’s Office. References in this Article to the Commission when acting as a Department,*

1 rather than as a body, shall be construed to refer to the Contract Monitoring Division where duties
2 have been so delegated.

3 “Contract” means an agreement subject to this Article 131 as stated in Section 131.2.

4 “Contracting Department” or “Department” means the City department, office, commission, or
5 other City entity that enters into the applicable Contract on behalf of the City.

6 “Contracting Officer” means the City official or employee who is authorized to execute a
7 contract, either as a Department Head or as a designee appointed in writing by the Department Head,
8 board, or commission as having the authority to sign contracts for the Department.

9 “Contractor” means any person or persons, firm, partnership, corporation, or combination
10 thereof that enters into a contract or property contract with a Department Head or officer empowered
11 by law to enter into contracts or property contracts on behalf of the City.

12 “Department Head” means the duly appointed General Manager, Director, or Executive
13 Director of a City department having charge and management of said department.

14 “Director” means the Director of the Human Rights Commission. The Director may revocably
15 delegate the administration of this Article 131 to the Director of the Contract Monitoring Division
16 within the City Administrator’s Office. References in this Article to the Director shall be construed as
17 to the Contract Monitoring Division Director where duties have been so delegated.

18 “Disability” means a physical or mental impairment which limits one or more major life
19 activities, and includes being regarded as having such an impairment, or having a record of such an
20 impairment.

21 “Domestic partner” means any person who has a currently registered domestic partnership
22 with a governmental body pursuant to State or local law authorizing such registration.

23 “Gender Expression” means the outward expression of one’s gender identity, which may
24 include, but is not limited to, clothing, hair style, gestures, makeup, or behavior, which may or may not
25

1 conform to societal expectations typically related to traits associated with a person's gender identity,
2 sexual orientation, or assigned sex at birth.

3 "Gender identity" means how a person self-identifies their gender, or their internal
4 understanding of their gender. A person's gender identity may or may not correspond with social
5 norms or stereotypes related to the sex they were assigned at birth. There are many terms related to
6 gender with which a person may identify, including but not limited to: agender; androgynous;
7 bigender; cisgender; cisgender man; cisgender woman; gender fluid; gender non-conforming; gender-
8 expansive; genderqueer, non-binary, pangender, Two-Spirit, transgender, trans, transgender man,
9 transgender woman, masculine, and feminine. One's gender identity may be described through any
10 number of ever-expanding terms or definitions, and one's gender identity may be subject to change by
11 the individual.

12 "Property Contract" means a written agreement for the exclusive use or occupancy of real
13 property for a term exceeding 29 consecutive days in any calendar year, whether by singular or
14 cumulative instrument, for the operation or use by others of real property owned or controlled by the
15 City for the operation of a business, social, or other establishment or organization, including leases,
16 concessions, franchises, and easements subject to this Article as stated in Section 131.2.

17 "Protected Category" means race, color, creed, religion, national origin, ancestry, Age, Sex,
18 Sexual orientation, Gender Identity, Gender Expression, domestic partner status, marital status,
19 Disability, Acquired Immune Deficiency Syndrome, AIDS/HIV status, weight, or height.

20 "Qualified disabled employee" means a person able to perform the essential functions of a job
21 with reasonable accommodation.

22 "Sex" means one's anatomical, physiological, genetic, or physical attributes, and the variation
23 in these attributes that may or may not indicate male, female, or a different sex such as intersex. These
24 attributes may include but are not limited to both primary and secondary sex characteristics, including
25 internal and external reproductive organs, hormone levels, hormone receptors, chromosomes, and

1 genes, all of which may change over time. A person’s sex may or may not align with their gender
2 identity.

3 “Sexual orientation” means one’s physical, emotional, romantic, or sexual attraction to people
4 of a particular gender or multiple genders, or lack thereof, and is distinct from their gender expression
5 or gender identity. A person’s sexual orientation may be identified by terms including, but not limited
6 to, asexual, bisexual, gay, lesbian, heterosexual, homosexual, pansexual, and queer.

7 “Subcontract” means an agreement to (1) provide goods and/or services, including
8 construction labor, materials, or equipment, to a contractor, if such goods or services are procured or
9 used in the fulfillment of a Contractor’s obligations arising from a Contract with the City, or (2)
10 transfer the right to occupy or use all or a portion of a real property interest subject to a Property
11 Contract to a Subcontractor and pursuant to which the contractor remains obligated under the
12 Property Contract, and which in either case is subject to the provisions of this Article pursuant to
13 Section 131.2(d).

14 “Subcontractor” means any person or persons, firm, partnership, corporation, or any
15 combination thereof, that enters into a Subcontract with a Contractor that is subject to the provisions of
16 this Article pursuant to Section 131.2(d).

17
18 **SEC. 131.4-1. REQUIREMENTS AND OBLIGATIONS RELATING TO**
19 **NONDISCRIMINATION IN CONTRACTS.**

20 **(a) City Contracting Departments.**

21 All Contracts and Property Contracts shall include, a provision obligating the Contractor not to
22 discriminate, as required by subsections (b)(1) and (b)(2) unless exempt under Section 131.2 or waived
23 under Section 131.6.

24 **(b) Obligations of City Contractors.**

1 (1) **Nondiscrimination in Employment.** In the performance of a Contract, the
2 Contractor or Subcontractor will not discriminate against any employee, City employee working with
3 such Contractor or Subcontractor, or applicant for employment with such Contractor or
4 Subcontractor, on the basis of the fact or perception of that person's Protected Category, or association
5 with members of classes protected under this Article 131 or in retaliation for opposing any practices
6 forbidden under this Article. Discrimination on the basis of sex includes sexual harassment as defined
7 in Section 16.9-25(b) of the Administrative Code. The Contractor or Subcontractor will take action to
8 ensure that applicants are employed, and that employees are treated equally during employment,
9 without regard to the fact or perception of their Protected Category. Such action shall include, but not
10 be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment
11 advertising; layoff or termination; rate of pay or other forms of compensation; and selection for
12 training, including apprenticeship.

13 (2) **Property Contracts.** In the performance of a Property Contract, the Contractor
14 or Subcontractor will not discriminate against any person seeking accommodations, advantages,
15 facilities, privileges, services, or membership in the business, social or other establishment or
16 organization operated by the Contractor or Subcontractor on the basis of the fact or perception of that
17 person's Protected Category, association with members of classes protected under this Article or in
18 retaliation for opposition to any practices forbidden under this Article. Services provided by
19 Contractor or Subcontractor to the public shall be provided regardless of Disability of persons
20 otherwise entitled to or qualified for such services.

21 (3) **Equal Opportunity in Hiring.** In the performance of a Contract, the Contractor
22 or Subcontractor will in all solicitations or advertisements for employees placed by or on behalf of the
23 Contractor or Subcontractor, state that qualified applicants will receive consideration for employment
24 without regard to the fact or perception of their Protected Category.

1 (4) **Subcontract Incorporation by Reference.** All Contractors must incorporate by
2 reference in all Subcontracts and require Subcontractors to comply with the requirements set forth in
3 this Section 131.4-1 and failure to do so shall constitute a material breach of contract.

4 (5) **Records and Reporting.** The Contractor or Subcontractor shall permit the City
5 access to its records of employment, employment advertisements, application forms, and other pertinent
6 data and records for the purposes of investigation to ascertain compliance with the nondiscrimination
7 provisions of this Article 131, and upon request shall provide evidence that the Contractor has
8 complied or will comply with the nondiscrimination provisions of this Article. Should the Contractor or
9 Subcontractor operate as a membership organization, the Contractor or Subcontractor shall permit
10 access to its membership records, rules, regulations, and other pertinent data, by the City for the
11 purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Article,
12 and on request provide evidence that the Contractor or Subcontractor has complied or will comply with
13 the nondiscrimination provisions.

14 (6) **Age-Related Non-Application.** The provisions of this Section 131.4-1 with
15 respect to age shall not apply to the following: (i) termination of employment because of the terms or
16 conditions of any bona fide retirement or pension plan, (ii) operation of the terms or conditions of any
17 bona fide retirement or pension plan which has the effect of a minimum service requirement, and (iii)
18 operation of the terms or conditions of any bona fide group or insurance plan.

19 (7) **Posting.** The Contractor or Subcontractor agrees to post in conspicuous places,
20 available to employees and applicants for employment, notices in such form and content as shall be
21 furnished or approved by the awarding authority setting forth the provisions of this Section 131.4-1.

22
23 **SEC. 131.4-2. REQUIREMENTS AND OBLIGATIONS RELATING TO PROVISION OF**
24 **BENEFITS.**

25 (a) **City Contracting Departments.**

1 (1) **Contract Incorporation by Reference.** All Contracts and Property Contracts
2 shall include, a provision obligating the Contractor not to discriminate, as required by subsection
3 (b)(1) unless exempt under Section 131.2 or waived under Section 131.6.

4 (2) **Pre-Award Certification.** To be eligible to submit a bid or proposal or to have a
5 bid or proposal considered by the awarding authority, the prospective contractor may be required to
6 certify in writing that, if awarded a Contract, they will abide by the provisions of this Article 131.

7 (b) **Obligations of City Contractors.**

8 (1) **Equal Benefits.** In the performance of a Contract, the Contractor will not,
9 during the term of the Contract, discriminate in the provision of Benefits between employees with
10 domestic partners and employees with spouses, and/or between the domestic partners and spouses of
11 such employees, where the domestic partnership has been registered with a governmental entity
12 pursuant to State or local law authorizing such registration, subject to the following conditions. In the
13 event that the Contractor's actual cost of providing a certain benefit for the domestic partner of an
14 employee exceeds that of providing it for the spouse of an employee, or the Contractor's actual cost of
15 providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic
16 partner of an employee, the Contractor shall not be deemed to discriminate in the provision of benefits
17 if the Contractor conditions providing such benefit upon the employee agreeing to pay the excess costs.
18 In addition, in the event the Contractor is unable to provide a certain benefit, despite taking reasonable
19 measures to do so, the Contractor shall not be deemed to discriminate in the provision of benefits if the
20 Contractor provides the employee with a cash equivalent.

21 (2) **Confidentiality.** 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 employee or
23 applicant for employment for domestic partner or spousal benefits or any documentation of eligibility
24 for domestic partner or spousal benefits submitted by an employee or applicant for employment.

1 (3) **Records and Reporting.** *The Contractor shall permit access to its records of*
2 *employment, employment advertisements, application forms, and other pertinent data and records by*
3 *the City for the purposes of investigation to ascertain compliance with the nondiscrimination provisions*
4 *of this Article, and upon request shall provide evidence that the Contractor has complied or will*
5 *comply with the nondiscrimination provisions of this Section 131.4-2.*

6 (4) **Notice to Employees and Applicants.** *The Contractor will send a notice, in such*
7 *form and content as shall be furnished or approved by the awarding authority, to their employees or*
8 *applicants for employment advising of the Contractor's or Subcontractor's commitments under this*
9 *Section 131.4-2.*

10 (5) **Subcontracts.** *The requirements of this Section 131.4-2 apply only to prime*
11 *Contracts, and do not apply to Subcontracts in any form.*

12
13 **SEC. 131.5. ADMINISTRATION AND REMEDIES.**

14 (a) **Administration of Article.** *The implementation and administration of this Article 131*
15 *shall be conducted by the San Francisco Human Rights Commission, its presiding officer and its*
16 *Director. The Commission and Director may delegate the duties to the Contract Monitoring Division*
17 *and its Director. Such delegation is revocable.*

18 (b) **Rules and Regulations.** *The Commission, or Contract Monitoring Division if so*
19 *delegated, shall promulgate rules and regulations for the implementation of this Article 131.*

20 (c) **Enforcement.**

21 (1) **Enforcement Relating to Nondiscrimination in Contracts.**

22 (A) **Findings of Breach.** *The Contractor or Subcontractor shall be deemed to*
23 *have breached the nondiscrimination provisions of this Article 131 upon a finding by the Director or*
24 *such other official who may be designated by the Commission, that the Contractor or Subcontractor*
25 *has willfully violated such nondiscrimination provisions; or a finding by the State of California that a*

1 contractor or subcontractor has violated any provision of the California Fair Employment and Housing
2 Act.

3 (B) **Notice and Corrective Action.** Upon such finding the awarding authority
4 shall notify the Contractor or Subcontractor that, unless the Contractor or Subcontractor demonstrates
5 to the satisfaction of the Director or other official designated by the Commission within such
6 reasonable period as the Commission shall determine, the violation has been corrected, action will be
7 taken as set forth in subsection (d)(1).

8 (C) **Appeals.** A process for appeals of findings of breach may but need not be
9 established in Rules and Regulations.

10 (D) **Reports.** If a finding of discrimination is made by either the Director or
11 the Commission, the contract awarding Department shall submit a report to the Board of Supervisors,
12 the Mayor's Office, and the Commission that provides details of what actions, if any, the contract
13 awarding Department undertook under this Article 131 because of the finding.

14 (2) **Enforcement Relating to Provisions of Benefits.**

15 (A) **Findings of Breach.** The Contractor shall be deemed to have breached
16 the equal benefits provisions of this Article 131 upon a finding by the Director that the Contractor has
17 willfully violated such provisions.

18 (B) **Notice and Corrective Action.** Upon such finding, the awarding authority
19 shall notify the Contractor that unless the Contractor demonstrates to the satisfaction of the Director
20 that the violation has been corrected, action will be taken as set forth in subsection (d)(2).

21 (C) **Appeals.** The Director shall be the final arbiter of a Contractor's
22 compliance or substantial compliance with this Article 131 and the Director's determination shall not
23 be appealable to the Commission.

24 (d) **Remedies for Violations of this Article.**
25

1 (1) **Damages and Termination.** The awarding authority may deduct from the
2 amount payable to the Contractor or Subcontractor by the City under any Contract or Property
3 Contract subject to this Article 131, or may impose upon the Contractor or Subcontractor, a penalty of
4 \$50 for each person for each calendar day during which such person was discriminated against in
5 violation of the provisions of this Article. In addition to any other penalties provided for the violation of
6 the nondiscrimination provisions of this Article or for the failure of any Contractor or Subcontractor to
7 abide by the rules and regulations of the Commission, the Contract, Property Contract, or Subcontract
8 may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a
9 finding as set forth in subsection (c)(1)(A) that the Contractor has discriminated contrary to the
10 provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and
11 retained by, the City.

12 (2) **Irresponsible Bidder.** A breach of the nondiscrimination provisions in the
13 performance of a Contract, Property Contract, or Subcontract shall be deemed by the City to be a
14 material breach of contract and the basis for determination by the awarding authority that the
15 Contractor or Subcontractor is an irresponsible bidder as to all future Contracts or Property
16 Contracts, for which such Contractor or Subcontractor may submit bids. Such Contractor or
17 Subcontractor shall not for a period of up to two years thereafter, or until it shall establish and carry
18 out a program in conformity with the nondiscrimination provisions of this Article, be allowed to act as
19 a contractor or subcontractor under any contract or property contract for the City.

20 (3) **Remedial Compliance.** A process for remedial compliance actions may be
21 established in rules and regulations.

22 (4) **Withholding.** The City may withhold payments under the Contract until the
23 Contractor is in full compliance with this Article 131.

1 (5) **Nonexclusive Remedies.** Nothing contained in this Article 131 shall be
2 construed in any manner so as to prevent the City from pursuing any other remedies that may be
3 available at law or equity or under any Contract or Property Contract.

4
5 **SEC. 131.6. WAIVERS AND EXCEPTIONS.**

6 (a) **Waivers by Director.** The Director, or duly authorized designee, may waive in whole or
7 in part the requirements of this Article 131 in the following circumstances:

8 (1) **Sole Source.** When the Director finds, upon the advice of the awarding authority,
9 that needed goods, services, construction services for a public work or improvement, or interest in or
10 right to use real property are available only from a sole source.

11 (2) **Only One Qualified Bidder.** When the Director finds, upon the advice of the
12 awarding authority, that there is only one qualified, responsive bidder or proposer who can perform
13 the work under the proposed agreement and who is not at that time disqualified from doing business
14 with the City.

15 (3) **No Compliant Bidders.** When the Director finds, upon the advice of the
16 awarding authority, that there are no qualified responsive bidders or prospective contractors who
17 could be certified as being in compliance with the requirements of this Article 131.

18 (4) **Adverse Impact on Services.** Where the Director determines that the public
19 interest warrants the granting of a waiver because application of this Article 131 would have an
20 adverse impact on services or a substantial adverse financial impact on the City, or would circumvent
21 the purposes of this Article.

22 (5) **Cooperative Purchasing.** When an agreement has been procured under
23 Administrative Code Sections 6.77 or 21.16, and the Director finds that application of this Article 131
24 would mean (A) a purchase under such arrangement would substantially reduce the City's cost of
25 purchasing such services; (B) a purchase under such an arrangement is in the best interest of the City;

1 and (C) adherence to the requirements of this Article 131 would prevent the awarding agency from
2 entering into such an agreement.

3 (b) **Waiver by Treasurer for Investments.** This Article 131 shall not apply to the following:
4 (1) the investment of trust moneys or agreements relating to the management of trust assets, (2) City
5 moneys invested in the City's investment pool, or (3) the investment of City moneys, where the
6 Treasurer finds that:

7 (A) No person, entity, or financial institution doing business in the City that is in
8 compliance with this Article is capable of performing the desired transaction(s); or

9 (B) Applying this Article would, in the opinion of the Treasurer, violate the
10 Treasurer's fiduciary duties.

11 (c) **Waiver by Public Utilities Commission.** The General Manager of the Public Utilities
12 Commission may waive the requirements of this Article 131 where the Contractor is providing
13 wholesale or bulk water, power, or natural gas, the conveyance or transmission of same, or ancillary
14 services such as spinning reserve, voltage control, or loading scheduling, as required for assuring
15 reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public
16 Utilities Commission; provided, that the purchase of same may not practically be accomplished
17 through the City's standard competitive bidding procedures; and further provided, that this exemption
18 shall not apply to Contractors or franchisees providing direct, retail services to end users within the
19 City.

20 (d) **Documentation.** All proposed waivers must set forth the reasons the Contracting Officer
21 is requesting the waiver.

22
23 **SEC. 131.7. SUPERSEDING AUTHORITY.**

24 (a) **Federal or State Law Preemption.** The requirements of this Article 131 shall not be in
25 effect in the event they would conflict with federal or State laws, or the City Attorney determines they

1 are reasonably likely to do so. Nothing in this Article shall be interpreted or applied so as to create any
2 requirement, power, or duty in conflict with any federal or State law.

3 (b) **Grant or Subvention.** If the requirements of this Article 131 would violate or are
4 inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency or
5 the instructions of an authorized representative of any such agency with respect to any such grant,
6 subvention, or agreement, the requirements of this Article shall not be in effect.

7
8 **SEC. 131.8. SEVERABILITY.**

9 If any section, subsection, sentence, clause, phrase, or word of this Article 131, or any
10 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
11 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
12 portions or applications of the Article. The Board of Supervisors hereby declares that it would have
13 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not
14 declared invalid or unconstitutional without regard to whether any other portion of this Article or
15 application thereof would be subsequently declared invalid or unconstitutional.

16
17
18 **SEC. 131.9. OPERATIVE DATE AND SUNSET.**

19 (a) **Operative Date.** This Article 131 shall become operative on July 1, 2025 and shall have
20 prospective effect only.

21 (b) **Sunset.** Unless extended by ordinance, this Article 131 shall expire by operation of law
22 on July 1, 2035. After the expiration, the City Attorney shall be authorized to cause this Article to be
23 removed from the Labor and Employment Code.

1 Section 4. The Labor and Employment Code is hereby amended by deleting Article
2 132, consisting of Sections 132.1 to 132.7, as follows:

3
4 ~~**ARTICLE 132: NONDISCRIMINATION IN PROPERTY CONTRACTS**~~

5
6 ~~**SEC. 132.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE**~~
7 ~~**NONDISCRIMINATION PROVISIONS.**~~

8 ~~*—(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of*~~
9 ~~*the City and County, shall include in all contracts and property contracts a provision obligating the*~~
10 ~~*contractor not to discriminate on the basis of the fact or perception of that person’s race, color, creed,*~~
11 ~~*religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner*~~
12 ~~*status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV*~~
13 ~~*status), weight, height, association with members of classes protected under this Article or in*~~
14 ~~*retaliation for opposition to any practices forbidden under this Article against any person seeking*~~
15 ~~*accommodations, advantages, facilities, privileges, services, or membership in all business, social, or*~~
16 ~~*other establishments or organizations, operated by that contractor, and shall require such contractor to*~~
17 ~~*include a similar provision in all subcontracts.*~~

18 ~~*—(b) The requirements of this Article shall apply to (i) any of a contractor’s operations within*~~
19 ~~*San Francisco; (ii) a contractor’s operations on real property outside of San Francisco owned by the*~~
20 ~~*City or which the City has a right to occupy if the contractor’s presence at that location is connected to*~~
21 ~~*as contract or property contract with the City; (iii) where the work is being performed by a contractor*~~
22 ~~*for the City within the United States; and (iv) any of a contractor’s operations elsewhere within the*~~
23 ~~*United States.*~~

24 ~~**SEC. 132.2. DEFINITIONS.**~~

25 ~~*—As used in this Article 132, the term:*~~

1 —“Age” for the purpose of membership refers to the age of any person who has attained the
2 age of 18 years, except for bona fide senior citizen organizations.

3 —“City” shall mean the City and County of San Francisco.

4 —“Commission” shall mean the Human Rights Commission of the City and County of San
5 Francisco.

6 —“Contract” shall mean an agreement for public works or improvements to be performed, or
7 grants to be provided, or for goods or services to be purchased, at the expense of the City and County
8 or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or
9 collected by the City and County, and does not include property contracts, agreements entered into
10 pursuant to settlement of legal proceedings, or contracts for a cumulative amount of \$5,000 or less per
11 vendor in each fiscal year.

12 —“Contractor” means any person or persons, firm, partnership, corporation, or combination
13 thereof, who enters into a contract or property contract with a department head or officer empowered
14 by law to enter into contracts or property contracts on the part of the City and County.

15 —“Director” shall mean the Director of the Human Rights Commission.

16 —“Disability” is a physical or mental impairment which limits one or more major life activities,
17 and includes being regarded as having such an impairment, or having a record of such an impairment.

18 —“Domestic partner” shall mean any person who has a currently registered domestic
19 partnership with a governmental body pursuant to State or local law authorizing such registration.

20 —“Gender Expression” shall mean the outward expression of one’s gender identity, which may
21 include, but is not limited to, clothing, hair styles, gestures, make up, or behavior which may or may
22 not conform to societal expectations typically related to traits associated with a person’s gender
23 identity, sexual orientation, or assigned sex at birth.

24 —“Gender identity” shall mean how a person self-identifies their gender, or their internal
25 understanding of their gender. A person’s gender identity may or may not correspond with social

1 ~~norms or stereotypes related to the sex they were assigned at birth. There are many terms related to~~
2 ~~gender with which a person may identify, including but not limited to: agender; androgynous;~~
3 ~~bigender; cisgender; cisgender man; cisgender woman; gender fluid; gender non-conforming; gender-~~
4 ~~expansive; genderqueer, non-binary, pangender, Two-Spirit, transgender, trans, transgender man,~~
5 ~~transgender woman, masculine, and feminine. One's gender identity may be described through any~~
6 ~~number of ever-expanding terms or definitions, and one's gender identity may be subject to change by~~
7 ~~the individual.~~

8 ~~—"Property contract" shall mean a written agreement for the exclusive use or occupancy of~~
9 ~~real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative~~
10 ~~instrument, (i) for the operation or use by others of real property owned or controlled by the City for~~
11 ~~the operation of a business, social, or other establishment or organization, including leases,~~
12 ~~concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned~~
13 ~~by others, including leases, concessions, franchises and easements. For the purposes of this Article,~~
14 ~~"exclusive use" means the right to use or occupy real property to the exclusion of others, other than the~~
15 ~~rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or~~
16 ~~encroachment permit for the use of or encroachment on City property regardless of the ultimate~~
17 ~~duration of such permit, except that "property contract" shall include such permits granted to a private~~
18 ~~entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also~~
19 ~~not include street excavation, street construction or street use permits, agreements for the use of City~~
20 ~~right-of-way where a contracting utility has the power of eminent domain, or agreements governing the~~
21 ~~use of City property which constitutes a public forum for activities that are primarily for the purpose of~~
22 ~~espousing or advocating causes or ideas and that are generally recognized as protected by the First~~
23 ~~Amendment to the U.S. Constitution, or which are primarily recreational in nature.~~

24 ~~—"Qualified disabled employee" shall mean a person able to perform the essential functions of~~
25 ~~a job with reasonable accommodation.~~

1 —“Sex” shall mean one’s anatomical, physiological, genetic, or physical attributes, and the
2 variation in these attributes that may or may not indicate male, female, or a different sex such as
3 intersex. These attributes may include but are not limited to both primary and secondary sex
4 characteristics, including internal and external reproductive organs, hormone levels, hormone
5 receptors, chromosomes and genes, all of which may change over time. A person’s sex may or may not
6 align with their gender identity.

7 —“Sexual orientation” shall mean one’s physical, emotional, romantic, or sexual attraction to
8 people of a particular gender or multiple genders, or lack thereof, and is distinct from their gender
9 expression or gender identity. A person’s sexual orientation may be identified by terms including, but
10 not limited to, asexual, bisexual, gay, lesbian, heterosexual, homosexual, pansexual, and queer.

11 —“Subcontract” shall mean an agreement to (i) provide goods and/or services, including
12 construction labor, materials or equipment, to a contractor, if such goods or services are procured or
13 used in the fulfillment of the contractor’s obligations arising from a contract with the City, (ii) to
14 transfer the right to occupy or use all or a portion of a real property interest subject to a property
15 contract to a subcontractor and pursuant to which the contractor remains obligated under the property
16 contract.

17 —“Subcontractor” means any person or persons, firm, partnership, corporation or any
18 combination thereof, who enters into a subcontract with a contractor. Such term shall include any
19 person or entity who enters into an agreement with any subcontractor for the performance of 10
20 percent or more of any subcontract.

21 **~~SEC. 132.3. NONDISCRIMINATION PROVISIONS.~~**

22 —~~Every contract and property contract entered into by any agency of the City shall incorporate~~
23 ~~by reference and require contractor to comply with the nondiscrimination provisions of Section 132.3.~~
24 ~~In addition, all contractors must incorporate by reference in all subcontracts and require~~
25

1 ~~subcontractors to comply with the requirements of this Section 132.3, and failure to do so shall~~
2 ~~constitute a material breach of contract.~~

3 ~~—In the performance of a contract, the contractor or subcontractor shall agree as follows:~~

4 ~~—(a) The contractor or subcontractor will not discriminate against any person seeking~~
5 ~~accommodations, advantages, facilities, privileges, services, or membership in the business, social or~~
6 ~~other establishment or organization operated by the contractor or subcontractor on the basis of the fact~~
7 ~~or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual~~
8 ~~orientation, gender identity, domestic partner status, marital status, disability, AIDS/HIV status,~~
9 ~~weight, height, association with members of classes protected under this Article or in retaliation for~~
10 ~~opposition to any practices forbidden under this Article. Services provided by contractor or~~
11 ~~subcontractor to the public shall be provided regardless of disability of persons otherwise entitled to or~~
12 ~~qualified for such services.~~

13 ~~—(b) Should the contractor or subcontractor operate as a membership organization, the~~
14 ~~contractor or subcontractor will permit access to its membership records, rules, regulations and other~~
15 ~~pertinent data, by the City's awarding authority, or the Commission, for the purpose of investigating to~~
16 ~~ascertain compliance with the nondiscrimination provisions of this Article, and on request provide~~
17 ~~evidence that the contractor or subcontractor has complied or will comply with the nondiscrimination~~
18 ~~provisions of this Article. The Director shall be the final arbiter of a contractor's or subcontractor's~~
19 ~~compliance or substantial compliance with this Article and the Director's determination shall not be~~
20 ~~appealable to the Commission.~~

21 ~~—(c) A contractor or subcontractor shall be deemed to have breached the nondiscrimination~~
22 ~~provisions of this Article upon:~~

23 ~~—(1) A finding by the Director or such other official who may be designated by the~~
24 ~~Commission, that contractor or subcontractor has wilfully violated such nondiscrimination provisions.~~

1 —(2)— Upon such finding by the Director or other official designated by the Commission, the
2 awarding authority shall notify the contractor or subcontractor that unless the contractor or
3 subcontractor demonstrates to the satisfaction of the Director or other official designated by the
4 Commission within such reasonable period as the Commission shall determine, that the violation has
5 been corrected, action will be taken as set forth in Section 132.3(d) and/or Section 132.3(g).

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

11 —(4)— For purposes of appeal proceedings under this Section, a quorum shall consist of eight
12 members of the Commission. The vote of the majority of the full Commission shall be necessary to
13 affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member
14 of the Commission be designated under Section 132.3(e)(1) of this Article, that Commissioner may not
15 participate in an appeal under this Section except as a witness.

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

24 —(6)— All appeals to the Commission shall be open to the public. Records and minutes shall
25 be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any

1 ~~appeal, the Commission shall give written notice thereof to the Director or other official designated by~~
2 ~~the Commission, and the appellant or appellants. The decision of the Commission shall be final unless~~
3 ~~within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed~~
4 ~~in a court of competent jurisdiction by any party to the contract, property contract or subcontract.~~

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

9 ~~—(8) The Commission shall promulgate rules and regulations for the implementation of the~~
10 ~~nondiscrimination provisions of this Article.~~

11 ~~—(d) A breach of the nondiscrimination provisions in the performance of a contract, property~~
12 ~~contract or subcontract shall be deemed by the City to be a material breach of contract and the basis~~
13 ~~for determination by the awarding authority that the contractor or subcontractor is an irresponsible~~
14 ~~contractor or subcontractor as to all future contracts or property contracts for which such contractor~~
15 ~~or subcontractor may submit bids. Such contractor or subcontractor shall not, for a period of up to two~~
16 ~~years thereafter, or until it shall establish and carry out a program in conformity with the~~
17 ~~nondiscrimination provisions of this Article, be allowed to act as a contractor or subcontractor under~~
18 ~~any contract or property contract.~~

19 ~~—(e) Nothing contained in this Article shall be construed in any manner so as to prevent the~~
20 ~~City from pursuing any other remedies that may be available at law, equity or under any contract or~~
21 ~~property contract.~~

22 ~~—(f) The contractor or subcontractor will meet the following standards for compliance:~~

23 ~~—(1) If the contractor or subcontractor has been held to be irresponsible under Section~~
24 ~~132.3(d) hereof, the contractor or subcontractor shall furnish evidence that it has established and is~~
25 ~~carrying out a program in conformity with the nondiscrimination provisions of this Article.~~

1 —(2) ~~The contractor or subcontractor may be required to file with the Commission a basic~~
2 ~~compliance report. Wilful false statements made in such reports shall be punishable as provided by~~
3 ~~law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with~~
4 ~~the Commission unless it has been specifically required to do so in writing by the Commission.~~

5 —(g) ~~The awarding authority may deduct from the amount payable to the contractor or~~
6 ~~subcontractor by the City under any contract or property contract subject to this Article, or may impose~~
7 ~~upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during~~
8 ~~which such person was discriminated against in violation of the provisions of this Article. In addition to~~
9 ~~any other penalties provided for the violation of the nondiscrimination provisions of this Article or for~~
10 ~~the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission,~~
11 ~~the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by~~
12 ~~the awarding authority upon the basis of a finding as set forth in Section 132.3(d) that the contractor or~~
13 ~~subcontractor has discriminated contrary to the provisions of this Article, and all moneys due or to~~
14 ~~become due hereunder may be forfeited to, and retained by, the City.~~

15 **~~SEC. 132.4. HUMAN RIGHTS COMMISSION EMPOWERED.~~**

16 —~~The San Francisco Human Rights Commission, its presiding officer and its director are~~
17 ~~hereby granted the power to do all acts and exercise all powers referred to in Section 132.3 thereof.~~

18 **~~SEC. 132.5. FUNDING.~~**

19 —~~The Board of Supervisors shall appropriate such funds from the General Fund of the City and~~
20 ~~County of San Francisco, subject to budgetary and fiscal provisions of the Charter, as it may deem~~
21 ~~necessary for enforcement of this ordinance.~~

22 **~~SEC. 132.6. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.~~**

23 —(a) ~~The Director shall waive the requirements of this Article under the following~~
24 ~~circumstances:~~

1 —(1)—Whenever the Director finds, upon the advice of the awarding authority, that there is
2 only one prospective contractor willing to enter into a property contract with the City for use of City
3 property on the terms and conditions established by the City, or that the needed goods, services,
4 construction services for a public work or improvement, or interest in or right to use real property are
5 available only from a sole source, and the prospective contractor is not currently disqualified from
6 doing business with the City, or from doing business with any governmental agency based on any
7 contract compliance requirements;

8 —(2)—If the contracting department or commission certifies in writing to the Director that
9 pursuant to Administrative Code Section 6.30 or 21.25 the contract or property contract is necessary to
10 respond to an emergency which endangers the public health or safety and no entity which complies
11 with the requirements of this Article capable of responding to the emergency is immediately available;
12 provided that such certification must be made prior to the Controller's contract certification;

13 —(3)—Where the City Attorney certifies in writing to the Director that the contract involves
14 specialized litigation requirements such that it would be in the best interests of the City to waive the
15 requirements of this Article.

16 —(b)—This Article shall not apply where the prospective contractor is a public entity and the
17 Director finds that goods, services, construction services for a public work or improvement or interest
18 in or right to use real property of comparable quality or accessibility as are available under the
19 proposed contract or property contract are not available from another source, or that the proposed
20 contract or property contract is necessary to serve a substantial public interest.

21 —(c)—This Article shall not apply where the contracting officer finds that the requirements of
22 this Article will violate or are inconsistent with the terms or conditions of a grant, subvention or
23 agreement with a public agency or the instructions of an authorized representative of any such agency
24 with respect to any such grant, subvention or agreement, provided that the contracting officer has made
25

1 a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to
2 authorize application of this Article.

3 ~~—(d) Upon the request of a potential contractor or upon the contracting officer’s own~~
4 ~~initiative, after taking all reasonable measures to find an entity that complies with the law, the~~
5 ~~contracting officer may waive any or all of the requirements of this Article for any contract, property~~
6 ~~contract or bid package advertised and made available to the public, or any competitive or sealed bids~~
7 ~~received by the City as of the date of the enactment of this ordinance under the following~~
8 ~~circumstances:~~

9 ~~—(1) Where the contracting officer determines that there are no qualified responsive bidders~~
10 ~~or prospective contractors who could be certified by the Commission as being in compliance with the~~
11 ~~requirements of this Article and that the contract or property contract is for goods, a service or a~~
12 ~~project that is essential to the City or City residents; or~~

13 ~~—(2) Where the contracting officer determines that transactions entered into pursuant to~~
14 ~~bulk purchasing arrangements through federal, State or regional entities which actually reduce the~~
15 ~~City’s purchasing costs would be in the best interests of the City; or~~

16 ~~—(3) Where the contracting officer determines that the requirements of this Article would~~
17 ~~result in the City’s entering into a contract with an entity that was set up, or is being used, for the~~
18 ~~purpose of evading the intent of this Article, which is to prohibit the City from entering into contracts~~
19 ~~with entities that discriminate based on the criteria set forth in this Article;~~

20 ~~—(4) The waiver authority granted to contracting officers in this Section 132.6(d) shall be~~
21 ~~subject to the requirements that:~~

22 ~~—(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of~~
23 ~~Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the~~
24 ~~waiver, what steps were taken to find an entity that complies with this Article and why the waiver does~~
25 ~~not defeat the intent of this Article, which is to prohibit the City from entering into contracts with~~

1 ~~entities that discriminate based on the criteria set forth in this Article. Such waivers shall be subject to~~
2 ~~the prior approval of the Director, who shall take action approving or denying a proposed waiver~~
3 ~~within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30~~
4 ~~days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved.~~
5 ~~The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next~~
6 ~~available Board agenda, and~~

7 ~~——(ii) Contracting officers report to the Director whenever such a waiver is granted within~~
8 ~~five days of granting the waiver, and~~

9 ~~——(iii) For any contract subject to approval by the Board, the contracting officer shall state~~
10 ~~in the approving resolution whether any waiver under this Section 132.6(d) has been or is proposed to~~
11 ~~be granted for that contract, and~~

12 ~~——(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver~~
13 ~~authority by departments and shall make a report to the Board of Supervisors. Contracting officers who~~
14 ~~have exercised waiver authority under this Section 132.6(d) in the previous quarter must appear before~~
15 ~~a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds~~
16 ~~abuse of waiver authority by a department under this Section 132.6(d), either as a result of a report of~~
17 ~~the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for~~
18 ~~that department to the Director, to be exercised by the Director upon recommendation of the~~
19 ~~contracting officer under any or all of the circumstances enumerated in this Section 132.6(d);~~

20 ~~——(5) Nothing in this Section 132.6(d) shall limit the right of the Board of Supervisors to~~
21 ~~waive the provisions of this Article.~~

22 ~~——(e) This Article shall not apply to (i) the investment of trust moneys or agreements relating to~~
23 ~~the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-~~
24 ~~existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:~~

1 —(1) ~~No person, entity or financial institution doing business in the City and County which is~~
2 ~~in compliance with this Article is capable of performing the desired transactions(s); or~~

3 —(2) ~~The City will incur a financial loss which in the opinion of the Treasurer would violate~~
4 ~~his or her fiduciary duties.~~

5 —~~This subparagraph (e) shall be subject to the requirement that City moneys shall be~~
6 ~~withdrawn or divested at the earliest possible maturity date if deposited or invested with a person,~~
7 ~~entity or financial institution other than the U.S. government which does not comply with this Article.~~

8 —~~(f) The General Manager of the Public Utilities Commission may waive the requirements of~~
9 ~~this Article where the contractor is providing wholesale or bulk water, power or natural gas, the~~
10 ~~conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or~~
11 ~~loading scheduling, as required for assuring reliable services in accordance with good utility practice,~~
12 ~~to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same~~
13 ~~may not practically be accomplished through the City's standard competitive bidding procedures; and~~
14 ~~further provided that this exemption shall not apply to contractors or franchisees providing direct,~~
15 ~~retail services to end users within the City and County of San Francisco.~~

16 **~~SEC. 132.7. SEVERABILITY.~~**

17 —~~This Article shall be construed so as not to conflict with applicable federal or State laws, rules~~
18 ~~or regulations. Nothing in this Article shall authorize any City agency to impose any duties or~~
19 ~~obligations in conflict with limitations on municipal authority established by federal law at the time~~
20 ~~such agency action is taken.~~

21 —~~In the event that a court or agency of competent jurisdiction holds that the State or federal~~
22 ~~law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the~~
23 ~~application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the~~
24 ~~court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article~~
25 ~~shall remain in effect.~~

1
2 Section 5. The Labor and Employment Code is hereby amended by revising Article
3 151, consisting of existing Sections 151.1 to 151.13, by replacing it with a new Article 151,
4 consisting of Sections 151.1 to 151.9 that incorporate parts of existing Article 151, to read as
5 follows:

6
7 **ARTICLE 151: SWEATFREE CONTRACTING**

8 ***SEC. 151.1. FINDINGS.***

9 ~~*—The Board of Supervisors finds and declares the following:*~~

10 ~~*—(a) This Article shall be known as the Sweatfree Contracting Ordinance.*~~

11 ~~*—(b) Each year the City and County of San Francisco spends hundreds of millions of dollars*~~
12 ~~*contracting with private sector contractors for the purchase or rental of goods. The prudent*~~
13 ~~*expenditure of public dollars requires that the City select responsible contractors.*~~

14 ~~*—(c) The City and County, as a major purchaser of goods, must be cognizant of the labor*~~
15 ~~*conditions that may be supported by its actions as a major market participant. Better working*~~
16 ~~*conditions assure consistently better quality goods for the City and County, by assuring fewer*~~
17 ~~*disruptions in the workplace due to workers' grievances, fewer absences due to illnesses, less fatigue*~~
18 ~~*and fewer workplace injuries, less turnover of workers, and greater incentive to perform.*~~

19 ~~*—(d) In its role as a market participant, the City and County seeks to assure that the integrity*~~
20 ~~*of the procurement process is not undermined by contractors or subcontractors who engage in*~~
21 ~~*sweatshop practices. Contractors who use Sweatshop Labor are able to underbid responsible*~~
22 ~~*contractors who pay fair wages and maintain humane work environments and conditions. Such*~~
23 ~~*practices place responsible contractors at a competitive disadvantage, which may dissuade responsible*~~
24 ~~*contractors from participating in the City and County procurement process. This Article will encourage*~~
25

1 ~~responsible contracting with the City and County and reduce any inadvertent support of contractors~~
2 ~~who use Sweatshop Labor.~~

3 ~~—(e) By adopting this ordinance, the City and County does not intend to preclude the City and~~
4 ~~County or its contractors or subcontractors from doing business with any foreign country.~~

5 **~~SEC. 151.2. DEFINITIONS.~~**

6 ~~—For the purposes of this Article, the following definitions shall apply to the terms used herein.~~

7 ~~—(a) “Abusive Forms of Child Labor” shall mean the following: work performed by a person~~
8 ~~under the age of 18 when the person does not voluntarily seek the work or the person is threatened by~~
9 ~~the person’s employer with physical, mental or emotional harm for nonperformance; (2) work~~
10 ~~performed by a person under the age of 18 in violation of any applicable law of the country of~~
11 ~~manufacture or assembly governing the minimum age of employment, compulsory education, or~~
12 ~~occupational health and safety; or (3) the use of a person under the age of 18 for illegal activities,~~
13 ~~including but not limited to the production or trafficking of illicit drugs or for prostitution.~~

14 ~~—(b) “Contract” shall mean an agreement for Goods for an amount greater than \$25,000 and~~
15 ~~having a term in excess of three months to be purchased or provided at the expense of the City and~~
16 ~~County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of~~
17 ~~or collected by the City and County. “Contract” shall also mean any amendment to a contract entered~~
18 ~~into after the effective date of this Article that causes the amount of the contract to exceed \$25,000 or~~
19 ~~causes the term to exceed three months.~~

20 ~~—(c) “Contractor” shall mean any person or persons, association, cooperative, firm,~~
21 ~~partnership, corporation, company, venture, trustee, trustee in bankruptcy, receiver, or combination~~
22 ~~thereof who enters into a Contract with the City and County.~~

23 ~~—(d) “Director” shall mean the Director of the Office of Contract Administration.~~

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

4 —(f) ~~“Good” shall mean any good, including without limitation, any material, supply, or~~
5 ~~equipment.~~

6 —(g) ~~“Slave Labor” shall mean any form of slavery, sale and trafficking of persons, debt~~
7 ~~bondage, indentured servitude, serfdom, or forced or compulsory labor.~~

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

17 —(i) ~~“Subcontractor” shall mean any person or persons, association, cooperative, firm,~~
18 ~~partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof including~~
19 ~~without limitation any subcontractor, entering into a Subcontract.~~

20 —(j) ~~“Sweatshop Labor” shall mean work performed by any Worker under terms or conditions~~
21 ~~that seriously or repeatedly violate laws of the jurisdiction within which the work is performed~~
22 ~~governing: (i) wages; (ii) employee benefits; (iii) health and safety, including without limitation~~
23 ~~exposure to hazardous or toxic substances; (iv) labor, including without limitation collective~~
24 ~~bargaining rights; (v) environmental conditions; (vi) nondiscrimination, harassment, or retaliation,~~
25 ~~including without limitation all laws prohibiting workplace and employment discrimination; (vii)~~

1 ~~freedom of association; or (viii) building or fire codes. “Sweatshop Labor” also shall mean any work~~
2 ~~performed by any person contributing to the provision of Goods to the City and County under a~~
3 ~~Contract or Subcontract that constitutes Foreign Convict or Forced Labor, or Abusive Forms of Child~~
4 ~~Labor or Slave Labor.~~

5 ~~—(k) “Worker” shall mean any employee of a Contractor or Subcontractor who contributes to~~
6 ~~the provision of Goods to the City and County under a Contract or Subcontract, including but not~~
7 ~~limited to any manufacturing or assembling of the Goods.~~

8 **~~SEC. 151.3. PROHIBITION ON SWEATSHOP CONDITIONS.~~**

9 ~~—Each Contractor and Subcontractor shall comply with each of the following requirements:~~

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

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

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

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

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

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

19 ~~—(g) All Contractors and Subcontractors shall comply with the overtime laws and regulations~~
20 ~~applicable to their Workers. In the absence of a law setting overtime compensation, overtime hours~~
21 ~~shall be compensated at the rate of one and one-half times the regular hourly compensation rate. All~~
22 ~~overtime hours worked beyond 48 hours of working time per work week shall be worked voluntarily,~~
23 ~~except mandatory overtime above that 48-hour mark is permitted if each of the following conditions is~~
24 ~~satisfied: (1) the law of the country of manufacture permits mandatory overtime, (2) the manufacturing~~
25

1 ~~facility is party to a collective bargaining agreement that permits mandatory overtime, and (3) the~~
2 ~~mandatory overtime hours are worked in conformance with the collective bargaining agreement.~~

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

7 ~~—(i) No Contractor or Subcontractor shall require or compel any Worker to use~~
8 ~~contraceptives or take pregnancy tests.~~

9 ~~—(j) Before commencing any work under the Contract, the Contractor shall provide the City~~
10 ~~and County a list of the names and addresses of each Subcontractor to be utilized in the performance of~~
11 ~~the Contract, the Contractor's and each Subcontractor's applicable State tax identification number and~~
12 ~~the address of each manufacturing or other facility or operation of the Contractor and its~~
13 ~~Subcontractors for the performance of the Contract. The Office of Contract Administration shall post~~
14 ~~this information on its internet website before a Contractor or any of its Subcontractors may commence~~
15 ~~work under the Contract. Contractor shall update the list to show any changes in the Subcontractors or~~
16 ~~the facilities or operation during the term of the Contract. Before commencing any work under the~~
17 ~~Contract, the Contractor also shall provide the City and County a written statement showing the~~
18 ~~amount to be paid each Subcontractor and shall update this information in writing to show changes in~~
19 ~~the amount to be paid any Subcontractor or amounts to be paid Subcontractors added after submittal of~~
20 ~~the most recent statement to the City and County. Amounts to be paid to subcontractors may be~~
21 ~~reported in ranges of \$20,000.00 to \$50,000.00; \$50,001.00 to \$100,000.00; \$100,001.00 to~~
22 ~~\$250,000.00; \$250,001.00 to \$500,000.00; above \$500,000.00; or such other ranges as the Director,~~
23 ~~after consultation with the Office of Labor Standards Enforcement and Sweatfree Procurement~~
24 ~~Advisory Group, deems appropriate to effectively implement this Article. Updates in the amount to be~~
25

1 ~~paid a Subcontractor or Subcontractors after submittal of the most recent statements to the City and~~
2 ~~County need only be submitted if the changed amount would fall into a different range.~~

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

11 ~~—(l) Each Contractor and Subcontractor shall be responsible for ensuring the Subcontractor's~~
12 ~~compliance with this Article.~~

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

19 ***SEC. 151.4. CONTRACTUAL REQUIREMENT.***

20 ~~—Each Contract shall include an agreement by the Contractor to comply with the requirements~~
21 ~~of this Article, and shall incorporate this Article by reference. Contracts shall provide the following:~~
22 ~~(1) that in the event the Director determines that any Contractor or Subcontractor has failed to comply~~
23 ~~with any provision of this Article or any regulations implementing this Article, the Contractor shall be~~
24 ~~liable for liquidated damages equal to the greater of \$1,000 or 20% of the amount of the Goods~~
25 ~~provided in violation of this Article, as determined by the Director; and (2) the City and County may~~

1 ~~deduct any liquidated damages owed by a Contractor from any monies owed the Contractor under the~~
2 ~~Contract or any other agreement that the Contractor has with the City and County.~~

3 **~~SEC. 151.5. PHASE-IN PERIOD.~~**

4 ~~—During the first full fiscal year of the City and County after the effective date of this Article,~~
5 ~~the City and County shall target for enforcement only Contracts for apparel, garments and~~
6 ~~corresponding accessories, materials, supplies or equipment. Agreements for other Goods shall be~~
7 ~~targeted for enforcement in accordance with the procedure set forth in Section 151.7.~~

8 **~~SEC. 151.6. ADDITIONAL GOODS COVERED BY ORDINANCE.~~**

9 ~~—In addition to Contracts for apparel, garments and corresponding accessories, materials,~~
10 ~~supplies or equipment, contracts for the following goods shall be targeted for enforcement:~~

11 ~~—(a) Textiles; meaning all items of cloth that are produced by weaving, knitting, felting,~~
12 ~~sewing, or similar production processes, including but not limited to such cloth items as sheets, pillows,~~
13 ~~pillowcases, towels, blankets, comforters, bath mats, mattress covers, table linens, cloth napkins,~~
14 ~~cleaning cloths, draperies, upholstery, rugs, and entrance mats, but excluding carpets.~~

15 **~~SEC. 151.7. ADVISORY GROUP.~~**

16 ~~—(a) The City and County shall establish a Sweatfree Procurement Advisory Group. The~~
17 ~~Sweatfree Procurement Advisory Group shall evaluate the industries engaged in the manufacture and~~
18 ~~sale of goods to determine whether contracts for any goods, in addition to apparel and garments,~~
19 ~~should be targeted for enforcement, and to evaluate the implementation, administration, and~~
20 ~~enforcement of this Article. To determine whether a particular good shall be targeted for enforcement,~~
21 ~~the factors that the Sweatfree Procurement Advisory Group shall consider shall include, but not be~~
22 ~~limited to: (a) the amount the City and County has spent, and anticipates spending for such good; (b)~~
23 ~~evidence of Sweatshop Labor or other conditions prohibited by this Article in the manufacturing,~~
24 ~~assemblage or distribution of such good; and (c) any financial impact that targeting the good for~~
25 ~~enforcement will have on the City and County. At the end of the first full fiscal year of the City and~~

1 ~~County following the effective date of this Article, and annually thereafter, the Sweatfree Procurement~~
2 ~~Advisory Group shall submit a written report to the Director and the Office of Labor Standards~~
3 ~~Enforcement that contains any recommendations on the administration, implementation, and~~
4 ~~enforcement of this Article, or the application of this Article to other goods. The report shall include the~~
5 ~~supporting information upon which each recommendation is based and a report on the financial impact~~
6 ~~that adoption of the recommendation will have on the City and County. The Director may submit any~~
7 ~~recommendation to extend the applicability of this Article to other goods to the Board of Supervisors.~~
8 ~~Upon the adoption of an ordinance approving such recommendation, Contracts for the purchase of~~
9 ~~such goods shall be subject to this Article. The Director in the Director's discretion may adopt other~~
10 ~~recommendations of the Sweatfree Procurement Advisory Group subject to the Municipal Code and the~~
11 ~~Charter.~~

12 ~~—(b) The Sweatfree Procurement Advisory Group shall determine how the City and County~~
13 ~~may maximize its purchase of goods produced in San Francisco. Within four months of its formation,~~
14 ~~the Sweatfree Procurement Advisory Group shall examine how the City and County may provide~~
15 ~~preferences and/or incentives to garment industry manufacturers in San Francisco that are in~~
16 ~~compliance with this Article, and explore the expansion of preferences and/or incentives to other~~
17 ~~industries. Within the four-month period, the Sweatshop Procurement Advisory Group shall propose~~
18 ~~legislation to immediately implement the preferences and/or incentives.~~

19 ~~—(c) The Sweatfree Procurement Advisory Group shall consist of eleven members. The Mayor~~
20 ~~and the Board of Supervisors shall each appoint five members. The Controller shall appoint one~~
21 ~~member. Each member shall be appointed to a term of two years. At least one of the Board of~~
22 ~~Supervisors' appointees and one of the Mayor's appointees must have significant experience~~
23 ~~representing employees in labor matters. At least one of the Board of Supervisors' appointees and one~~
24 ~~of the Mayor's appointees must have significant experience acquiring goods or services for a public~~
25 ~~entity. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must~~

1 ~~have significant experience as an advocate for human rights or the poor. The Controller's appointee~~
2 ~~shall have significant experience in finance, financial auditing, or accounting. All members of the~~
3 ~~Sweatfree Procurement Advisory Group shall be appointed within sixty days of the effective date of this~~
4 ~~Article. Each member shall serve at the pleasure of the appointing authority. The Sweatfree~~
5 ~~Procurement Advisory Group shall meet not less than once each fiscal year.~~

6 **~~SEC. 151.8. ADMINISTRATION AND ENFORCEMENT.~~**

7 ~~—(a) The Director shall implement and administer, and the Director and the Office of Labor~~
8 ~~Standards Enforcement shall enforce the requirements of this Article. The Director may issue~~
9 ~~regulations for the implementation and administration of this Article. The Director may, in consultation~~
10 ~~with the Office of Labor Standards Enforcement, issue regulations for the enforcement of this Article.~~
11 ~~The Director may delegate, in writing, responsibilities to other departments, offices, employees,~~
12 ~~officers, or agents of the City and County. Each City department, when requested by the Director, shall~~
13 ~~cooperate with the Director in the implementation or administration of this Article, and when requested~~
14 ~~by the Director or Office of Labor Standards Enforcement, shall cooperate with the enforcement of this~~
15 ~~Article by providing relevant information that is in the department's possession and control, and~~
16 ~~providing any other assistance that it is feasible for the department to provide. The City and County~~
17 ~~may, subject to the Charter, including without limitation its budgetary and fiscal provisions, and the~~
18 ~~Municipal Codes, enter into contracts with any entity and cooperative agreements or arrangements~~
19 ~~with any public entity for assistance in implementing, administering or enforcing this Article, and shall~~
20 ~~explore efficient and cost-effective mechanisms for ensuring the compliance of Contractors.~~

21 ~~—(b) Until such time as the City and County determines that it is able to adequately monitor~~
22 ~~compliance with this Article using City personnel, the City and County shall, subject to the Charter,~~
23 ~~including without limitation its budgetary and fiscal provisions, and the Municipal Codes, enter into an~~
24 ~~agreement with an independent non-profit organization with expertise in monitoring and reporting on~~
25

1 ~~Sweatshop Labor for assistance monitoring the compliance of Contractors. This subsection does not in~~
2 ~~anyway limit the City's ability to contract for assistance under subsection 151.8(a).~~

3 ~~—(c) Each Contractor and Subcontractor shall cooperate fully with any investigation of the~~
4 ~~Director, the Office of Labor Standards Enforcement, the Director's designee or contractors, including~~
5 ~~without limitation any independent non-profit monitor, and other City employees and agents authorized~~
6 ~~to assist in the implementation, administration or enforcement of this Article. Such persons or entities~~
7 ~~shall, in the performance of their duties, have the right to engage in random inspections of any worksite~~
8 ~~where the Contract or any Subcontract is performed and have access to any Worker or any record~~
9 ~~required to be maintained in Section 151.3.~~

10 ~~—(d) Any failure of a Contractor or Subcontractor to perform in accordance with this Article~~
11 ~~shall be a material breach of the Contract. In such an event, the City and County may take any or all of~~
12 ~~the following actions:~~

13 ~~—(1) Assess liquidated damages as provided for in the Contract.~~

14 ~~—(2) Terminate the Contract.~~

15 ~~—(3) Commence debarment proceedings pursuant to Chapter 28 of the Administrative Code~~
16 ~~against the Contractor, where the Contractor has failed to comply with this Article, or against the~~
17 ~~Subcontractor, or Contractor and Subcontractor, where the Subcontractor has failed to comply with~~
18 ~~this Article.~~

19 ~~—(4) Withhold payments under the Contract until the Contractor or its Subcontractor is in~~
20 ~~full compliance with this Article.~~

21 ~~—(5) Require the Contractor or Subcontractor, at its expense, to provide training and best~~
22 ~~practices guidelines to managers and employees at the facility or operation where the violation~~
23 ~~occurred to ensure future compliance. Upon request by the Director or the Director's designee, the~~
24 ~~Contractor or Subcontractor shall submit such materials for the City and County's review and~~
25 ~~approval prior to distribution to managers and employees.~~

1 —(6)—Any Contractor or Subcontractor shall provide the Director or the Director’s designees
2 or contractor, and other City employees and agents authorized to assist in the administration and
3 enforcement of this Article immediate access to the facility or operation where the violation has
4 occurred for an inspection of the facility or operation and records, and interviews of Workers.

5 —(7)—During the term of the Contract, but not more than once every 30 days, the Director,
6 the Office of Labor Standards Enforcement, or the Director’s designee may require the Contractor or
7 Subcontractor to provide a written summary of the steps taken to remedy the noncompliance and any
8 difficulties encountered in curing the noncompliance. The request may require the response to be
9 submitted under penalty of perjury. The Contractor or Subcontractor shall provide the written
10 summary within the time period specified by the Director, the Office of Labor Standards Enforcement,
11 or the Director’s designee, which shall not be less than 14 days from receipt of the request.

12 —(8)—Pursue any other remedies available to the City and County at law or in equity.

13 ***SEC. 151.9. EFFECTIVE DATE.***

14 —This Article shall be effective ninety days after it is adopted. This legislation is intended to
15 have prospective effect only.

16 ***SEC. 151.10. EXCEPTIONS.***

17 —This Article shall not apply in the following circumstances:

18 —(a)—When a Contract involves the expenditure of funds received by the City and County and
19 the application of this Article would violate or be inconsistent with the terms or conditions of the
20 applicable grant agreement, subvention or agreement or the instructions of an authorized
21 representative of any such agency with respect to any such grant agreement, subvention or agreement.

22 —(b)—When the Director or the Director’s designee determines that there is only one
23 responsible contractor available to provide the Goods and that contractor is unable to comply with this
24 Article, or the City and County department, commission, office or other City and County entity seeking
25 to enter into the contract certifies in writing to the Director, and the Director finds that there are no

1 ~~qualified responsive bidders or proposers or prospective contractors that would comply with the~~
2 ~~requirements of this Article and the Contract is for Goods that are essential to the City or the public.~~
3 ~~This subsection (b) is subject to the provisions of Section 151.11. If a waiver is granted pursuant to this~~
4 ~~subsection (b), the Contract entered into as a result of the waiver may be for a term of no greater than~~
5 ~~two years.~~

6 ~~—(c) When the Contract is with a public entity.~~

7 ~~—(d) When the acquisition of Goods is only incidental to the other purchases under the~~
8 ~~Contract. The acquisition of Goods shall be incidental if the amount paid by the City for the Goods is~~
9 ~~10 percent or less than the total amount of the Contract.~~

10 ~~—(e) If the department recommending the Contract certifies in writing to the Director that~~
11 ~~pursuant to Administrative Code Section 6.60 or 21.15 that the Contract is necessary to respond to an~~
12 ~~emergency which endangers the public health or safety and no entity which complies with the~~
13 ~~requirements of this Article capable of responding to the emergency is immediately available.~~

14 ~~**SEC. 151.11. AWARD OF CONTRACT ABSENT A SWEATFREE COMPLIANT BID OR**~~
15 ~~**PROPOSAL.**~~

16 ~~—(a) It is the City's goal to achieve full compliance with this Article. But, in the absence of~~
17 ~~bids or proposals that are fully compliant with the provisions of this Article, the City should have~~
18 ~~authority to award Contracts to the bidder or proposer that is most compliant with this Article. If, in~~
19 ~~response to a solicitation for bids or a request for proposals, the City receives no bids or proposals that~~
20 ~~are fully compliant with the provisions of this Article, the Director is authorized to enter into a~~
21 ~~Contract with a noncompliant bidder or proposer, according to the following principles.~~

22 ~~—(b) Notwithstanding the determination of low bid or highest ranked proposal, the Director~~
23 ~~shall have authority to determine which bidder or proposer most substantially complies with this~~
24 ~~Article, and shall award the Contract to that bidder or proposer.~~

1 ~~—(c) No Contract awarded pursuant to subsection (b) may exceed two years in term unless the~~
2 ~~Director determines, no later than six months prior to the expiration of the original term of the~~
3 ~~Contract, that the Contractor has achieved an additional level or levels of compliance with the~~
4 ~~provisions of this Article that warrants exercise of an option to extend the Contract for up to an~~
5 ~~additional year.~~

6 ~~—(d) Any Contract awarded pursuant to subsection (b) shall be terminated by the Director~~
7 ~~during the original term of the Contract or any extension of the original term if the Director determines~~
8 ~~that the Contractor (i) is not making a good faith effort to achieve an additional level or levels of~~
9 ~~compliance with the provisions of this Article or (ii) has not corrected within a reasonable time, as~~
10 ~~defined by the Director, a specific violation of this Article that the City discovers after award of the~~
11 ~~Contract. In addition, the Director shall include in any Contract awarded pursuant to subsection (b) a~~
12 ~~compliance plan that identifies deficiencies in the bid or proposal and specifies a condition or~~
13 ~~conditions and related timetables designed to achieve an additional level or levels of compliance with~~
14 ~~the provisions of this Article no later than six months prior to the expiration of the original term of the~~
15 ~~Contract; and failure of the Contractor to satisfy said compliance plan may serve as the basis for the~~
16 ~~Director to terminate the Contract.~~

17 ~~—(e) Standards for determining most substantial compliance under subsection (b) and~~
18 ~~additional level or levels of compliance under subsections (c) and (d) shall be adopted by the Director~~
19 ~~following consultation with the Office of Labor Standards Enforcement and the Sweatfree Procurement~~
20 ~~Advisory Group, and a public hearing. Such standards shall give due consideration to the City's need~~
21 ~~to receive information from bidders and Contractors to enable the City to monitor compliance with this~~
22 ~~Article; the degree to which a particular requirement of the Ordinance is not being complied with by a~~
23 ~~bidder or Contractor; the number of requirements of the Ordinance that are not being complied with by~~
24 ~~a bidder or Contractor; practical difficulties faced by bidders and/or Contractors generally in~~
25 ~~complying with a particular requirement of the Ordinance; the relative importance, if ascertainable, of~~

1 ~~the different labor standards set forth in Section 151.3; and such other factors as may be relevant to~~
2 ~~achieving maximum compliance with this Article.~~

3 ~~—Such standards shall become operative on the effective date of this Section if they are~~
4 ~~adopted by the Director before then. Such standards shall become operative on the date they are~~
5 ~~adopted by the Director if that occurs after the effective date of this Section.~~

6 ~~—In addition, the Director has authority to adopt rules and procedures that implement this~~
7 ~~Section.~~

8 ~~—(f) The Director shall not award a Contract pursuant to subsection (b) where the cost of that~~
9 ~~contract would exceed the low bid or highest ranked proposal by more than 15 percent.~~

10 ~~—(g) The Director shall maintain a record of contracts issued under this Section to~~
11 ~~noncompliant bidders and proposers. This information shall be compiled on an annual fiscal year basis~~
12 ~~and reported to the Board of Supervisors upon written request to the Director by any member of the~~
13 ~~Board of Supervisors.~~

14 ~~—(h) Neither subsection (b) nor any other provision in this Section shall override the~~
15 ~~Director's authority to reject all bids or proposals or take other action within his or her legal~~
16 ~~authority.~~

17 **~~SEC. 151.12. PREEMPTION.~~**

18 ~~—Nothing in this Article shall be interpreted or applied so as to create any power or duty in~~
19 ~~conflict with any federal or state law.~~

20 **~~SEC. 151.13. SEVERABILITY.~~**

21 ~~—If any part or provision of this Article or the application of this Article to any person or~~
22 ~~circumstance, is held invalid, the remainder of this Article, including the application of such part or~~
23 ~~provisions to other persons or circumstances, shall not be affected by such holding and shall continue~~
24 ~~in full force and effect. To this end, the provisions of this Article are severable~~

1 **SEC. 151.1. GENERAL PROVISIONS.**

2 (a) Name of Article. This Article shall be known as the “Sweatfree Contracting
3 Ordinance.”

4 (b) Findings. The Board of Supervisors finds and declares the following:

5 (1) Each year the City spends hundreds of millions of dollars contracting with
6 private sector contractors for the purchase or rental of goods. The prudent expenditure of public funds
7 requires that the City select responsible contractors.

8 (2) The City, as a major purchaser of goods, must be cognizant of the labor
9 conditions that may be supported by its actions as a major market participant. Better working
10 conditions assure consistently better quality goods for the City, by assuring fewer disruptions in the
11 workplace due to workers' grievances, fewer absences due to illnesses, less fatigue and fewer
12 workplace injuries, less turnover of workers, and greater incentive to perform the work well.

13 (3) In its role as a market participant, the City seeks to assure that the integrity of
14 the procurement process is not undermined by entities that engage in sweatshop practices. Contractors
15 who source goods from manufacturers that use Sweatshop Labor are able to underbid responsible
16 contractors who source goods from manufacturers who pay fair wages and maintain humane work
17 environments and conditions. Such practices place responsible contractors at a competitive
18 disadvantage, which may dissuade responsible contractors from participating in the City procurement
19 process. This Article 151 will encourage responsible contracting with the City and reduce any
20 inadvertent support of manufacturers that use Sweatshop Labor.

21 (4) By adopting this Article 151, the City does not intend to preclude the City or its
22 contractors or subcontractors from doing business with any foreign country.

23
24 **SEC. 151.2. SCOPE OF ARTICLE.**

1 (a) **Authority.** This Article 151 governs the obligations of a person or entity entering into an
2 agreement with the City at the expense of the City or to be paid out of moneys deposited in the Treasury
3 or out of trust moneys under the control of or collected by the City, or agreements for the exclusive use
4 of City-owned property.

5 (b) **Agreements Subject to this Article.** Except as stated in subsection (c), the requirements
6 of this Article 151 apply to agreements entered into under Chapter 21 of the Administrative Code
7 valued above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative
8 Code.

9 (c) **Agreements not Subject to this Article.** Notwithstanding subsection (b), an agreement is
10 exempt from all requirements of this Article 151 under one or more of the following circumstances:

11 (1) **Government Entity.** This Article shall not apply where the prospective
12 contractor is a Government Entity, as defined in Administrative Code Section 1.25(d).

13 (2) **Employee Benefits.** This Article shall not apply to agreements where the services
14 are related to employee benefits, including, without limitation, health plans, retirement or deferred
15 compensation benefits, insurance and flexible accounts, provided by or through the San Francisco
16 Health Service System, the Retirement Board, or the Retiree Health Care Trust Fund.

17 (3) **Legal Services.** This Article shall not apply to agreements entered into pursuant
18 to settlement of legal proceedings; or to agreements for urgent or specialized advice, consultation, or
19 litigation services for the City Attorney's Office.

20 (4) **Finance.** This Article shall not apply to agreements entered into for purposes of
21 issuing or causing the issuance of bonds, notes, bond anticipation notes, commercial paper, certificates
22 of participation or other obligations for borrowed money including without limitation any lease,
23 installment purchase or sale agreement, or other similar financing agreements or ancillary
24 arrangements including, but not limited to, Issue and Paying Agent agreements, Trustee agreements,
25 Forward Purchase and Sale agreements, and Interest Rate Swap agreements.

1 (5) **Emergency.** *This Article shall not apply to agreements entered into pursuant to*
2 *an emergency as declared under the authority of Charter Section 3.100 (14), Administrative Code*
3 *Section 6.60, or Administrative Code Section 21.15.*

4 (6) **Real Property.** *This Article shall not apply to:*

5 _____ *(A) an agreement that gives a public entity or public utility the right to use or*
6 *occupy real property owned or controlled by the City;*

7 _____ *(B) a revocable at-will permit regardless of the ultimate duration of such permit,*
8 *unless the permittee engages in a for-profit activity on the City property;*

9 _____ *(C) a regulatory permit, authorization, or approval, or franchise agreement;*

10 _____ *(D) an agreement to use City property which constitutes a public forum for*
11 *activities that are primarily for the purpose of espousing or advocating causes or ideas and that are*
12 *generally recognized as protected by the First Amendment to the U.S. Constitution;*

13 _____ *(E) an agreement for activities which are primarily recreational in nature, unless*
14 *the user engages in a for-profit activity on the City property;*

15 _____ *(F) an easement, month-to-month Lease, or revocable Lease; or*

16 _____ *(G) a Lease for 1,000 square feet or less of property owned or controlled by the*
17 *City.*

18 (d) **Subcontracts.** *The requirements of this Article 151 do not apply to subcontractors*
19 *except to the extent that the requirements are imposed upon the Contractor.*

20 (e) **Amendment.** *If an agreement is amended to increase the compensation in a manner that*
21 *the cumulative new value exceeds the applicability thresholds in subsection (b), the new agreement as*
22 *modified will be subject to this Article 151 unless otherwise exempted under subsection (c).*

23
24 **SEC. 151.3. DEFINITIONS.**

1 As used in this Article 151, the following words and phrases shall have the meanings indicated
2 herein:

3 "Abusive Forms of Child Labor" means the following: (1) work performed by a person under
4 the age of 18 when the person does not voluntarily seek the work or the person is threatened by the
5 person's employer with physical, mental, or emotional harm for nonperformance; (2) work performed
6 by a person under the age of 18 in violation of any applicable law of the country of manufacture or
7 assembly governing the minimum age of employment, compulsory education, or occupational health
8 and safety; or (3) the use of a person under the age of 18 for illegal activities, including but not limited
9 to the production or trafficking of illicit drugs or for prostitution.

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

11 "Contract" means an agreement subject to this Article 151 as stated in Section 151.2.

12 "Contracting Department" or "Department" means the City department, office, commission, or
13 other City entity that enters into the applicable Contract on behalf of the City.

14 "Contracting Officer" means the City official or employee who is authorized to execute a
15 contract, either as a Department Head or as a designee appointed in writing by the Department Head,
16 board, or commission as having the authority to sign contracts for the Department.

17 "Contractor" means any person or persons, firm, partnership, corporation, or combination
18 thereof that enters into a contract or property contract with a Department Head or officer empowered
19 by law to enter into contracts or property contracts on behalf of the City.

20 "Covered Goods" means apparel and garments (including any accessories, materials, supplies,
21 or equipment associated with the apparel or garments) that are assembled together through weaving,
22 knitting, felting, sewing, or other production process in a Factory for a Manufacturer from which a
23 Contractor secures apparel and garments for the purpose of selling said apparel and garments to the
24 City. Notwithstanding the prior sentence, Covered Goods shall exclude: (1) goods purchased for a
25 service Contract, where the goods are incidental to the provision of the service; (2) apparel and

1 garments procured for a public works related contract, such as safety vests and helmets; and (3)
2 uniforms, garments, and shoes that require special production processes to ensure the safety of the
3 wearer in the fulfillment of public health and public safety, including but not limited to: firefighting
4 gear, neoprene gloves, ballistic vests and body armor, helmet covers, medical gowns, personal
5 protective equipment, or similar items.

6 “Department Head” means the duly appointed General Manager, Director, or Executive
7 Director of a City department having charge and management of said department.

8 “Director” means the Director of the Office of Contract Administration, also known as the
9 Purchaser, or the Director’s designee.

10 “Factory” means a facility that manufactures or otherwise contributes significantly to the
11 production of a Covered Good. For apparel, the Factory is the facility that manufactures the Covered
12 Good by cutting and assembling through processes such as but not limited to: sewing, weaving,
13 knitting, or felting, and may also include the facility that finishes and applies marks to the Covered
14 Goods.

15 “Foreign Convict or Forced Labor” means any form of labor used to produce or manufacture
16 goods prohibited from importation into the United States under 19 U.S. C. § 1307, as may be amended
17 from time to time, which includes Abusive Forms of Child Labor and Slave Labor.

18 “Labor Laws” means those laws specifying responsibilities and rights in employment,
19 including, but not limited to laws governing: (1) wages; (2) employee benefits; (3) health and safety,
20 including without limitation exposure to hazardous or toxic substances; (4) collective bargaining
21 rights; (5) environmental conditions; (6) nondiscrimination, harassment, or retaliation, including
22 without limitation all laws prohibiting workplace and employment discrimination; (7) freedom of
23 association; or (8) building or fire codes.

24 “Manufacturer” means a person or business that owns an apparel brand.
25

1 “Slave Labor” means any form of slavery, sale and trafficking of persons, debt bondage,
2 indentured servitude, serfdom, or forced or compulsory labor.

3 “Sweatshop Labor” means work performed in a Factory by any Worker for the purpose of
4 producing a Covered Good under terms or conditions that: (1) seriously or repeatedly violate Labor
5 Laws of the jurisdiction within which the work is performed; or (2) constitute Foreign Convict or
6 Forced Labor, Abusive Forms of Child Labor, or Slave Labor.

7 “Worker” means any employee employed in a Factory utilized by a Manufacturer to produce
8 Covered Goods for the purpose of selling those Covered Goods to the City.

9
10 **SEC. 151.4. REQUIREMENTS AND OBLIGATIONS.**

11 **(a) City Contracting Departments.**

12 **Incorporation of Terms.** Each Contract shall include an agreement by the Contractor to
13 comply with the requirements of this Article 151, incorporating this Article 151 by reference, and shall
14 include a description of potential liquidated damages.

15 **(b) Obligations of City Contractors.**

16 **(1) Working Conditions.**

17 **(A) Sweatshop Labor Prohibited.** Each Contractor shall certify that no
18 Covered Goods provided to the City pursuant to the Contract have been produced in whole or in part
19 by Sweatshop Labor.

20 **(B) Human Rights Standards.** Each Contractor shall ensure that Covered
21 Goods provided to the City are not sourced from Manufacturers that:

22 **(i) Use Factories that engage in Sweatshop Labor;**

23 **(ii) Subject Workers to physical, sexual, or other illegal harassment**
24 or abuse, including corporal punishment, illegal discrimination or retaliation for exercising their right
25 to free speech and assembly or other rights protected under applicable labor or employment laws;

1 (iii) Require or compel Workers to use contraceptives or take
2 pregnancy tests;

3 (iv) Subject Workers to harassment, intimidation, or retaliation as a
4 result of their efforts to freely associate or bargain collectively; or

5 (v) Do not otherwise comply with all human rights laws and Labor
6 Laws imposed by treaty or law on the country in which the Factories that make or assemble the
7 Covered Goods are located, unless the City determines that such laws are inconsistent with this Article
8 151.

9 (C) **Minimum Standards.** This Article 151 specifies the basic rights afforded
10 to Workers. This Article does not preempt or limit any other applicable law, regulation or requirement,
11 or decision by a private entity, that requires a higher level of compensation or rights.

12 (2) **Records Retention.**

13 (A) **Worker Related Records.** Each Contractor shall require the
14 Manufacturers from which Covered Goods are procured to maintain for a period of not less than three
15 years from the date of the expiration or termination of the term of the Contract, basic payroll and time
16 records for each Worker, and copies of any tax records filed with a governmental entity during the
17 term. Such records shall include the following for each Worker: (i) name and job classification; (ii) the
18 rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits); (iii) the
19 daily and weekly number of hours worked; (iv) deductions made; and (v) any actual wages paid.

20 (B) **Inspection by City.** Each Contractor shall require the Manufacturers
21 from which Covered Goods are secured to make all records required to be maintained by this Article
22 151 available at all times for inspection and examination by the duly authorized officers and agents of
23 the City.

24 (C) **Lists of Manufacturers and Factories.** Each Contractor shall maintain
25 and, upon request of the City, provide the City a list of the names, addresses, and State tax

1 identification numbers, as applicable, of all Manufacturers from whom the Covered Goods are sourced
2 and the Factories in which the Covered Goods are produced. The Contractor also shall provide the
3 City a written statement showing the amount to be paid each Manufacturer and/or Factory and shall
4 update this information in writing upon request to show changes in the amount to be paid.

5 (D) **Written Assurance.** During each year of the term of a Contract, the
6 Director, the Office of Labor Standards Enforcement, or the Director's designee may request a written
7 assurance from the Contractor and each of its Manufacturers and/or Factories that they are in
8 compliance with this Article 151. The request may seek confirmation of compliance with some or all of
9 the requirements of this Article, and may require the response to be submitted under penalty of perjury.
10 The Contractor, Manufacturer, and/or Factory shall provide the written assurance within the time
11 period specified by the Director, the Office of Labor Standards Enforcement, or the Director's
12 designee, which shall not be less than 14 days from receipt of the request.

13
14 **SEC. 151.5. ADMINISTRATION AND REMEDIES.**

15 **(a) Administration of Article.**

16 (1) **Office of Contract Administration.** The Director of the Office of Contract
17 Administration shall implement and administer the procurement requirements of this Article 151. The
18 Director is authorized to create and maintain a prequalified list of Manufacturers that meet the
19 requirements of this Article, and awarded Contractors using listed Manufacturers in performance of a
20 Contract shall be deemed in compliance with this Article. The Director of Contract Administration may
21 develop rules and regulations to implement such a prequalified list program.

22 (2) **Office of Labor Standards Enforcement.** The Director of the Office of Labor
23 Standards Enforcement shall monitor compliance with this Article 151 and work jointly with the Office
24 of Contract Administration to make recommendations on the enforcement and remedies for violations
25 of this Article.

1 **(3) Cooperative Implementation.** *The City may, subject to the Charter, including*
2 *without limitation its budgetary and fiscal provisions, and the Municipal Code, enter into contracts*
3 *with any entity and cooperative agreements or arrangements with any public entity for assistance in*
4 *implementing, administering, or enforcing this Article 151, and shall explore efficient and cost-effective*
5 *mechanisms for ensuring the compliance of Contractors.*

6 **(b) Rules and Regulations.** *The Director of the Office of Contract Administration may*
7 *promulgate rules and regulations for the implementation of the Article 151.*

8 **(c) Enforcement.**

9 **(1) Office of Labor Standards Enforcement.** *When allegations of violations of this*
10 *Article 151 are brought to the attention of the Office of Labor Standards Enforcement, the Director of*
11 *the Office of Labor Standards Enforcement shall promptly review the allegations and, if confirmed,*
12 *recommend appropriate enforcement actions.*

13 **(2) Use of External Sources of Information.** *When determining whether there is a*
14 *violation of this Article 151, the Office of Labor Standards Enforcement shall take into consideration*
15 *relevant and reliable information including, but not limited to, information provided by the Contractor*
16 *on behalf of the Manufacturer, reports from reputable national and international organizations,*
17 *documented media reports, and credible information from local groups and organizations.*

18 **(3) City Departments to Cooperate with Agencies.** *Each City department, when*
19 *requested by the Director of the Office of Contract Administration, shall cooperate in the*
20 *implementation or administration of this Article 151, and when requested by the Director of the Office*
21 *of Contract Administration or the Director of Office of Labor Standards Enforcement, shall cooperate*
22 *with the enforcement of this Article by providing relevant information that is in the department's*
23 *possession and control, and providing any other assistance that it is feasible for the department to*
24 *provide.*

1 (4) **Independent Monitor Cooperation.** Each Contractor shall require from its
2 Manufacturers and/or Factories that they cooperate fully with any investigation of the Director of the
3 Office of Labor Standards Enforcement, the Director's designee or contractors, including without
4 limitation any independent non-profit monitor, and other City employees and agents authorized to
5 assist in the implementation, administration. or enforcement of this Article 151. Such persons or
6 entities shall, in the performance of their duties, have the right to engage in random inspections of any
7 Factories where the Covered Goods are manufactured and have access to any Worker or any record
8 required to be maintained in Section 151.4.

9 (d) **Remedies for Violations of this Article.**

10 If the Office of Labor Standards Enforcement determines that a Contractor or the Manufacturer
11 or Factory from which it sources Covered Goods has violated this Article 151, or has not corrected
12 within a reasonable timeframe, as defined by the Director of Office of Labor Standards Enforcement, a
13 specific violation of this Article that the City discovers after award of the Contract, the Director of the
14 Office of Labor Standards Enforcement may recommend that the awarding authority take some or all of
15 the following measures:

16 (1) Assess the Contractor with a statutory penalty equal to the greater of \$1,000 or
17 20% of the value of the procured equipment, goods, supplies, or materials.

18 (2) Terminate the Contract.

19 (3) Commence debarment proceedings pursuant to Chapter 28 of the Administrative
20 Code against the Contractor, Manufacturer, and/or Factory.

21 (4) Withhold payments under the Contract until the Contractor or its Manufacturers
22 or Factories are in full compliance with this Article.

23 (5) Require the Contractor, Manufacturer, or Factory, at its expense, to provide
24 training and best practices guidelines to managers and employees at the facility or operation where the
25 violation occurred, to ensure future compliance. Upon request by the Director of the Office of Labor

1 Standards Enforcement or the Director's designee, the Contractor, Manufacturer, or Factory shall
2 submit such materials for the City 's review and approval prior to distribution to managers and
3 employees.

4 (6) Inspect records and the facility or site where the violation occurred and
5 interview Workers.

6 (7) During the term of the Contract, but not more than once every 30 days, require
7 the Contractor to provide a written report of the steps Contractor, Manufacturer, or Factory have
8 taken to remedy the noncompliance and any difficulties encountered in curing the noncompliance. The
9 request may require the response to be submitted under penalty of perjury. The Contractor shall
10 provide the written report within the time period specified by the Director, the Office of Labor
11 Standards Enforcement, or the Director's designee, which shall not be less than 14 days from receipt of
12 the request.

13 (8) Pursue any other remedies available to the City at law or in equity.

14
15 **SEC. 151.6. WAIVERS AND EXCEPTIONS.**

16 (a) **Waivers by Director.** The Director, or duly authorized designee, may waive in whole or
17 in part the requirements of this Article 151 in the following circumstances:

18 (1) **Sole Source.** When the Director finds, upon the advice of the awarding authority,
19 that needed goods, services, construction services for a public work or improvement, or interest in or
20 right to use real property are available only from a sole source.

21 (2) **Only One Qualified Bidder.** When the Director finds, upon the advice of the
22 awarding authority, that there is only one qualified, responsive bidder or proposer who can perform
23 the work under the proposed agreement and who is not at that time disqualified from doing business
24 with the City.

1 (3) **No Compliant Bidders.** When the Director finds, upon the advice of the
2 awarding authority, that there are no qualified, responsive bidders or prospective contractors who
3 could be certified as being in compliance with the requirements of this Article 151.

4 (4) **Adverse Impact on Services.** Where the Director determines that the public
5 interest warrants the granting of a waiver because application of this Article 151 would have an
6 adverse impact on services or substantial adverse financial impact on the City, or would circumvent the
7 purposes of this Article.

8 (5) **Cooperative Purchasing.** When an agreement has been procured under
9 Administrative Code Sections 6.77 or 21.16, and the Director finds that application of this Article 151
10 would mean: (A) a purchase under such arrangement would substantially reduce the City's cost of
11 purchasing such services; (B) a purchase under such an arrangement is in the best interest of the City;
12 and (C) adherence to the requirements of this Article 151 would prevent the awarding agency from
13 entering into such an agreement.

14 (b) **Waiver by Treasurer for Investments.** This Article 151 shall not apply to the following:
15 (1) the investment of trust moneys or agreements relating to the management of trust assets, (2) City
16 moneys invested in the City's investment pool, or (3) the investment of City moneys, where the
17 Treasurer finds that:

18 (A) No person, entity, or financial institution doing business in the City that is in
19 compliance with this Article is capable of performing the desired transaction(s); or

20 (B) Applying this Article would, in the opinion of the Treasurer, violate the
21 Treasurer's fiduciary duties.

22 (c) **Waiver by Public Utilities Commission.** The General Manager of the Public Utilities
23 Commission may waive the requirements of this Article 151 where the Contractor is providing
24 wholesale or bulk water, power, or natural gas, the conveyance or transmission of same, or ancillary
25 services such as spinning reserve, voltage control, or loading scheduling, as required for assuring

1 reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public
2 Utilities Commission; provided, that the purchase of same may not practically be accomplished
3 through the City's standard competitive bidding procedures; and further provided, that this exemption
4 shall not apply to Contractors or franchisees providing direct, retail services to end users within the
5 City.

6 (d) **Documentation.** All proposed waivers must set forth the reasons the Contracting Officer
7 is requesting the waiver.

8
9 **SEC. 151.7. SUPERSEDING AUTHORITY.**

10 (a) **Federal or State Law Preemption.** The requirements of this Article 151 shall not be in
11 effect in the event they would conflict with federal or State laws, or the City Attorney determines they
12 are reasonably likely to do so. Nothing in this Article shall be interpreted or applied so as to create any
13 requirement, power, or duty in conflict with any federal or State law.

14 (b) **Grant or Subvention.** If the requirements of this Article 151 would violate or are
15 inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency or
16 the instructions of an authorized representative of any such agency with respect to any such grant,
17 subvention, or agreement, the requirements of this Article shall not be in effect.

18
19 **SEC. 151.8. SEVERABILITY.**

20 If any section, subsection, sentence, clause, phrase, or word of this Article 151, or any
21 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
22 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
23 portions or applications of the Article. The Board of Supervisors hereby declares that it would have
24 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not
25

1 declared invalid or unconstitutional without regard to whether any other portion of this Article or
2 application thereof would be subsequently declared invalid or unconstitutional.

3
4 **SEC. 151.9. OPERATIVE DATE AND SUNSET.**

5 (a) **Operative Date.** This Article 151 shall become operative on July 1, 2025 and shall have
6 prospective effect only.

7 (b) **Sunset.** Unless extended by ordinance, this Article 151 shall expire by operation of law
8 on July 1, 2035. After the expiration, the City Attorney shall be authorized to cause this Article to be
9 removed from the Labor and Employment Code.

10
11 Section 6. The Administrative Code is hereby amended by revising Chapter 12F,
12 consisting of existing Sections 12F.1 to 12F.7, by replacing it with a new Chapter 12F,
13 consisting of Sections 12F.1 to 12F.9 that incorporate parts of existing Chapter 12F, to read
14 as follows:

15
16 **CHAPTER 12F: IMPLEMENTING THE MACBRIDE PRINCIPLES – NORTHERN IRELAND**

17
18 **SEC. 12F.1. INTENT.**

19 ~~—This ordinance is set forth in order to accomplish the following objectives:~~

20 ~~—(a) To declare the City and County of San Francisco's opposition to any form of religious~~
21 ~~discrimination.~~

22 ~~—(b) To influence any discriminatory practices of American corporations doing business in~~
23 ~~Northern Ireland.~~

24 ~~—(c) To support efforts to effect peaceful change with regard to the situation in Northern~~
25 ~~Ireland by means that are prudent and responsible.~~

1 ~~—(d) To send legislation to the government of the United Kingdom stating that the people of~~
2 ~~San Francisco oppose religious discrimination and encouraging the government of the United~~
3 ~~Kingdom to take more pro-active measures in support of affirmative action.~~

4 ~~—(e) To express the support of the Board of Supervisors of the City and County of San~~
5 ~~Francisco for the implementation of the MacBride Principles by companies from the United States who~~
6 ~~conduct business in Northern Ireland.~~

7 **~~SEC. 12F.2. FINDINGS.~~**

8 ~~—The Board of Supervisors hereby makes the following findings:~~

9 ~~—(a) The people of the City and County of San Francisco recognize the moral responsibility of~~
10 ~~communities to continually take political steps toward insuring that full human rights are obtained for~~
11 ~~all people and that religious discrimination is abolished.~~

12 ~~—(b) Northern Ireland is a sectarian state in which the rights of the Irish Catholic minority~~
13 ~~citizens have been severely restricted, particularly in terms of equal employment opportunities. The~~
14 ~~result of this religious discrimination has been an unemployment rate for Catholics which is more than~~
15 ~~twice that of the majority Protestants.~~

16 ~~—(c) The internationally recognized MacBride Principles are aimed at reducing employment~~
17 ~~discrimination in companies doing business in Northern Ireland, currently 26 of which are American~~
18 ~~firms. These MacBride Principles have been formally adopted by numerous state and local~~
19 ~~governments, including the States of New York, Connecticut, New Jersey, Massachusetts, Rhode Island~~
20 ~~and the Cities of New York, Philadelphia, Worcester, Hartford, Cleveland, Detroit, Chicago,~~
21 ~~Providence and Wilmington.~~

22 ~~—(d) The MacBride Principles are authorized by Dr. Sean MacBride, distinguished Irish~~
23 ~~statesman, Nobel Peace Prize laureate and founder of Amnesty International.~~

1 —(e) ~~The City of San Francisco has a tradition of regulating the use of public monies to ensure~~
2 ~~that purchases, deposits and investments are made consistent with moral standards in a manner which~~
3 ~~promotes public welfare.~~

4 —(f) ~~In keeping with this tradition, the Board of Supervisors seeks, through City policy, to~~
5 ~~influence those who do business in Northern Ireland.~~

6 —(g) ~~This legislation should not be construed to discourage future investment in Northern~~
7 ~~Ireland.~~

8 —(h) ~~A peaceful solution of the troubles in Northern Ireland depends on elimination of~~
9 ~~discrimination.~~

10 ***SEC. 12F.3. THE MACBRIDE PRINCIPLES.***

11 —~~The MacBride Principles call for affirmative action to be taken by institutions and companies~~
12 ~~doing business in Northern Ireland, by:~~

13 —A. ~~Increasing the representation of individuals from underrepresented religious groups in~~
14 ~~the work force, including managerial, supervisory, administrative, clerical and technical jobs.~~

15 —~~A work force that is severely unbalanced may indicate prima facie that full equality of~~
16 ~~opportunity is not being afforded all segments of the community in Northern Ireland. Each signatory to~~
17 ~~the MacBride Principles must make every reasonable, lawful effort to increase the representation of~~
18 ~~underrepresented religious groups at all levels of its operations in Northern Ireland.~~

19 —B. ~~Providing adequate security for the protection of minority employees both at the~~
20 ~~workplace and while traveling to and from work.~~

21 —~~While total security can be guaranteed nowhere today in Northern Ireland, each signatory~~
22 ~~to the MacBride Principles must make reasonable, good faith efforts to protect workers against~~
23 ~~intimidation and physical abuse at the workplace. Signatories must also make reasonable, good faith~~
24 ~~efforts to ensure that applicants are not deterred from seeking employment because of fear for personal~~
25 ~~safety at the workplace or while traveling to and from work.~~

1 ~~—C.— Banning provocative or religious or political emblems from the workplace.~~

2 ~~—Each signatory to the MacBride Principles must make reasonable, good faith efforts to~~
3 ~~prevent the display of provocative sectarian emblems at their plants in Northern Ireland.~~

4 ~~—D.— Publicly advertising all job openings and making special recruitment efforts to attract~~
5 ~~applicants from underrepresented religious groups.~~

6 ~~—Signatories to the MacBride Principles must exert special efforts to attract employment~~
7 ~~applications from the sectarian community that is substantially underrepresented in the work force.~~
8 ~~This should not be construed to imply a diminution of opportunity for other applications.~~

9 ~~—E.— Providing that layoff, recall and termination procedures should not, in practice, favor~~
10 ~~particular religious groups.~~

11 ~~—Each signatory to the MacBride Principles must make reasonable, good faith efforts to~~
12 ~~ensure that layoff, recall and termination procedures do not penalize a particular religious group~~
13 ~~disproportionately. Layoff and termination practices that involve seniority solely can result in~~
14 ~~discrimination against a particular religious group if the bulk of employees with greatest seniority are~~
15 ~~disproportionately from another religious group.~~

16 ~~—F.— Abolishing job reservations, apprenticeship restrictions and differential employment~~
17 ~~criteria which discriminate on the basis of religious or ethnic origin.~~

18 ~~—Signatories to the MacBride Principles must make reasonable, good faith efforts to abolish~~
19 ~~all differential employment criteria whose effect is discrimination on the basis of religion. For example,~~
20 ~~job reservations and apprenticeship regulations that favor relatives of current or former employees~~
21 ~~can, in practice, promote religious discrimination if the company's work force has historically been~~
22 ~~disproportionately drawn from another religious group.~~

23 ~~—G.— Developing training programs that will prepare substantial numbers of current minority~~
24 ~~employees for skilled jobs, including the expansion of existing programs and the creation of new~~
25 ~~programs to train, upgrade and improve the skills of minority employees.~~

1 —~~This does not imply that such programs should not be open to all members of the work force~~
2 ~~equally.~~

3 —~~H. Establishing procedures to assess, identify and actively recruit minority employees with~~
4 ~~potential for further advancement.~~

5 —~~This section does not imply that such procedures should not apply to all employees equally.~~

6 —~~I. Appointing a senior management staff member to oversee the company's affirmative action~~
7 ~~efforts and the setting up of timetables to carry out affirmative action principles.~~

8 —~~In addition to the above, each signatory to the MacBride Principles is required to report~~
9 ~~annually to an independent monitoring agency on its progress in the implementation of these~~
10 ~~principles.~~

11 **~~SEC. 12F.4. RETIREMENT BOARD AND SYSTEM.~~**

12 —~~The Retirement Board of the City and County of San Francisco is hereby commended for its~~
13 ~~efforts in support of the MacBride Principles (with the exception of Principle E, as listed in Section~~
14 ~~12F.3 of this Code) and the addition of the Principles to the Social Investment Policy of the Retirement~~
15 ~~Board. The Retirement Board is encouraged to take further steps to support these Principles by moving~~
16 ~~to the next level of the Social Investment Procedures which will be to actively promote proxies which~~
17 ~~would conform with the policy position of the Retirement Board, and by encouraging businesses with~~
18 ~~whom it deals, and in whom it invests, likewise to support the MacBride Principles.~~

19 **~~SEC. 12F.5. CITY CONTRACTS.~~**

20 —~~All contracts entered into by a department head or officer empowered by law to enter into~~
21 ~~contracts on behalf of the City and County for public works or improvements to be performed, for a~~
22 ~~franchise, concession or lease of property, or for goods and services or supplies to be purchased at the~~
23 ~~expense of the City and County, or to be paid out of monies deposited in the Treasury or out of trust~~
24 ~~monies under the control or collected by the City and County, shall contain a statement urging~~
25 ~~companies doing business in Northern Ireland to move toward resolving employment inequities, and~~

1 ~~encouraging them to abide by the MacBride Principles. Each of these statements shall also urge San~~
2 ~~Francisco companies to do business with corporations that abide by the MacBride Principles. Above~~
3 ~~the signature line for use by contractors on each contract shall be placed an acknowledgment~~
4 ~~confirming that they have read and understood the City's statement urging companies doing business in~~
5 ~~Northern Ireland to move toward resolving employment inequities, encouraging compliance with the~~
6 ~~MacBride Principles, and urging San Francisco companies to do business with corporations that abide~~
7 ~~by the MacBride Principles.~~

8 **~~SEC. 12F.6. RESEARCH AND EDUCATION.~~**

9 ~~—(a) The Board of Supervisors shall send, and the Mayor is asked to join in, a letter to all~~
10 ~~United States corporations listed by the Investment Responsibility Research Center as doing business in~~
11 ~~Northern Ireland. This letter shall state the City's support for the MacBride Principles and urge the~~
12 ~~corporations to abide by the Principles. The letter shall ask that each recipient company sign and~~
13 ~~return to the Clerk of the Board of Supervisors a statement agreeing to the Principles. Each letter will~~
14 ~~clearly state that the Board shall evaluate the issue further in one year, and may amend the City's~~
15 ~~policies regarding implementation of the MacBride Principles in light of the progress made with~~
16 ~~regard to the elimination of employment inequities in Northern Ireland.~~

17 ~~—(b) The Clerk of the Board shall report to the Board of Supervisors by July 1, 1989 and by~~
18 ~~January 1, 1990 on the letters that were sent as required in the immediately preceding paragraph, and~~
19 ~~on any responses received. The Controller shall report to the Board of Supervisors by July 1, 1989 and~~
20 ~~by January 1, 1990 on the number of companies with whom the City is doing business who are~~
21 ~~conducting business in Northern Ireland.~~

22 ~~—(c) The City Treasurer shall sent a statement to banks with whom the City has deposits and~~
23 ~~encourage them to do business with corporations that abide by the MacBride Principles.~~

1 ~~—(d) The Board of Supervisors, through the Clerk of the Board, shall send a letter to the~~
2 ~~government of the United Kingdom conveying a copy of this legislation and expressing opposition to~~
3 ~~religious discrimination.~~

4 **SEC. 12F.7. SEVERABILITY.**

5 ~~—The provisions of this ordinance are declared to be separate and severable. The invalidity of any~~
6 ~~clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the~~
7 ~~application thereof to any person or circumstances shall not affect the validity of the remainder of this~~
8 ~~ordinance, or the validity of its application to other persons or circumstances.~~

9
10 **SEC. 12F.1. GENERAL PROVISIONS.**

11 (a) Name of Chapter. This Chapter 12F shall be known as the “MacBride Principles
12 Ordinance.”

13 (b) Findings.

14 (1) The people of the City and County of San Francisco recognize the moral
15 responsibility of communities to continually take political steps toward ensuring that full human rights
16 are obtained for all people and that religious discrimination is abolished.

17 (2) The internationally recognized MacBride Principles are aimed at reducing
18 employment discrimination in companies doing business in Northern Ireland. These MacBride
19 Principles have been formally adopted by numerous state and local governments.

20 (3) The MacBride Principles were endorsed by Dr. Sean MacBride, distinguished
21 Irish statesman, Nobel Peace Prize laureate and founder of Amnesty International.

22 (4) The City has a tradition of regulating the use of public moneys to ensure that
23 purchases, deposits, and investments are made consistent with moral standards in a manner that
24 promotes public welfare.

1 (5) In keeping with this tradition, the Board of Supervisors seeks, through City
2 policy, to influence those who do business in Northern Ireland.

3 (6) This Chapter 12F should not be construed to discourage future investment in
4 Northern Ireland.

5 (7) This Chapter 12F is enacted to accomplish the following objectives: to declare
6 the City's opposition to any form of religious discrimination; to influence any discriminatory practices
7 of American corporations doing business in Northern Ireland; and to support efforts to effect peaceful
8 change with regard to the situation in Northern Ireland by means that are prudent and responsible.

9
10 **SEC. 12F.2. SCOPE OF CHAPTER.**

11 (a) Authority. This Chapter 12F governs the obligations of a person or entity entering into an
12 agreement with the City at the expense of the City or to be paid out of moneys deposited in the Treasury
13 or out of trust moneys under the control of or collected by the City, or agreements for the exclusive use
14 of City-owned property.

15 (b) Agreements Subject to this Chapter. Except as stated in subsection (c), the requirements
16 of this Chapter 12F apply to the following:

17 (1) Agreements entered into under Chapter 6 of the Administrative Code valued
18 above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.

19 (2) Agreements entered into under Chapter 21 of the Administrative Code valued
20 above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.

21 (3) Agreements entered into under Chapter 21G of the Administrative Code valued
22 above the Minimum Competitive Amount as defined in Section 6.40(a) of the Administrative Code.

23 (4) A Lease, as defined in Section 23.2 of the Administrative Code, for the exclusive
24 use of City property for more than 29 consecutive calendar days.

1 (c) **Agreements not Subject to this Chapter.** Notwithstanding subsection (b), an agreement is
2 exempt from all requirements of this Chapter 12F under one or more of the following circumstances:

3 (1) **Government Entity.** This Chapter shall not apply where the prospective contractor
4 is a Government Entity, as defined in Administrative Code Section 1.25(d).

5 (2) **Employee Benefits.** This Chapter shall not apply to agreements where the services
6 are related to employee benefits, including, without limitation, health plans, retirement or deferred
7 compensation benefits, insurance and flexible accounts, provided by or through the San Francisco
8 Health Service System, the Retirement Board, or the Retiree Health Care Trust Fund.

9 (3) **Legal Services.** This Chapter shall not apply to agreements entered into pursuant
10 to settlement of legal proceedings; or to agreements for urgent or specialized advice, consultation, or
11 litigation services for the City Attorney's Office.

12 (4) **Finance.** This Chapter shall not apply to agreements entered into for purposes of
13 issuing or causing the issuance of bonds, notes, bond anticipation notes, commercial paper, certificates
14 of participation or other obligations for borrowed money including without limitation any lease,
15 installment purchase or sale agreement, or other similar financing agreements or ancillary
16 arrangements including, but not limited to, Issue and Paying Agent agreements, Trustee agreements,
17 Forward Purchase and Sale agreements, and Interest Rate Swap agreements.

18 (5) **Emergency.** This Chapter shall not apply to agreements entered into pursuant to
19 an emergency as declared under the authority of Charter Section 3.100 (14), Administrative Code
20 Section 6.60, or Administrative Code Section 21.15.

21 (6) **Real Property.** This Chapter shall not apply to:

22 (A) an agreement that gives a public entity or public utility the right to use or
23 occupy real property owned or controlled by the City;

24 (B) a revocable at-will permit regardless of the ultimate duration of such permit,
25 unless the permittee engages in a for-profit activity on the City property;

1 (C) a regulatory permit, authorization, or approval, or franchise agreement;

2 (D) an agreement to use City property which constitutes a public forum for
3 activities that are primarily for the purpose of espousing or advocating causes or ideas and that are
4 generally recognized as protected by the First Amendment to the U.S. Constitution;

5 (E) an agreement for activities which are primarily recreational in nature, unless
6 the user engages in a for-profit activity on the City property;

7 (F) an easement, month-to-month Lease, or revocable Lease; or

8 (G) a Lease for 1,000 square feet or less of property owned or controlled by the
9 City.

10 (d) **Subcontracts.** Where a single Subcontractor is compensated to directly perform greater
11 than 50% of the value for the Contract, they are subject to the requirements of this Chapter 12F, even
12 when phrased as requirements applicable to “Contractors.” If a Property Contract involves a sublease
13 of more than 50% of the area, the that sublessee is a Subcontractor and subject to the requirements of
14 this Chapter.

15 (e) **Amendment.** If an agreement is amended to increase the compensation in a manner that
16 the cumulative new value exceeds the applicability thresholds in subsection (b), the new agreement as
17 modified will be subject to this Chapter unless otherwise exempted under subsection (c).

18

19 **SECTION 12F.3. DEFINITIONS.**

20 As used in this Chapter 12F, the following words and phrases shall have the meanings
21 indicated herein:

22 “City” means the City and County of San Francisco.

23 “Contract” means an agreement subject to this Chapter as stated in Section 12F.2.

24 “Contracting Department” or “Department” means the City department, office, commission, or
25 other City entity that enters into the applicable Contract on behalf of the City.

1 "Contracting Officer" means the City official or employee who is authorized to execute a
2 contract, either as a Department Head or as a designee appointed in writing by the Department Head,
3 board, or commission as having the authority to sign contracts for the Department.

4 "Contractor" means any person or persons, firm, partnership, corporation, or combination
5 thereof that enters into a contract or property contract with a Department Head or officer empowered
6 by law to enter into contracts or property contracts on behalf of the City.

7 "Department Head" means the duly appointed General Manager, Director, or Executive
8 Director of a City department having charge and management of said department.

9 "MacBride Principles" means a set of nine equal opportunity guidelines for corporations
10 operating in Northern Ireland, fully stated in Section 12F.4(c).

11 "Property Contract" means a written agreement for the exclusive use or occupancy of real
12 property for a term exceeding 29 consecutive days in any calendar year, whether by singular or
13 cumulative instrument, for the operation or use by others of real property owned or controlled by the
14 City for the operation of a business, social, or other establishment or organization, including leases,
15 concessions, franchises, and easements subject to this Chapter as stated in Section 12F.2.

16 "Subcontract" means an agreement to (1) provide goods and/or services, including
17 construction labor, materials, or equipment, to a contractor, if such goods or services are procured or
18 used in the fulfillment of a Contractor's obligations arising from a Contract with the City, or (2)
19 transfer the right to occupy or use all or a portion of a real property interest subject to a Property
20 Contract to a Subcontractor and pursuant to which the contractor remains obligated under the
21 Property Contract, and which in either case is subject to the provisions of this Chapter 12F pursuant to
22 Section 12F.2(d).

23 "Subcontractor" means any person or persons, firm, partnership, corporation, or any
24 combination thereof, that enters into a Subcontract with a Contractor that is subject to the provisions of
25 this Chapter pursuant to Section 12F.2(d).

1
2 **SEC. 12F.4. REQUIREMENTS AND OBLIGATIONS.**

3 **(a) City Contracting Departments.** *All Contracts awarded by the City shall contain a*
4 *statement urging companies doing business in Northern Ireland to move toward resolving employment*
5 *inequities, and encouraging them to abide by the MacBride Principles. Each of these statements shall*
6 *also urge San Francisco companies to do business with corporations that abide by the MacBride*
7 *Principles.*

8 **(b) Obligations of City Contractors.** *Contractors must acknowledge that they have read and*
9 *understood the City's statement urging companies doing business in Northern Ireland to move toward*
10 *resolving employment inequities, encouraging compliance with the MacBride Principles, and urging*
11 *San Francisco companies to do business with corporations that abide by the MacBride Principles.*

12 **(c) MacBride Principles.** *The MacBride Principles call for affirmative action to be taken*
13 *by institutions and companies doing business in Northern Ireland, by:*

14 **(1) Increasing the representation of individuals from underrepresented religious**
15 *groups in the work force, including managerial, supervisory, administrative, clerical, and technical*
16 *jobs. A work force that is severely unbalanced may indicate prima facie that full equality of opportunity*
17 *is not being afforded all segments of the community in Northern Ireland. Each signatory to the*
18 *MacBride Principles must make every reasonable, lawful effort to increase the representation of*
19 *underrepresented religious groups at all levels of its operations in Northern Ireland.*

20 **(2) Providing adequate security for the protection of minority employees both at the**
21 *workplace and while traveling to and from work. While total security can not be guaranteed in*
22 *Northern Ireland, each signatory to the MacBride Principles must make reasonable, good-faith efforts*
23 *to protect workers against intimidation and physical abuse at the workplace. Signatories must also*
24 *make reasonable, good-faith efforts to ensure that applicants are not deterred from seeking*
25 *employment because of fear for personal safety at the workplace or while traveling to and from work.*

1 (3) Banning provocative or religious or political emblems from the workplace. Each
2 signatory to the MacBride Principles must make reasonable, good-faith efforts to prevent the display of
3 provocative sectarian emblems at their plants in Northern Ireland.

4 (4) Publicly advertising all job openings and making special recruitment efforts to
5 attract applicants from underrepresented religious groups. Signatories to the MacBride Principles
6 must exert special efforts to attract employment applications from the sectarian community that is
7 substantially underrepresented in the work force. This should not be construed to imply a diminution of
8 opportunity for other applications.

9 (5) Providing that layoff, recall, and termination procedures should not, in practice,
10 favor particular religious groups. Each signatory to the MacBride Principles must make reasonable,
11 good-faith efforts to ensure that layoff, recall, and termination procedures do not penalize a particular
12 religious group disproportionately. Layoff and termination practices that involve seniority solely can
13 result in discrimination against a particular religious group if the bulk of employees with greatest
14 seniority are disproportionately from another religious group.

15 (6) Abolishing job reservations, apprenticeship restrictions, and differential
16 employment criteria which discriminate on the basis of religious or ethnic origin. Signatories to the
17 MacBride Principles must make reasonable, good-faith efforts to abolish all differential employment
18 criteria whose effect is discrimination on the basis of religion. For example, job reservations and
19 apprenticeship regulations that favor relatives of current or former employees can, in practice,
20 promote religious discrimination if the company's work force has historically been disproportionately
21 drawn from another religious group.

22 (7) Developing training programs that will prepare substantial numbers of current
23 minority employees for skilled jobs, including the expansion of existing programs and the creation of
24 new programs to train, upgrade, and improve the skills of minority employees. This does not imply that
25 such programs should not be open to all members of the work force equally.

1 (8) Establishing procedures to assess, identify, and actively recruit minority
2 employees with potential for further advancement. This does not imply that such procedures should not
3 apply to all employees equally.

4 (9) Appointing a senior management staff member to oversee the company's
5 affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

6 In addition to the above nine principles, each signatory to the MacBride Principles is required
7 to report annually to an independent monitoring agency on its progress in the implementation of these
8 principles.

9
10 **SEC. 12F.5. ADMINISTRATION AND REMEDIES.**

11 (a) Administration of Chapter. Departments shall implement the requirements of this
12 Chapter 12F independently. The City Attorney shall assist with drafting a Contract clause to effectuate
13 this Chapter.

14 (b) Enforcement and Remedies. Other than reading and acknowledging the City's
15 statement in Section 12F.4(a), the obligations of this Chapter 12F are hortatory. Contractors are urged
16 to implement the MacBride Principles but are not obligated to do so.

17
18 **SEC. 12F.6. WAIVERS AND EXCEPTIONS.**

19 (a) Waivers by Department. The Contracting Officer may waive in whole or in part the
20 requirements of this Chapter 12F in the following circumstances:

21 (1) Sole Source. When the Contracting Officer finds, upon the advice of the
22 awarding authority, that needed goods, services, construction services for a public work or
23 improvement, or interest in or right to use real property are available only from a sole source.

24 (2) Only One Qualified Bidder. When the Contracting Officer finds, upon the
25 advice of the awarding authority, that there is only one qualified, responsive bidder or proposer who

1 can perform under the proposed agreement and who is not at that time disqualified from doing business
2 with the City.

3 (3) **No Compliant Bidders.** When the Contracting Officer finds, upon the advice of
4 the awarding authority, that there are no qualified responsive bidders or prospective contractors who
5 could be certified as being in compliance with the requirements of this Chapter 12F.

6 (4) **Adverse Impact on Services.** Where the Contracting Officer determines that the
7 public interest warrants the granting of a waiver because application of this Chapter 12F would have
8 an adverse impact on services or a substantial adverse financial impact on the City; or would
9 circumvent the purposes of this Chapter.

10 (5) **Cooperative Purchasing.** When an agreement has been procured under
11 Administrative Code Sections 6.77 or 21.16, and the Contracting Officer finds that application of this
12 Chapter 12F would mean (A) a purchase under such arrangement would substantially reduce the
13 City's cost of purchasing such services; (B) a purchase under such an arrangement is in the best
14 interest of the City; and (C) adherence to the requirements of this Chapter 12F would prevent the
15 awarding agency from entering into such an agreement.

16 (b) **Waiver by Treasurer for Investments.** This Chapter 12F shall not apply to the
17 following; (1) the investment of trust moneys or agreements relating to the management of trust assets,
18 (2) City moneys invested in the City's investment pool, or (3) the investment of City moneys, where the
19 Treasurer finds that:

20 (A) No person, entity, or financial institution doing business in the City that is in
21 compliance with this Chapter is capable of performing the desired transaction(s); or

22 (B) Applying this Chapter would, in the opinion of the Treasurer, violate the
23 Treasurer's fiduciary duties.

24 (c) **Waiver by Public Utilities Commission.** The General Manager of the Public Utilities
25 Commission may waive the requirements of this Chapter 12F where the Contractor is providing

1 wholesale or bulk water, power, or natural gas, the conveyance or transmission of same, or ancillary
2 services such as spinning reserve, voltage control, or loading scheduling, as required for assuring
3 reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public
4 Utilities Commission; provided, that the purchase of same may not practically be accomplished
5 through the City's standard competitive bidding procedures; and further provided, that this exemption
6 shall not apply to Contractors or franchisees providing direct, retail services to end users within the
7 City.

8 (d) **Documentation.** All proposed waivers must set forth the reasons the Contracting Officer
9 is requesting the waiver.

10
11 **SEC. 12F.7. SUPERSEDING AUTHORITY.**

12 (a) **Federal or State Law Preemption.** The requirements of this Chapter 12F shall not be in
13 effect in the event they conflict with federal or State laws, or the City Attorney determines they are
14 reasonably likely to do so. Nothing in this Chapter shall be interpreted or applied so as to create any
15 requirement, power, or duty in conflict with any federal or State law.

16 (b) **Grant or Subvention.** If the requirements of this Chapter 12F would violate or are
17 inconsistent with the terms or conditions of a grant, subvention, or agreement with a public agency or
18 the instructions of an authorized representative of any such agency with respect to any such grant,
19 subvention, or agreement, the requirements of this Chapter shall not be in effect.

20
21 **SECTION 12F.8. SEVERABILITY.**

22 If any section, subsection, sentence, clause, phrase, or word of this Chapter 12F, or any
23 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
24 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
25 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have

1 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not
2 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
3 application thereof would be subsequently declared invalid or unconstitutional.

4
5 **SEC. 12F.9. OPERATIVE DATE AND SUNSET.**

6 (a) **Operative Date.** This Chapter 12F shall become operative on July 1, 2025 and shall
7 have prospective effect only.

8 (b) **Sunset.** Unless extended by ordinance, this Chapter 12F shall expire by operation of law
9 on July 1, 2035. After the expiration, the City Attorney shall be authorized to cause this Chapter to be
10 removed from the Administrative Code.

11
12 Section 7. The Administrative Code is hereby amended by repealing Chapter 12J,
13 consisting of Sections 12J.1 to 12J.10, as follows:

14
15 **~~CHAPTER 12J: CITY BUSINESS WITH BURMA PROHIBITED~~**

16
17 **~~SEC. 12J.1. FINDINGS.~~**

18 ~~—(a) Because the quality of life of all people is diminished when peace and justice are not fully~~
19 ~~present in the world, local communities have the responsibility to take positive steps to support the rule~~
20 ~~of law and to help end injustices and egregious violations of human rights wherever they may occur.~~

21 ~~—(b) The nation of Burma (Myanmar) has institutionalized torture and rape as political~~
22 ~~instruments, and embarked upon campaigns of forcible relocation, forced labor and slavery, and~~
23 ~~persecution of ethnic minorities, and other human rights violations, thereby denying the majority of the~~
24 ~~population the right to participate in the political process, to benefit from the system of justice, or to~~
25 ~~exercise economic rights.~~

1 —(c)—The military regime of Burma (Myanmar) has implemented a reign of terror preventing
2 political participation by various methods, including (1) ignoring the results of the 1990 elections in
3 which pro-democracy candidates received over 60 percent of the vote and over 80 percent of the seats
4 in the government; (2) forcing the imprisonment, death, or exile of many of these candidates; (3) failing
5 to convene a Constitutional Convention as promised in 1990; (4) imposing martial law barring
6 freedom of the press and gatherings of more than five people and declaring that "martial law means no
7 law at all"; (5) forcibly relocating hundreds of thousands of people, including those in neighborhoods
8 with strong pro-democracy support, ethnic minorities including the Muslim Rohingyas, and indigenous
9 groups in areas rich with extractive resources, to locales in which malaria and other diseases are
10 rampant and where food, water and sewerage are scarce, if available at all; (6) barring all labor and
11 trade union organizing and implementing forcible labor for the purposes of road and tourist site
12 construction, portering of military goods and human mine-sweeping; (7) pressuring the governments of
13 Thailand and Bangladesh to force refugees back to Burma (Myanmar) in exchange for continuing sales
14 of resources such as timber, fishing concessions and natural gas; (8) harming men, women and
15 children of Burma by pillaging villages and townships and by attacking and burning refugee camps;
16 and (9) persecuting Buddhist monks for their support of pro-democratic organizing.

17 —(d)—The military regime is currently attempting to enhance its standing in the international
18 community and to increase the flow of foreign money and investment through various means, including
19 the development of massive natural gas fields offshore and the construction of a gas pipeline through
20 areas traditionally held by ethnic minorities, forcing their displacement.

21 —(e)—The rightfully elected leadership of Burma, the National Coalition Government of the
22 Union of Burma (NCGUB), winners of the 1990 elections, living in exile, have called upon the world
23 community to impose economic and arms sanctions against the State Law and Order Restoration
24 Council (SLORC). The NCGUB's call for sanctions is supported by Nobel Peace Prize Laureates Osear
25

1 ~~Arias Sanchez, the Dalai Lama, Mairead McGuire, Archbishop Desmond Tutu, Betty Williams,~~
2 ~~Adolpho Perez Esquivel and others, and by the AFL-CIO.~~

3 ~~—(f) The United Nations and elected representatives of the United States, including President~~
4 ~~Clinton, the Senate, and the House of Representatives, have repeatedly shown support for the peoples~~
5 ~~of Burma, urging SLORC to release all political prisoners, to respect the results of the May 1990~~
6 ~~elections and to commit to genuine democratic reforms. Section 138 of the U.S. Customs and Trade Act~~
7 ~~of 1990 instructs the president to impose comprehensive trade sanctions against Burma's military~~
8 ~~regime. Section 2651 (United States Policy Concerning the Dictatorship in Burma) of the sanctions~~
9 ~~amendment to the 1996 foreign aid bill, H.R. 1564, has been approved by the Senate and bans all U.S.~~
10 ~~trade with, investment in and travel to Burma (Myanmar).~~

11 ~~—(g) The United States Supreme Court has upheld the power of a municipality to make~~
12 ~~legitimate economic decisions without being subject to the restraints of the Commerce Clause when it~~
13 ~~participates in the marketplace as opposed to exerting its regulatory powers.~~

14 ~~—(h) The City and County of San Francisco declares the right to measure the moral character~~
15 ~~of its business partners in determining with whom it seeks to have business relations or to whom it~~
16 ~~grants privileges.~~

17 ~~—(i) The system of oppression by SLORC is illegal and contrary to international laws and~~
18 ~~covenants. The conduct of the SLORC being morally repugnant to the citizens of San Francisco, the~~
19 ~~Board of Supervisors does hereby set forth a municipal policy prohibiting contracts for personal~~
20 ~~services or the construction of public works or improvements with those who do business in Burma~~
21 ~~(Myanmar), and prohibiting the purchase of any commodities produced in Burma (Myanmar), or~~
22 ~~provided by those who do business, maintain facilities, or are organized under SLORC's rule.~~

23 **SEC. 12J.2. DEFINITIONS.**

24 ~~—As used in this Chapter, the following words and phrases shall have the meanings indicated~~
25 ~~herein:~~

1 ~~—(a) "City" or "City and County" shall mean the City and County of San Francisco, or any~~
2 ~~department, board, commission or agency thereof.~~

3 ~~—(b) "Commodities" shall include, but not be limited to, goods, commodities, materials,~~
4 ~~supplies, vehicles, machinery, and equipment.~~

5 ~~—(c) "Contract" shall mean an agreement with a nongovernmental entity for commodities,~~
6 ~~contractual services or contracts for the construction of public works or improvements to be purchased~~
7 ~~at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of~~
8 ~~trust moneys under the control of or collected by the City and County.~~

9 ~~—(d) "Contracting officer" shall mean that officer or employee of the City authorized under the~~
10 ~~Charter, the Administrative Code or the Municipal Code, to enter into a contract on behalf of the City.~~

11 ~~—(e) "Contractual services," for purposes of Section 12J.3, shall mean investment counseling,~~
12 ~~underwriting, acting as a trustee or escrow agent, providing any consulting advice or assistance under~~
13 ~~a professional or personal service contract, and services provided pursuant to any contract subject to~~
14 ~~Charter Section 10.104(15). "Contractual services" shall not include purchase orders, blanket~~
15 ~~purchase orders or other agreements of the City for the purchase of a commodity under Section 12J.4.~~

16 ~~—(f) "The government of Burma (Myanmar)" or "Burma (Myanmar)" shall mean any public or~~
17 ~~quasi-public entity sanctioned by the State Law and Order Restoration Council ("SLORC") operating~~
18 ~~within Burma, including, but not limited to, municipal, provincial, or other governing bodies operating~~
19 ~~as proxy of SLORC, including all departments and agencies of such bodies, public utilities, public~~
20 ~~facilities, or any national corporation in which the public sector of Burma (Myanmar) has a financial~~
21 ~~interest or operational responsibilities.~~

22 ~~—(g) "Prohibited person or entity" shall mean any private person or entity designated by the~~
23 ~~Investor Responsibility Research Center ("IRRC") as having investments or employees in Burma, or~~
24 ~~any private person or entity that licenses any person or entity organized under the laws of Burma~~
25 ~~(Myanmar) to produce and market its products. The Purchaser (1) shall develop a list of prohibited~~

1 ~~persons or entities pursuant to the terms of this paragraph, and (2) shall have the authority to delete~~
2 ~~from such list any person or entity designated by the IRRC as having investments or employees in~~
3 ~~Burma if any such entity demonstrates to the Purchaser's satisfaction that such designation is~~
4 ~~erroneous.~~

5 ~~—(h) "Purchaser" shall mean the Purchaser of the City and County or any authorized~~
6 ~~representative of that official.~~

7 **~~SEC. 12J.3. CONTRACTUAL SERVICES, REAL AND PERSONAL PROPERTY~~**
8 **~~AGREEMENTS.~~**

9 ~~—(a) Prohibited Transactions. The City shall not enter into, amend, modify or renew any~~
10 ~~agreement for (i) contractual services, (ii) public works or improvements, or (iii) any lease, permit,~~
11 ~~license or other agreement for the use or sale of the City's real or personal property, with any~~
12 ~~prohibited person or entity.~~

13 ~~—(b) Contract Condition. Each contract for services or for the use or sale of the City real or~~
14 ~~personal property shall include as a material condition to that agreement the following paragraph:~~

15 ~~—Contractor is not the government of Burma (Myanmar), a person or business entity organized~~
16 ~~under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(g) of~~
17 ~~the San Francisco Administrative Code. The City reserves the right to terminate this contract for~~
18 ~~default if the contractor violates the terms of this clause.~~

19 ~~—(c) A person or entity shall not be a prohibited person or entity under Subsection (a) above~~
20 ~~so long as such person or entity is only performing contractual services necessary to complete a~~
21 ~~specific project in Burma (Myanmar) initiated prior to May 1, 1996, so long as the scope of the~~
22 ~~services is not increased by any modification of an existing project contract after May 1, 1996, and~~
23 ~~provided that the term, or remaining term of the services contract is not greater than five years from~~
24 ~~May 1, 1996.~~

25 ~~—(d) Nonapplicability; Findings; Alternate Selection.~~

1 — (1) ~~Section 12J.3 shall not apply to bid packages advertised and made available to the~~
2 ~~public or any competitive and sealed bids received by the City or to contracts for contractual services~~
3 ~~entered into prior to May 1, 1996.~~

4 — (2) ~~The provisions of Section 12J.3 shall not apply to contracts for \$10,000 or less; to~~
5 ~~leases, permits, licenses or other agreements for the use of the City's real or personal property entered~~
6 ~~into prior to May 1, 1996, or having a monthly rental payment of \$100 or less or having a duration of~~
7 ~~30 days or less in any calendar year, whether by single or cumulative instrument; to any transaction~~
8 ~~allowing access to or use of City real property upon purchase of an admission ticket; or to permits for~~
9 ~~the use of City streets for temporary periods of construction of improvements on abutting private real~~
10 ~~property; to leases, permits, licenses or other agreements that renew existing easements or rights-of-~~
11 ~~way over real property owned by the City between the City and a party holding the easement or right-~~
12 ~~of-way as of May 1, 1996, provided that the agreements do not permit the building of new facilities on~~
13 ~~City land or a change in the character of its use.~~

14 — (3) ~~Section 12J.3 shall not apply to any amendment, modification or renewal of a contract~~
15 ~~entered into prior to May 1, 1996 where necessary for the timely completion of a project and not~~
16 ~~involving an increase in the total moneys to be paid by the City under that contract.~~

17 — (4) ~~The provisions of Section 12J.3 shall not apply where the contracting officer finds that:~~

18 — (A) ~~No person or entity doing business in the City which is not a prohibited person or~~
19 ~~entity under Section 12J.2(g) is capable of performing the desired function(s); or~~

20 — (B) ~~The City will incur a financial loss which in the opinion of the contracting officer~~
21 ~~would violate his or her fiduciary duties. For purposes of this Section, prima facie evidence of a breach~~
22 ~~of fiduciary duty shall mean a financial loss of 10 percent of a contract's value or \$10,000, whichever~~
23 ~~is less; or~~

24 — (C) ~~The inclusion or application of such provisions will violate or be inconsistent with~~
25 ~~the terms or conditions of a grant, subvention or contract with an agency of the State of California or~~

1 ~~the United States or the instructions of an authorized representative of any such agency with respect to~~
2 ~~any such grant, subvention or contract; or~~

3 ~~—(D) The inclusion or application of such provisions will violate or be inconsistent with~~
4 ~~the laws, rules or regulations of the State of California or the United States of America.~~

5 **~~SEC. 12J.4. PURCHASE OF COMMODITIES.~~**

6 ~~—(a) Prohibited Transactions.~~

7 ~~—(1) The City shall not purchase any commodity from the government of Burma (Myanmar),~~
8 ~~or a prohibited person or entity.~~

9 ~~—(2) The City shall not purchase any commodity made in Burma (Myanmar). A commodity~~
10 ~~shall be considered made in Burma (Myanmar) if it is manufactured, produced or grown in Burma~~
11 ~~(Myanmar), or if further work or material manufactured, produced or grown in Burma (Myanmar) is~~
12 ~~added to a commodity which effects a substantial transformation of that commodity. Interpretation of~~
13 ~~this Section shall be consistent with statutes and regulations of the United States regarding markings of~~
14 ~~commodities by country of origin pursuant to 19 CFR 134.~~

15 ~~—(3) Performing contractual services necessary to complete a specific project in Burma~~
16 ~~(Myanmar) initiated prior to May 1, 1996, shall not be deemed doing business in Burma (Myanmar), so~~
17 ~~long as the scope of the services is not increased by any modification of any existing project contract~~
18 ~~after May 1, 1996, and provided that the term, or remaining term of the services contract is not greater~~
19 ~~than five years from May 1, 1996.~~

20 ~~—(b) Contract Condition. Each contract for the supply of a commodity to the City shall include~~
21 ~~as a material condition to that agreement the following paragraph in the contract:~~

22 ~~— Seller is not the government of Burma (Myanmar), a person or business entity organized~~
23 ~~under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(g) of~~
24 ~~the San Francisco Administrative Code. The item(s) sold in this contract (purchase order) to the City~~
25 ~~and County of San Francisco is (are) not made in Burma (Myanmar) as defined in Section 12J.4(a) of~~

1 ~~the San Francisco Administrative Code. The City reserves the right to terminate this contract for~~
2 ~~default if the contractor furnishes items made in Burma (Myanmar).~~

3 ~~—(c) Exceptions. This Section shall not apply to:~~

4 ~~—(1) Any binding contractual obligation for purchase of commodities entered into prior to~~
5 ~~May 1, 1996;~~

6 ~~—(2) The purchase of any commodity for which Burma (Myanmar) is the only source; or any~~
7 ~~commodity made outside Burma (Myanmar) which cannot be obtained except through a prohibited~~
8 ~~person or entity;~~

9 ~~—(3) Any contract for the purchase of commodities for \$10,000 or less;~~

10 ~~—(4) Where the contracting officer finds that no person or entity doing business in the City~~
11 ~~that is not a prohibited person or entity is capable of providing the desired commodity;~~

12 ~~—(5) Any contract, purchase order or blanket purchase order wherein the City will incur a~~
13 ~~financial loss which in the opinion of the contracting officer would violate his or her fiduciary duties.~~

14 ~~For purposes of this Section, prima facie evidence of a breach of fiduciary duty shall mean a financial~~
15 ~~loss of 10 percent of a contract's value or \$10,000, whichever is less; or~~

16 ~~—(6) Where the inclusion or application of such provisions will violate or be inconsistent~~
17 ~~with the terms or conditions of a grant, subvention or contract with an agency of the State of California~~
18 ~~or the United States or the instructions of an authorized representative of any such agency with respect~~
19 ~~to any such grant, subvention or contract.~~

20 **~~SEC. 12J.5. RULES AND REGULATIONS.~~**

21 ~~—(a) The Purchaser or department head of a department, board or commission authorized to~~
22 ~~sell or lease City-owned property, whichever is appropriate, may promulgate any rules and regulations~~
23 ~~necessary or appropriate to carry out the purposes and requirements of this ordinance. Each City~~
24 ~~department, board and commission shall cooperate with, and provide in writing to the Purchaser, all~~
25 ~~information necessary for the Purchaser to promulgate such rules and regulations.~~

1 —(b) ~~All contracts and other similar written agreements shall incorporate this Chapter by~~
2 ~~reference whenever applicable and shall provide that the failure of any bidder or contractor to comply~~
3 ~~with any of its requirements shall be deemed a material breach of contract.~~

4 **~~SEC. 12J.6. PUBLIC RECORDS.~~**

5 —~~All reports prepared pursuant to the requirements of this ordinance shall be made available~~
6 ~~for public inspection except those prepared for purposes of litigation.~~

7 **~~SEC. 12J.7. PENALTIES.~~**

8 —(a) ~~Whenever a person or entity being considered for a contract or under contract with the~~
9 ~~City makes representations regarding its involvement in Burma (Myanmar) that are found by the City~~
10 ~~after an investigation by the contracting officer and the City Attorney to be false, the City shall have the~~
11 ~~authority to impose such sanctions or take such other actions as are designed to ensure compliance~~
12 ~~with the provisions of this Chapter which shall include, but are not limited to:~~

13 —(1) ~~Refusal to certify the award of a contract;~~

14 —(2) ~~Order the suspension of a contract;~~

15 —(3) ~~Order the withholding of funds;~~

16 —(4) ~~Disqualification of a bidder or contractor from eligibility for providing commodities or~~
17 ~~services to the City for a period not to exceed five years, with a right to review and reconsideration by~~
18 ~~the contracting City department after two years upon a showing of corrective action indicating~~
19 ~~violations are not likely to reoccur.~~

20 —(b) ~~All contracts to which this ordinance applies shall provide that in the event any bidder or~~
21 ~~contractor fails to comply in good faith with any of the provisions of this Chapter the bidder or~~
22 ~~contractor shall be liable for liquidated damages for each violation in an amount equal to the bidder's~~
23 ~~or contractor's net profit on the contract, or 10 percent of the total amount of the contract or \$1,000~~
24 ~~whichever is greatest. All contracts shall also contain a provision whereby the bidder or contractor~~
25

1 ~~acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon~~
2 ~~demand and may be set off against any moneys due to the bidder or contractor from any City contract.~~

3 **~~SEC. 12J.8. IMPLEMENTATION REPORTS.~~**

4 ~~—The Purchaser shall provide a written report on the implementation of this ordinance to the~~
5 ~~Board of Supervisors as follows:~~

6 ~~—(1) At the first Board of Supervisors meeting held one year after this Chapter has been in~~
7 ~~effect; and~~

8 ~~—(2) Annually thereafter.~~

9 ~~—Each City department, board and commission shall provide in writing all information~~
10 ~~requested by the Purchaser as necessary to prepare such reports.~~

11 **~~SEC. 12J.9. SEVERABILITY.~~**

12 ~~—If any section, subsection, clause, phrase or portion of this Chapter is for any reason held~~
13 ~~invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such~~
14 ~~portion shall be deemed a separate, distinct and independent provision and such holding shall not~~
15 ~~affect the validity of the remaining portions thereof.~~

16 **~~SEC. 12J.10. SUSPENSION.~~**

17 ~~—The provisions of Chapter 12J, prohibiting the City from doing business with Burma, are~~
18 ~~hereby suspended. Until enactment of legislation withdrawing this suspension, the provisions of~~
19 ~~Chapter 12J shall have no force or effect and no City officer or employee shall enforce or implement~~
20 ~~the provisions of Chapter 12J.~~

21
22 Section 8. The Labor and Employment Code is hereby amended by repealing Article
23 141, consisting of Sections 141.1 to 141.9, as follows:

24 **~~ARTICLE 141: SALARY HISTORY~~**

1 **SEC. 141.1. DEFINITIONS.**

2 —*As used in this Article 141, the following terms have the following meanings:*

3 —*“Applicant” shall mean a person applying for Employment to be performed on a Contract or*
4 *Property Contract or in furtherance of a Contract or Property Contract, and whose application, in*
5 *whole or part, will be solicited, received, processed or considered, whether or not through an*
6 *interview, in the City or on City property. “Applicant” shall not include a person applying for*
7 *Employment with their current Employer.*

8 —*“City” shall mean City and County of San Francisco.*

9 —*“Contract” shall mean an agreement between a City department and any person or entity that*
10 *provides, at the expense of the City, for public works or public improvements to be purchased under*
11 *Chapter 6 of the Administrative Code, or for commodities or services to be purchased under Chapter*
12 *21 of the Administrative Code. “Contract” shall not include:*

13 —*(a) Agreements for the investment of trust money or relating to the management of trust*
14 *assets, agreements to invest City moneys in U.S. government securities, or agreements for the*
15 *investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a*
16 *fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing*
17 *public assets; or*

18 —*(b) Agreements entered into for underwriting services for the purchase and sale of City*
19 *bonds, notes, and other forms of indebtedness; or*

20 —*(c) Agreements advertised, solicited, or initiated prior to the Operative Date of this Article*
21 *141, including amendments to existing Contracts; or*

22 —*(d) Agreements for a cumulative amount of \$10,000 or less per Contractor in each fiscal*
23 *year; or*

24 —*(e) Agreements with a public entity or public utility.*

1 —~~“Contractor” shall mean any person or persons, firm, partnership, corporation, or~~
2 ~~combination thereof who enters into a Contract or Property Contract with the City.~~

3 —~~“Employer” shall mean any Contractor or Subcontractor, whether an individual, firm,~~
4 ~~corporation, partnership, labor organization, group of persons, association, or other organization~~
5 ~~however organized. “Employer” includes job placement and referral agencies and other employment~~
6 ~~agencies working on behalf of a Contractor or Subcontractor. “Employer” does not include any unit of~~
7 ~~local, state, or federal government. The physical location of the employment or prospective employment~~
8 ~~of an Applicant must be at least eight hours per week on City property.~~

9 —~~“Employment” shall mean any occupation, vocation, job, or work, including but not limited to~~
10 ~~temporary or seasonal work, part-time work, contracted work, contingent work, work on commission,~~
11 ~~and work through the services of a temporary or other employment agency, for which the Applicant is~~
12 ~~to receive a Salary. Employment doesn’t include work as an independent contractor.~~

13 —~~“Inquire” shall mean any direct or indirect statement, question, prompting, or other~~
14 ~~communication, orally or in writing, personally or through an agent, to gather information from or~~
15 ~~about an Applicant, using any mode of communication, including but not limited to application forms~~
16 ~~and interviews.~~

17 —~~“OLSE” shall mean the Office of Labor Standards Enforcement or any successor department~~
18 ~~or office. The “Director” of OLSE shall mean the head of OLSE.~~

19 —~~“Property Contract” shall mean a lease, permit, or license, through which the City gives to a~~
20 ~~person or entity the right to exclusively use or occupy real property owned or controlled by the City for~~
21 ~~a period of more than 29 days in any calendar year. “Property Contract” shall not mean:~~

22 —~~(a) An agreement with a public entity or public utility;~~

23 —~~(b) A revocable at-will permit regardless of the ultimate duration of such permit, unless the~~
24 ~~permittee engages in a for-profit activity on the City property;~~

1 —~~(c) Regulatory permits, including street or public right of way construction, excavation and~~
2 ~~use permits;~~

3 —~~(d) Agreements governing the use of City property which constitutes a public forum for~~
4 ~~activities that are primarily for the purpose of espousing or advocating causes or ideas and that are~~
5 ~~generally recognized as protected by the First Amendment to the U.S. Constitution;~~

6 —~~(e) Agreements for activities which are primarily recreational in nature, unless the user~~
7 ~~engages in a for-profit activity on the City property; or~~

8 —~~(f) Agreements advertised, solicited, or initiated prior to the Operative Date of this Article~~
9 ~~141, including amendments to existing Contracts.~~

10 —~~“Salary” shall mean an Applicant’s financial compensation in exchange for labor, including~~
11 ~~but not limited to wages, commissions, and any monetary emolument.~~

12 —~~“Salary History” shall mean an Applicant’s current and past Salary in the Applicant’s~~
13 ~~current position, or in a prior position with the current Employer or a prior Employer.~~

14 —~~“Subcontract” shall mean an agreement to (a) provide goods and/or services, including~~
15 ~~construction labor, materials or equipment, to a Contractor, if such goods or services are procured or~~
16 ~~used in the fulfillment of the Contractor’s obligations arising from a Contract with the City, or (b) to~~
17 ~~transfer the right to occupy or use all or a portion of a real property interest subject to a Property~~
18 ~~Contract to a Subcontractor and pursuant to which the Contractor remains obligated under the~~
19 ~~Property Contract.~~

20 —~~“Subcontractor” shall mean any person or persons, firm, partnership, corporation or any~~
21 ~~combination thereof who enters into a Subcontract with a Contractor. Such term shall include any~~
22 ~~person or entity who enters into an agreement with any Subcontractor for the performance of 10% or~~
23 ~~more of any Subcontract.~~

24 ~~**SEC. 141.2. APPLICABILITY OF ARTICLE TO CONTRACTORS AND**~~
25 ~~**SUBCONTRACTORS.**~~

1 ~~The requirements of this Article 141 shall only apply to a Contractor's or Subcontractor's~~
2 ~~operations to the extent those operations are in furtherance of performing a Contract or Property~~
3 ~~Contract with the City. Accordingly, the protections of this Article apply only to applicants and~~
4 ~~employees who would be or are performing work in furtherance of performing a Contract or Property~~
5 ~~Contract with the City.~~

6 ~~**SEC. 141.3. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE**~~
7 ~~**PROVISION REQUIRING COMPLIANCE WITH THIS ARTICLE.**~~

8 ~~All contracting agencies of the City, or any department thereof, acting for or on behalf of the~~
9 ~~City, shall include in all Contracts and Property Contracts a provision requiring Contractor's~~
10 ~~compliance with this Article 141 and shall require such Contractor to include a similar provision in all~~
11 ~~Subcontracts executed and amended thereunder, and failure to do so shall constitute a material breach~~
12 ~~of contract.~~

13 ~~**SEC. 141.4. PROHIBITIONS ON USE OF SALARY HISTORY IN HIRING.**~~

14 ~~(a) An Employer shall not Inquire about an Applicant's Salary History.~~

15 ~~(b) An Employer shall not consider an applicant's Salary History as a factor in determining~~
16 ~~whether to offer Employment or what Salary to offer an Applicant.~~

17 ~~(c) An Employer shall not refuse to hire, or otherwise disfavor, injure, or retaliate against an~~
18 ~~Applicant for not disclosing his or her Salary History to the Employer.~~

19 ~~(d) An Employer shall not release the Salary History of any current or former employee to~~
20 ~~that person's Employer or prospective Employer without written authorization from the current or~~
21 ~~former employee unless the release of Salary History is required by law, is part of a publicly available~~
22 ~~record, or is subject to a collective bargaining agreement.~~

23 ~~(e) Nothing in this Article 141 shall prohibit an Applicant from voluntarily and without~~
24 ~~prompting disclosing Salary History.~~

1 ~~—(f) Where an Applicant voluntarily and without prompting discloses Salary History to a~~
2 ~~prospective Employer, nothing in this Article 141 shall prohibit that Employer from considering that~~
3 ~~voluntarily disclosed Salary History in determining Salary for such Applicant or verifying such~~
4 ~~Applicant's Salary History.~~

5 ~~—(g) An Employer may, without inquiring about Salary History, engage in discussion with the~~
6 ~~Applicant about the Applicant's expectations with respect to Salary, including but not limited to~~
7 ~~unvested equity or deferred compensation or bonus that an Applicant would forfeit or have cancelled~~
8 ~~by virtue of the Applicant's resignation from their current Employer.~~

9 ~~—(h) Nothing in this Article 141 shall prohibit an Employer from verifying non-Salary related~~
10 ~~information disclosed by the Applicant or from conducting a background check provided that when~~
11 ~~such verification or background check discloses the Applicant's Salary History, the disclosed Salary~~
12 ~~History shall not be considered for purposes of determining the Salary to be offered to the Applicant~~
13 ~~during the hiring process.~~

14 **~~SEC. 141.5. NONAPPLICABILITY, EXCEPTIONS, AND WAIVERS.~~**

15 ~~—(a) Section 141.4 shall not apply to Contracts, Subcontracts, or Property Contracts in the~~
16 ~~following circumstances:~~

17 ~~—(1) The contracting City department determines that needed services under the applicable~~
18 ~~Contract are available only from one source pursuant to applicable provisions of the Administrative~~
19 ~~Code and Labor and Employment Code; or~~

20 ~~—(2) The contracting City Department determines, pursuant to applicable provisions of the~~
21 ~~Administrative Code and Labor and Employment Code, that the Contract is necessary to respond to an~~
22 ~~emergency which endangers the public health or safety; and no entity that complies with Section 141.4~~
23 ~~and is capable of responding to the emergency is immediately available to perform the required~~
24 ~~services; or~~

1 —(3) ~~The contracting City department determines that there are no qualified responsive~~
2 ~~bidders or prospective vendors that comply with the requirements of Section 141.4; and the Contract is~~
3 ~~for a service, project, or property that is essential to the City or the public; or~~

4 —(4) ~~The contracting City department determines that the public interest warrants the~~
5 ~~granting of a waiver because application of Section 141.4 would have an adverse impact on services or~~
6 ~~a substantial adverse financial impact on the City; or~~

7 —(5) ~~The contracting City department determines that the services to be purchased are~~
8 ~~available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a~~
9 ~~group purchasing organization; purchase under such arrangement will substantially reduce the City's~~
10 ~~cost of purchasing such services; and purchase under such an arrangement is in the best interest of the~~
11 ~~City; or~~

12 —(6) ~~The contracting City department determines that the requirements of Section 141.4 will~~
13 ~~violate or are inconsistent with the terms or conditions of a grant, subvention, or agreement with a~~
14 ~~public agency or the instructions of an authorized representative of any such agency with respect to~~
15 ~~any such grant, subvention, or agreement, provided that the contracting officer has made a good faith~~
16 ~~attempt to change the terms or conditions of any such grant, subvention, or agreement to authorize~~
17 ~~application of this Section.~~

18 —(b) ~~The General Manager of the Public Utilities Commission may waive the requirements of~~
19 ~~Section 141.4 where the Contractor is providing wholesale or bulk water, power, or natural gas, the~~
20 ~~conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or~~
21 ~~loading scheduling, as required for assuring reliable services in accordance with good utility practice,~~
22 ~~to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same~~
23 ~~may not practically be accomplished through the City's standard competitive bidding procedures; and~~
24 ~~further provided that this waiver provision shall not apply to Contractors or franchisees providing~~
25 ~~direct, retail services to end users within the City.~~

1 ~~—(c) For any determination of nonapplicability, exception, or waiver pursuant to subsections~~
2 ~~(a) and (b), the contracting City department shall maintain a record documenting the basis for such~~
3 ~~decision. Each contracting City department that makes a determination of nonapplicability, exception,~~
4 ~~or waiver pursuant to subsections (a) and (b) shall submit a report to the City Administrator~~
5 ~~summarizing the Contract and the basis for inapplicability. Such reports shall be submitted annually~~
6 ~~within 30 days of the end of the fiscal year.~~

7 **~~SEC. 141.6. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.~~**

8 ~~—Employers shall post the notice described in Labor and Employment Code Section 61.5(a) in~~
9 ~~a conspicuous place at every workplace, job site, or other location on City property, under the~~
10 ~~Employer's control and frequently visited by their employees or Applicants, and shall send a copy of~~
11 ~~this notice to each labor union or representative of workers with which the Employer has a collective~~
12 ~~bargaining agreement or other agreement or understanding, that is applicable to employees in the City~~
13 ~~or on City property. The notice shall be posted in English, Spanish, Chinese, and any language spoken~~
14 ~~by at least 5% of the employees at the workplace, job site, or other location at which it is posted.~~

15 **~~SEC. 141.7. IMPLEMENTATION AND ENFORCEMENT.~~**

16 ~~—(a) The OLSE is authorized to take appropriate steps to enforce and coordinate enforcement~~
17 ~~of this Article 141, including the investigation of possible violations of this Article.~~

18 ~~—(b) An employee or Applicant may report to the OLSE any suspected violation of this Article.~~
19 ~~The OLSE shall encourage reporting pursuant to this subsection by keeping confidential, to the~~
20 ~~maximum extent permitted by applicable laws, the name and other identifying information of the~~
21 ~~employee or person reporting the violation; provided, however, that with the authorization of such~~
22 ~~person, the OLSE may disclose his or her name and identifying information as necessary to enforce this~~
23 ~~Article or for other appropriate purposes.~~

24 ~~—(c) A Contractor or Subcontractor shall be deemed to have breached the provisions of this~~
25 ~~Article upon a finding by the OLSE that the Contractor or Subcontractor has willfully violated these~~

1 ~~provisions, provided, however, that for a first violation, or for any violation during the first 12 months~~
2 ~~following the operative date of this Article, the OLSE must issue warnings and notices to correct, and~~
3 ~~offer the Contractor or Subcontractor technical assistance on how to comply with the requirements of~~
4 ~~this Article.~~

5 ~~—(d) Upon a subsequent finding of a violation of this Article, the awarding authority shall~~
6 ~~notify the Contractor or Subcontractor that unless the Contractor or Subcontractor demonstrates to the~~
7 ~~satisfaction of the OLSE within such reasonable period as the OLSE shall determine, that the violation~~
8 ~~has been corrected, action will be taken as set forth in subparagraphs (e) through (i) hereof.~~

9 ~~—(e) The Director of the OLSE shall establish rules governing the administrative process for~~
10 ~~determining and appealing violations of this Article. The rules shall include procedures for:~~

11 ~~—(1) Providing the Contractor or Subcontractor with notice that it may have violated this~~
12 ~~Article;~~

13 ~~—(2) Providing the Contractor or Subcontractor with a right to respond to the notice;~~

14 ~~—(3) Providing the Contractor or Subcontractor with notice of the OLSE's determination of~~
15 ~~a violation; and,~~

16 ~~—(4) Providing the Contractor with an opportunity to appeal the OLSE's determination to a~~
17 ~~hearing officer, who is appointed by the City Controller or his or her designee.~~

18 ~~—(f) If there is an appeal of the OLSE's determination of a violation, the hearing before the~~
19 ~~hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any~~
20 ~~such hearing, the OLSE's determination of a violation shall be considered prima facie evidence of a~~
21 ~~violation, and the Contractor or Subcontractor shall have the burden of proving, by a preponderance of~~
22 ~~the evidence, that the OLSE's determination of a violation is incorrect. The hearing officer's decision~~
23 ~~of the appeal shall constitute the City's final decision.~~

24 ~~—(g) For a second violation, the awarding authority may deduct from the amount payable to~~
25 ~~the Contractor or Subcontractor by the City under any Contract subject to this Article, or the OLSE~~

1 ~~may impose upon the Contractor or Subcontractor, a penalty of \$50 for each employee, applicant or~~
2 ~~other person as to whom the violation occurred or continued. Thereafter, for subsequent violations, the~~
3 ~~penalty may increase to no more than \$100, for each employee or applicant whose rights were, or~~
4 ~~continue to be, violated.~~

5 ~~—(h) In addition to any other penalties provided for the violation of this Article, the Contract~~
6 ~~or Property Contract may be terminated or suspended, in whole or in part, by the awarding authority~~
7 ~~upon the basis of a finding under this Section 141.7 that the Contractor or Subcontractor has violated~~
8 ~~the provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and~~
9 ~~retained by, the City.~~

10 ~~—(i) A violation of the provisions of this Article during the performance of a Contract or~~
11 ~~Property Contract shall be deemed by the City to be a material breach of contract and may provide a~~
12 ~~basis for determination by the awarding authority that the Contractor or Subcontractor is an~~
13 ~~irresponsible bidder subject to debarment procedures set forth in Chapter 28.~~

14 ~~—(j) Nothing contained in this Article shall be construed in any manner so as to prevent the~~
15 ~~City from pursuing any other remedies that may be available at law, equity or under any Contract or~~
16 ~~Property Contract.~~

17 ~~—(k) The Director of OLSE shall have authority to adopt regulations or guidelines that~~
18 ~~implement the provisions of this Article. Regulations or guidelines shall be adopted only after~~
19 ~~consultation with the Director of the Office of Contract Administration.~~

20 ~~—(l) OLSE shall maintain a record of the number and types of complaints it receives alleging a~~
21 ~~violation of this Article, and the resolution of those complaints. This information shall be compiled on~~
22 ~~an annual calendar year basis and reported to the Board of Supervisors by January 31 of each year.~~

23 **~~SEC. 141.8. UNDERTAKING FOR THE GENERAL WELFARE.~~**

24 ~~—In enacting and implementing this Article 141, the City is assuming an undertaking only to~~
25 ~~promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an~~

1 obligation for breach of which it is liable in money damages to any person who claims that such breach
2 proximately caused injury.

3 ***SEC. 141.9. SEVERABILITY.***

4 ~~—If any section, subsection, sentence, clause, phrase, or word of this Article 141, or any~~
5 ~~application thereof to any person or circumstance, is held to be invalid or unconstitutional by a~~
6 ~~decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining~~
7 ~~portions or applications of this Article. The Board of Supervisors hereby declares that it would have~~
8 ~~passed this Article and each and every section, subsection, sentence, clause, phrase, and word not~~
9 ~~declared invalid or unconstitutional without regard to whether any other portion of this ordinance or~~
10 ~~application thereof would be subsequently declared invalid or unconstitutional.~~

11
12 Section 9. The Labor and Employment Code is hereby amended by repealing Article
13 142, consisting of Sections 142.1 to 142.11, as follows:

14
15 ***ARTICLE 142: CITY CONTRACTOR/SUBCONTRACTOR CONSIDERATION OF CRIMINAL***
16 ***HISTORY IN HIRING AND EMPLOYMENT DECISIONS***

17
18 ***SEC. 142.1. DEFINITIONS.***

19 ~~—For the purposes of this Article 142, the following words and phrases shall mean and include:~~

20 ~~—“Adverse Action” shall have the same meaning as in Police Code Section 4903.~~

21 ~~—“Arrest” shall have the same meaning as in Police Code Section 4903.~~

22 ~~—“Background Check Report” shall have the same meaning as in Police Code Section 4903.~~

23 ~~—“Bid” shall mean a bid or proposal submitted to the City in response to an invitation for bids~~
24 ~~or a request for proposals. “Bid” shall also mean a response to a request for qualifications if no~~
25 ~~further ranking prior to Contractor selection is contemplated by the procurement process.~~

1 —“City” shall mean the City and County of San Francisco.

2 —“Contract” shall mean an agreement for public works or improvements to be performed, or
3 for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid
4 out of moneys deposited in the treasury or out of trust moneys under the control or collected by the
5 City. “Contract” does not include (1) Property Contracts, (2) agreements entered into pursuant to
6 settlement of legal proceedings, (3) contracts for urgent litigation expenses as determined by the City
7 Attorney, or (4) contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

8 —“Contracting Officer” shall mean the department head or designee of the department head.

9 —“Contractor” shall mean any person or persons, firm, partnership, corporation, or
10 combination thereof who enters into a Contract or Property Contract with the City.

11 —“Conviction” shall have the same meaning as in Police Code Section 4903.

12 —“Conviction History” shall have the same meaning as in Police Code Section 4903.

13 —“Directly-Related Conviction” shall have the same meaning as in Police Code Section 4903.

14 —“Employment” shall have the same meaning as in Police Code Section 4903.

15 —“Evidence of Rehabilitation or Other Mitigating Factors” shall have the same meaning as in
16 Police Code Section 4903.

17 —“HRC” and “Director of HRC” shall have the same meaning as in Police Code Section 4903.

18 —“Inquire” shall have the same meaning as in Police Code Section 4903.

19 —“OCA” shall mean the Office of Contract Administration or any successor department or
20 office. The “Director” of OCA shall mean the head of the OCA.

21 —“OLSE” and “Director of OLSE” shall have the same meaning as in Police Code Section
22 4903.

23 —“Person” shall have the same meaning as in Police Code Section 4903.

24 —“Property Contract” shall mean a written agreement, including a lease, permit, or license,
25 through which the City gives to a person or entity the right to exclusively use or occupy real property

1 owned or controlled by the City for a period of more than 29 days in any calendar year, but excluding
2 the following (collectively, “Excluded Property Contracts”): (1) an agreement through which the City
3 gives the right to use or occupy real property owned or controlled by the City to a public entity or
4 public utility; (2) a revocable at-will permit regardless of the ultimate duration of such permit, unless
5 the permittee engages in a for-profit activity on the City property; (3) regulatory permits, including
6 street or public right of way construction, excavation, and use permits; (4) agreements governing the
7 use of City property which constitutes a public forum for activities that are primarily for the purpose of
8 espousing or advocating causes or ideas and that are generally recognized as protected by the First
9 Amendment to the U.S. Constitution; or (5) agreements for activities which are primarily recreational
10 in nature, unless the user engages in a for-profit activity on the City property.

11 —“Subcontract” shall mean an agreement to (i) provide goods and/or services, including
12 construction labor, materials or equipment, to a Contractor, if such goods or services are procured or
13 used in the fulfillment of the Contractor’s obligations arising from a Contract with the City, or (ii) to
14 transfer the right to occupy or use all or a portion of a real property interest subject to a Property
15 Contract to a Subcontractor and pursuant to which the Contractor remains obligated under the
16 Property Contract.

17 —“Subcontractor” shall mean any person or persons, firm, partnership, corporation or any
18 combination thereof who enters into a Subcontract with a Contractor. Such term shall include any
19 person or entity who enters into an agreement with any Subcontractor for the performance of 10
20 percent or more of any Subcontract.

21 —“Unresolved Arrest” shall have the same meaning as in Police Code Section 4903.

22 **SEC. 142.2. APPLICABILITY OF ARTICLE TO CONTRACTORS AND**
23 **SUBCONTRACTORS.**

24 —The requirements of this Article shall only apply to a Contractor’s or Subcontractor’s
25 operations to the extent those operations are in furtherance of performing a Contract or Property

1 *Contract with the City. Accordingly, the protections of this Article apply only to applicants and*
2 *employees who would be or are performing work in furtherance of performing a Contract or Property*
3 *Contract with the City. If there is a conflict between the requirements of this Article and any City law,*
4 *rule or regulation existing as of the effective date of Ordinance No. 249-14 amending this Article, the*
5 *requirements of this Article shall prevail.*

6 ***SEC. 142.3. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE***
7 ***PROVISION REQUIRING COMPLIANCE WITH THIS ARTICLE.***

8 *—All contracting agencies of the City, or any department thereof, acting for or on behalf of the*
9 *City, shall include in all Contracts and Property Contracts hereinafter executed or amended in any*
10 *manner or as to any portion thereof, a provision requiring Contractor’s compliance with this Article*
11 *and shall require such Contractor to include a similar provision in all Subcontracts executed and*
12 *amended thereunder, and failure to do so shall constitute a material breach of contract.*

13 ***SEC. 142.4. PROCEDURES FOR CONTRACTOR AND SUBCONTRACTOR USE OF***
14 ***CRIMINAL HISTORY INFORMATION IN EMPLOYMENT DECISIONS.***

15 *—(a) Regarding applicants or potential applicants for employment, or employees, a*
16 *Contractor or Subcontractor shall not, at any time or by any means, inquire about, require disclosure*
17 *of, or if such information is received base an Adverse Action in whole or in part on:*

18 *—(1) An Arrest not leading to a Conviction, excepting under circumstances identified in this*
19 *Section an Unresolved Arrest;*

20 *—(2) Participation in or completion of a diversion or a deferral of judgment program;*

21 *—(3) A Conviction that has been judicially dismissed, expunged, voided, invalidated, or*
22 *otherwise rendered inoperative, by way of example but not limitation, under California Penal Code*
23 *Sections 1203.4, 1203.4a, or 1203.41;*

24 *—(4) A Conviction or any other determination or adjudication in the juvenile justice system,*
25 *or information regarding a matter considered in or processed through the juvenile justice system;*

1 —~~(5) A Conviction that is more than seven years old, the date of Conviction being the date of~~
2 ~~sentencing;~~

3 —~~(6) Information pertaining to an offense other than a felony or misdemeanor, such as an~~
4 ~~infraction, except that a Contractor or Subcontractor may inquire about, require disclosure of, base an~~
5 ~~Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or~~
6 ~~employee's driving record if driving is more than a de minimis element of the employment in question;~~
7 ~~or~~

8 —~~(7) A Conviction that arises out of conduct that has been decriminalized since the date of~~
9 ~~the Conviction, the date of the Conviction being the date of sentencing. Examples of statutes that have~~
10 ~~decriminalized particular conduct include but are not limited to California Health and Safety Code~~
11 ~~Sections 11362.1 and 11362.2.~~

12 —~~Accordingly, the matters identified in this subsection (a) may not be considered in any~~
13 ~~manner by the Contractor or Subcontractor.~~

14 —~~(b) A Contractor or Subcontractor shall not require applicants or potential applicants for~~
15 ~~employment or employees to disclose on any employment application the fact or details of any~~
16 ~~Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(7). Nor shall~~
17 ~~the Contractor or Subcontractor inquire on any employment application about the fact or details of any~~
18 ~~Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(7). A~~
19 ~~Contractor or Subcontractor may ask on an employment application for an applicant, potential~~
20 ~~applicant, or employee's written consent for a Background Check so long as the application includes a~~
21 ~~clear and conspicuous statement that the Contractor or Subcontractor will not itself conduct or obtain~~
22 ~~from a third party the Background Check until after a conditional offer of employment in accordance~~
23 ~~with subsection (c) of this Section 142.4.~~

24 —~~(c) A Contractor or Subcontractor shall not require applicants or potential applicants for~~
25 ~~employment, or employees, to disclose, and shall not inquire into or discuss, their Conviction History~~

1 ~~or an Unresolved Arrest until after a conditional offer of employment. A Contractor or Subcontractor~~
2 ~~may not itself conduct or obtain from a third party a Background Check until after a conditional offer~~
3 ~~of employment.~~

4 ~~—(d) Prior to any Conviction History inquiry, the Contractor or Subcontractor shall provide a~~
5 ~~copy of the notice described in Section 142.5(b) to the applicant or employee.~~

6 ~~—(e) Prior to obtaining a copy of a Background Check Report, the Contractor or~~
7 ~~Subcontractor shall comply with all state and federal requirements including but not limited to~~
8 ~~California Investigative Consumer Reporting Agencies Act (ICRAA), California Civil Code sections~~
9 ~~1786 et seq., and the Federal Consumer Reporting Act (FCRA), 15 United States Code sections 1681 et~~
10 ~~seq., to provide notice to the applicant or employee that such a report is being sought.~~

11 ~~—(f) In making an employment decision based on an applicant's or employee's Conviction~~
12 ~~History, a Contractor or Subcontractor shall conduct an individualized assessment, considering only~~
13 ~~Directly-Related Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and~~
14 ~~any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.~~

15 ~~—(g) If a Contractor or Subcontractor intends to base an Adverse Action on an item or items~~
16 ~~in the applicant or employee's Conviction History, prior to taking any Adverse Action the Contractor~~
17 ~~or Subcontractor shall provide the applicant or employee with a copy of the Background Check Report,~~
18 ~~and shall notify the applicant or employee of the prospective Adverse Action and the item or items~~
19 ~~forming the basis for the prospective Adverse Action.~~

20 ~~—(h) If, within seven days of the date that the notice described in subsection (g) is provided by~~
21 ~~the Contractor or Subcontractor to the applicant or employee, the applicant or employee gives the~~
22 ~~Contractor or Subcontractor notice, orally or in writing, of evidence of the inaccuracy of the item or~~
23 ~~items of Conviction History or any Evidence of Rehabilitation or Other Mitigating Factors, the~~
24 ~~Contractor or Subcontractor shall delay any Adverse Action for a reasonable period after receipt of the~~
25

1 ~~information and during that time shall reconsider the prospective Adverse Action in light of the~~
2 ~~information.~~

3 ~~—(i) Upon taking any final Adverse Action based upon the Conviction History of an applicant~~
4 ~~or employee, a Contractor or Subcontractor shall notify the applicant or employee of the final Adverse~~
5 ~~Action.~~

6 ~~—(j) A Contractor or Subcontractor shall not engage in any communication that is intended~~
7 ~~and reasonably likely to reach persons who are reasonably likely to seek employment to be performed~~
8 ~~under a Contract or Property Contract and that expresses, directly or indirectly, that any person with~~
9 ~~an Arrest or Conviction will not be considered for employment or may not apply for employment. For~~
10 ~~purposes of this subsection (j), engaging in a communication includes but is not limited to making a~~
11 ~~verbal statement or producing or disseminating any solicitation, advertisement, or signage.~~

12 ~~—(k) Nothing in this Section 142.4 shall be construed to prohibit a Contractor or~~
13 ~~Subcontractor from observing the conditions of a seniority system or an employee benefit plan,~~
14 ~~provided such systems or plans are not a subterfuge to evade the purposes or requirements of this~~
15 ~~Article.~~

16 **~~SEC. 142.5. NOTICE AND POSTING REQUIREMENTS FOR CONTRACTORS AND~~**
17 **~~SUBCONTRACTORS.~~**

18 ~~—(a) The Contractor or Subcontractor shall state in all solicitations or advertisements for~~
19 ~~employees that are reasonably likely to reach persons who are reasonably likely to seek employment to~~
20 ~~be performed under a Contract or Property Contract, that the Contractor or Subcontractor will~~
21 ~~consider for employment qualified applicants with criminal histories in a manner consistent with the~~
22 ~~requirements of this Article.~~

23 ~~—(b) The OLSE shall, by the operative date of this Article, publish and make available to~~
24 ~~Contractors and Subcontractors, in English, Spanish, Chinese, and all languages spoken by more than~~
25 ~~5% of the San Francisco workforce, a notice substantially similar in form and content to the notice~~

1 ~~described in Police Code Section 4905(b). However, the notice shall cite this Article rather than Police~~
2 ~~Code Article 49 as the applicable legal authority for the rights and obligations described therein.~~

3 ~~—(c) Contractors and Subcontractors shall post the notice described in subsection (b) in a~~
4 ~~conspicuous place at every workplace, job site, or other location under the Contractor or~~
5 ~~Subcontractor’s control at which work is being done or will be done in furtherance of performing a~~
6 ~~Contract or Property Contract with the City. The notice shall be posted in English, Spanish, Chinese,~~
7 ~~and any language spoken by at least 5% of the employees at the workplace, job site, or other location~~
8 ~~at which it is posted.~~

9 **~~SEC. 142.6. IMPLEMENTATION AND ENFORCEMENT.~~**

10 ~~—(a) The OLSE is authorized to take appropriate steps to enforce and coordinate enforcement~~
11 ~~of this Article 142, including the investigation of possible violations of this Article. The OLSE shall not~~
12 ~~find a violation based on a Contractor or Subcontractor’s decision that an applicant or employee’s~~
13 ~~Conviction History is Directly Related, but otherwise may find a violation of this Article, including if~~
14 ~~the Contractor or Subcontractor failed to conduct the individualized assessment as required under~~
15 ~~Section 142.4(f).~~

16 ~~—(b) An employee, applicant or other person may report to the OLSE any suspected violation~~
17 ~~of this Article 142. The OLSE shall encourage reporting pursuant to this subsection (b) by keeping~~
18 ~~confidential, to the maximum extent permitted by applicable laws, the name and other identifying~~
19 ~~information of the employee or person reporting the violation; provided, however, that with the~~
20 ~~authorization of such person, the OLSE may disclose his or her name and identifying information as~~
21 ~~necessary to enforce this Article or for other appropriate purposes.~~

22 ~~—(c) A Contractor or Subcontractor shall be deemed to have breached the provisions~~
23 ~~regarding the procedures for use of Conviction History in employment upon a finding by the OLSE that~~
24 ~~the Contractor or Subcontractor has willfully violated these provisions except as provided in the~~
25 ~~second sentence of subsection (f) of this Section 142.6.~~

1 ~~—(d) The Director of the OLSE shall establish rules governing the administrative process for~~
2 ~~determining and appealing violations of this Article 142. The rules shall include procedures for:~~

3 ~~—(1) providing the Contractor or Subcontractor with notice that it may have violated this~~
4 ~~Article;~~

5 ~~—(2) providing the Contractor or Subcontractor with a right to respond to the notice;~~

6 ~~—(3) providing the Contractor or Subcontractor with notice of the OLSE's determination of~~
7 ~~a violation;~~

8 ~~—(4) providing the Contractor with an opportunity to appeal the OLSE's determination to a~~
9 ~~hearing officer, who is appointed by the City Controller or his or her designee.~~

10 ~~—(e) If there is an appeal of the OLSE's determination of a violation, the hearing before the~~
11 ~~hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any~~
12 ~~such hearing, the OLSE's determination of a violation shall be considered prima facie evidence of a~~
13 ~~violation, and the Contractor or Subcontractor shall have the burden of proving, by a preponderance of~~
14 ~~the evidence, that the OLSE's determination of a violation is incorrect. The hearing officer's decision~~
15 ~~of the appeal shall constitute the City's final decision.~~

16 ~~—(f) This subsection (f) applies to violations occurring during the term of a Contract entered~~
17 ~~into prior to the effective date of the ordinance in Board of Supervisors File No. 171170 amending this~~
18 ~~Article 142. For a first violation, or for any violation during the first twelve months following the~~
19 ~~operative date of this Article, the OLSE must issue warnings and notices to correct, and offer the~~
20 ~~Contractor or Subcontractor technical assistance on how to comply with the requirements of this~~
21 ~~Article. Upon a subsequent finding of a violation of this Article, the awarding authority shall notify the~~
22 ~~Contractor or Subcontractor that unless the Contractor or Subcontractor demonstrates to the~~
23 ~~satisfaction of the OLSE within such reasonable period as the OLSE shall determine, that the violation~~
24 ~~has been corrected, action will be taken as set forth in this subsection (f) and subsections (h) through~~
25 ~~(j) of this Section 142.6. For a second violation, the awarding authority may deduct from the amount~~

1 payable to the Contractor or Subcontractor by the City under any Contract subject to this Article, or
2 the OLSE may impose upon the Contractor or Subcontractor, a penalty of \$50 for each employee,
3 applicant or other person as to whom the violation occurred or continued. Thereafter, for subsequent
4 violations, the penalty may increase to no more than \$100, for each employee or applicant whose rights
5 were, or continue to be, violated. Such funds shall be allocated to the OLSE and used to offset the costs
6 of implementing and enforcing this Article. If multiple employees or applicants are impacted by the
7 same procedural violation at the same time (e.g. all applicants for a certain job opening are asked for
8 their conviction history on the initial application), the violation shall be treated as a single violation
9 rather than multiple violations.

10 ~~—(g) This subsection (g) applies to violations occurring during the term of a Contract entered~~
11 ~~into on or after the effective date of the ordinance in Board of Supervisors File No. 171170 amending~~
12 ~~this Article 142. For a first violation, the awarding authority may deduct from the amount payable to~~
13 ~~the Contractor or Subcontractor by the City under any Contract subject to this Article, or the OLSE~~
14 ~~may impose upon the Contractor or Subcontractor, a penalty of \$500 for each employee, applicant or~~
15 ~~other person as to whom the violation occurred or continued. For a second violation, the awarding~~
16 ~~authority may deduct from the amount payable to the Contractor or Subcontractor by the City under~~
17 ~~any Contract subject to this Article, or the OLSE may impose upon the Contractor or Subcontractor, a~~
18 ~~penalty of no more than \$1,000 for each employee, applicant or other person as to whom the violation~~
19 ~~occurred or continued. Thereafter, for subsequent violations, the awarding authority may deduct from~~
20 ~~the amount payable to the Contractor or Subcontractor by the City under any Contract subject to this~~
21 ~~Article, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of no more than~~
22 ~~\$2,000, for each employee or applicant whose rights were, or continue to be, violated. The~~
23 ~~administrative penalties for each violation shall be paid to the employee or applicant as to whom the~~
24 ~~violation occurred or continued. If multiple employees or applicants are impacted by the same~~
25 ~~procedural violation at the same time (e.g. all applicants for a certain job opening are asked for their~~

1 ~~Conviction History on the initial application), the violation shall be treated as one violation for each~~
2 ~~impacted employee or applicant.~~

3 ~~—(h) In addition to any other penalties provided for the violation of this Article, the Contract~~
4 ~~or Property Contract may be terminated or suspended, in whole or in part, by the awarding authority~~
5 ~~upon the basis of a finding under this Section 142.6 that the Contractor or Subcontractor has violated~~
6 ~~the provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and~~
7 ~~retained by, the City.~~

8 ~~—(i) A violation of the provisions of this Article during the performance of a Contract or~~
9 ~~Property Contract shall be deemed by the City to be a material breach of contract and the basis for~~
10 ~~determination by the awarding authority that the Contractor or Subcontractor is an irresponsible~~
11 ~~bidder as to all future contracts for which such Contractor or Subcontractor may submit bids. Such~~
12 ~~Contractor or Subcontractor shall not for a period of up to two years thereafter, be allowed to act as a~~
13 ~~Contractor or Subcontractor under any Contract or Property Contract. This subsection (i) shall be~~
14 ~~governed by the procedures set forth in Chapter 28.~~

15 ~~—(j) Nothing contained in this Article shall be construed in any manner so as to prevent the~~
16 ~~City from pursuing any other remedies that may be available at law, equity or under any Contract or~~
17 ~~Property Contract.~~

18 ~~—(k) The Director of OLSE shall have authority to adopt regulations or guidelines that~~
19 ~~implement the provisions of this Article. Regulations or guidelines shall be adopted only after~~
20 ~~consultation with the Director of OCA. Regulations or guidelines that relate to provisions of general~~
21 ~~import or applicability in Police Code Article 49 shall be adopted only after consultation with the~~
22 ~~Director of HRC and the Mayor's Office of Housing and Community Development. A designee of the~~
23 ~~Director of OLSE shall not have the authority to adopt regulations or guidelines under the first~~
24 ~~sentence of this subsection (k); but at the discretion of the Director of OLSE a designee of the Director~~
25 ~~of OLSE shall have the authority to conduct hearings leading to the adoption of regulations or~~

1 *guidelines, and to consult with the Director of HRC, the Mayor's Office of Housing and Community*
2 *Development, and the Director of OCA as specified in this subsection (k).*

3 *—(l) OLSE shall maintain a record of the number and types of complaints it receives alleging a*
4 *violation of this Article, and the resolution of those complaints. This information shall be compiled on*
5 *an annual calendar year basis and reported to the Board of Supervisors by January 31 of each year.*

6 ***SEC. 142.7. CONTRACTOR AND SUBCONTRACTOR RECORDS.***

7 *—(a) All Contractors and Subcontractors shall be subject to the same requirements for access*
8 *to and maintenance of employment records as described in Police Code Section 4910. In no event shall*
9 *OLSE require a Contractor or Subcontractor to provide any information or documents the disclosure*
10 *of which would violate state or federal law.*

11 *—(b) A Contractor or Subcontractor shall provide to the OLSE, or the OLSE's designee, such*
12 *information on an annual basis as may be required to verify the Contractor or Subcontractor's*
13 *compliance with this Article.*

14 *—(c) Where a Contractor or Subcontractor does not maintain or retain adequate records*
15 *documenting compliance with this Article and does not allow OLSE reasonable access to such records,*
16 *it shall be presumed that the Contractor or Subcontractor did not comply with this Article 142, absent*
17 *clear and convincing evidence otherwise. The Office of Treasurer and Tax Collector shall have the*
18 *authority to provide any and all nonfinancial information to OLSE necessary to fulfill OLSE's*
19 *responsibilities as the enforcing agency under this Article. With regard to all such information*
20 *provided by the Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality*
21 *provisions of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.*

22 ***SEC. 142.8. NONAPPLICABILITY, EXCEPTIONS, AND WAIVERS.***

23 *—(a) The Director of OCA shall waive the requirements of this Article under the following*
24 *circumstances:*

1 —(1)— ~~Whenever the Director of OCA finds, upon the advice of the awarding authority, that~~
2 ~~there is only one prospective Contractor willing to enter into a Contract with the City, or a Property~~
3 ~~Contract with the City for use of City property on the terms and conditions established by the City, or~~
4 ~~that the needed goods, services, construction services for a public work or improvement, or interest in~~
5 ~~or right to use real property are available only from a sole source, and the prospective Contractor is~~
6 ~~not currently disqualified from doing business with the City, or from doing business with any~~
7 ~~governmental agency based on any contract compliance requirements;~~

8 —(2)— ~~If the contracting department, board or commission certifies in writing to the OCA that~~
9 ~~pursuant to Administrative Code and Labor and Employment Code provisions the Contract or Property~~
10 ~~Contract is necessary to respond to an emergency which endangers the public health or safety and no~~
11 ~~entity which complies with the requirements of this Article capable of responding to the emergency is~~
12 ~~immediately available; provided that such certification must be made prior to the Controller's contract~~
13 ~~certification;~~

14 —(3)— ~~Where the City Attorney certifies in writing to the OCA that the contract involves~~
15 ~~specialized litigation requirements such that it would be in the best interests of the City to waive the~~
16 ~~requirements of this Article.~~

17 —(b)— ~~This Article shall not apply where the prospective Contractor is a public entity and the~~
18 ~~Director of OCA finds that goods, services, construction services for a public work or improvement or~~
19 ~~interest in or right to use real property of comparable quality or accessibility as are available under~~
20 ~~the proposed Contract or Property Contract are not available from another source, or that the~~
21 ~~proposed Contract or Property Contract is necessary to serve a substantial public interest.~~

22 —(c)— ~~This Article shall not apply where the Director of OCA finds that the requirements of this~~
23 ~~Article 142 will violate or are inconsistent with the terms or conditions of a grant, subvention or~~
24 ~~agreement with a public agency or the instructions of an authorized representative of any such agency~~
25 ~~with respect to any such grant, subvention or agreement, provided that the contracting officer has made~~

1 a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to
2 authorize application of this Article.

3 ~~—(d) Subject to the requirements of subsection (e), upon the request of a potential Contractor~~
4 ~~or upon the Contracting Officer's own initiative, after taking all reasonable measures to find an entity~~
5 ~~that complies with this Article 142, the Contracting Officer may propose a waiver of any or all of the~~
6 ~~requirements of this Article for any Contract, Property Contract or bid package advertised and made~~
7 ~~available to the public, or any competitive or sealed bids received by the City as of the operative date~~
8 ~~of this Article under the following circumstances:~~

9 ~~—(1) Where the Contracting Officer determines that there are no qualified responsive~~
10 ~~bidders or prospective Contractors who could be certified as being in compliance with the~~
11 ~~requirements of this Article and that the Contract or Property Contract is for goods, a service, or a~~
12 ~~project that is essential to the City or City residents; or~~

13 ~~—(2) Where the Contracting Officer determines that transactions entered into pursuant to~~
14 ~~bulk purchasing arrangements through federal, state or regional entities which actually reduce the~~
15 ~~City's purchasing costs would be in the best interests of the City; or~~

16 ~~—(3) Where the Contracting Officer determines that the requirements of this Article would~~
17 ~~result in the City's entering into a Contract with an entity that was set up, or is being used, for the~~
18 ~~purpose of evading the intent of this Article;~~

19 ~~—(e) The waiver authority granted to Contracting Officers in this Section 142.8 shall be~~
20 ~~subject to the requirement that:~~

21 ~~—(1) All proposed waivers must be submitted for approval to the Director of OCA. All~~
22 ~~proposed waivers must set forth the reasons the Contracting Officer is requesting the waiver, what~~
23 ~~steps were taken to find any entity that complies with this Article, and why the waiver does not defeat~~
24 ~~the intent of this Article, which is to prohibit the City from entering into Contracts and Property~~
25

1 *Contracts with persons that do not comply with the requirements of this Article to follow certain*
2 *procedures when inquiring about and using criminal history information in employment decisions.*

3 ~~— (2) The Director of OCA shall take action approving or denying a proposed waiver within~~
4 ~~30 days of receiving a notification of the proposed waiver from a contracting officer. If after 30 days~~
5 ~~the Director of OCA has taken no action on the proposed waiver, the waiver shall be deemed approved.~~

6 ~~— (3) The Director of OCA or Contracting Officer shall report to the OLSE whenever such a~~
7 ~~waiver is granted within five days of granting the waiver.~~

8 ~~— (f) For any Contract or Property Contract subject to approval by the Board of Supervisors,~~
9 ~~the approving resolution shall state whether any waiver or exception under this Section 142.8 has been~~
10 ~~or is proposed to be granted for that contract.~~

11 ~~— (g) This Article 142 shall not apply to (i) the investment of trust moneys or agreements~~
12 ~~relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or~~
13 ~~under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer~~
14 ~~finds that:~~

15 ~~— (1) No person, entity or financial institution doing business in the City which is in~~
16 ~~compliance with this Article is capable of performing the desired transactions(s); or~~

17 ~~— (2) The City will incur a financial loss which in the opinion of the Treasurer would violate~~
18 ~~his or her fiduciary duties.~~

19 ~~— This subsection (g) shall be subject to the requirement that City moneys shall be withdrawn~~
20 ~~or divested at the earliest possible maturity date if deposited or invested with a person, entity or~~
21 ~~financial institution other than the U.S. government which does not comply with this Article.~~

22 ~~— (h) The General Manager of the Public Utilities Commission may waive the requirements of~~
23 ~~this Article 142 where the Contractor is providing wholesale or bulk water, power or natural gas, the~~
24 ~~conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or~~
25 ~~loading scheduling, as required for assuring reliable services in accordance with good utility practice,~~

1 ~~to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same~~
2 ~~may not practically be accomplished through the City's standard competitive bidding procedures; and~~
3 ~~further provided that this exemption shall not apply to Contractors or franchisees providing direct,~~
4 ~~retail services to end users within the City.~~

5 ~~—(i)—OCA shall maintain a record of all instances in which the requirements of this Article~~
6 ~~have not been applicable to a Contract or Property Contract because of an exception or a waiver as~~
7 ~~recognized under this Section 142.8. This information shall be compiled on an annual fiscal year basis~~
8 ~~and reported to the Board of Supervisors upon written request by any member of the Board of~~
9 ~~Supervisors to the Purchaser.~~

10 ~~—(j)—The Contracting Officer may waive the restriction in subsection (a)(5) of Section 142.4~~
11 ~~and any limitations imposed in this Article based on subsection (a)(5) as to any Contract or Property~~
12 ~~Contract, including any grant, where the Contracting Officer certifies in writing that, in the~~
13 ~~performance of the agreement, the Contractor or grantee (1) is providing services to or has supervisory~~
14 ~~or disciplinary authority over a minor, (2) is providing services to or has supervisory authority over a~~
15 ~~“dependent adult,” as that phrase is defined in California Welfare and Institutions Code Section~~
16 ~~15610.23 or any successor state law, or (3) is providing support services or care to or has supervisory~~
17 ~~authority over a person 65 years or older. The Contracting Officer shall report annually in writing to~~
18 ~~the Director of OCA all waivers that he or she grants pursuant to this subsection (j).~~

19 ~~—(k)—Waivers granted to a Contractor pursuant to this Section 142.8 shall relieve that~~
20 ~~Contractor of any obligations it may have under Article 49 of the Police Code, but only with respect to~~
21 ~~work performed under the Contract or Property Contract for which the waiver was granted.~~

22 **~~SEC. 142.9. PREEMPTION.~~**

23 ~~—The City recognizes that in some circumstances state or federal law governs some of the~~
24 ~~matters addressed in this Article. Nothing in this Article shall be interpreted or applied by a court or an~~
25 ~~agency of City government so as to create any requirement, power, or duty in conflict with federal or~~

1 ~~state law or with a requirement of any government agency, including any agency of City government,~~
2 ~~implementing federal or state law. Consistent with the foregoing preemption principle, for example, the~~
3 ~~OLSE is authorized to not enforce any provision of this Article upon determining that its application in~~
4 ~~a particular context would conflict with federal or state law or with a requirement of a government~~
5 ~~agency implementing federal or state law. As another example consistent with the foregoing~~
6 ~~preemption principle, Contractors may inquire about criminal convictions outside of the time periods~~
7 ~~set forth in this Article where required by federal or state law or a government agency implementing~~
8 ~~federal or state law. These examples are illustrative and do not limit the scope of the preemption~~
9 ~~principle stated in this Section 142.9.~~

10 **~~SEC. 142.10. SEVERABILITY.~~**

11 ~~—If any part or provision of this Article, or the application thereof to any person or~~
12 ~~circumstance, is held invalid, the remainder of the Article, including the application of such part or~~
13 ~~provision to other persons or circumstances, shall not be affected thereby and shall continue in full~~
14 ~~force and effect. To this end, provisions of this Article are severable.~~

15 **~~SEC. 142.11. OPERATIVE DATE.~~**

16 ~~—This Article shall become operative on 180 days after enactment and shall have prospective~~
17 ~~effect only, measured from the operative date forward. Enactment occurs when the Mayor signs the~~
18 ~~ordinance creating the Article, the Mayor returns the ordinance unsigned or does not sign the~~
19 ~~ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the~~
20 ~~ordinance.~~

21
22 Section 10. The Labor and Employment Code is hereby amended by repealing Article
23 161, consisting of Sections 161.1 to 161.4, as follows:

24
25 **~~ARTICLE 161: EARNED INCOME CREDIT INFORMATION~~**

1
2 —~~SEC. 161.1. DEFINITIONS.~~

3 —~~As used in this Article the following capitalized words and phrases shall have the following~~
4 ~~meanings:~~

5 —~~“City” shall mean the City and County of San Francisco.~~

6 —~~“Contract” shall mean a Prime Contract or a Subcontract.~~

7 —~~“Contract Amendment” shall mean an agreement pursuant to which a Contract entered into~~
8 ~~prior to the Effective Date is modified or supplemented in order to: (i) extend the term; (ii) increase the~~
9 ~~total amount of payments due to a Contractor; or (iii) increase the scope of work or services to be~~
10 ~~performed by a Contractor.~~

11 —~~“Contractor” shall mean either (i) a Prime Contractor; or (ii) the person or entity that enters~~
12 ~~into a Subcontract with a Prime Contractor.~~

13 —~~“Contracting Department” shall mean the department, office, commission or other City entity~~
14 ~~that enters into the applicable Contract on behalf of the City.~~

15 —~~“Effective Date” shall mean January 1, 2000.~~

16 —~~“EIC Forms” shall mean, at the time in question, any forms published by the Federal Internal~~
17 ~~Revenue Service for use in claiming all or any portion of the federal Earned Income Credit. For~~
18 ~~example, as of the Effective Date, such forms consist of IRS Form W-5 and IRS Schedule EIC.~~

19 —~~“EIC Limit” shall mean, at the time in question, the highest income limit under which a~~
20 ~~person (assuming the highest number of qualifying children) could be eligible for the federal Earned~~
21 ~~Income Credit under federal laws, rules and regulations. For example, as of the Effective Date, such~~
22 ~~highest income limit is \$30,580 per year.~~

23 —~~“Eligible Employee” shall mean any employee of Contractor who is paid at a rate that, on an~~
24 ~~annualized basis, is not greater than the EIC Limit.~~

1 —“Prime Contract” shall mean (a) either an agreement pursuant to which the City obtains
2 public works or improvements or goods or services, at the City’s expense or from trust funds under the
3 control of the City; or (b) an agreement pursuant to which the City grants funds to a third party, at the
4 City’s expense or from trust funds under the control of the City. Notwithstanding the foregoing, the
5 term “Prime Contract” shall exclude (i) agreements entered into prior to the Effective Date (unless and
6 until a Contract Amendment is entered into); (ii) agreements entered into after the Effective Date
7 (unless and until a Contract Amendment is entered into) pursuant to bid packages or requests for
8 proposals advertised and made available to the public prior to the Effective Date, which bid packages
9 or requests for proposals were not amended on or after the Effective Date; and (iii) agreements with a
10 Contractor that is a public entity.

11 —“Prime Contractor” shall mean the person or entity that enters into a Prime Contract with
12 the City.

13 —“Subcontract” shall mean an agreement pursuant to which a Prime Contractor obtains from
14 a third party goods, services or labor to be used in the fulfillment of the Prime Contractor’s duties
15 under the applicable Prime Contract.

16 **SEC. 161.2. REQUIRED CONTRACT PROVISIONS.**

17 —Every Contract or Contract Amendment entered into on or after the Effective Date shall
18 provide as follows:

19 —(a) Contractor shall provide the EIC Forms to each Eligible Employee at each of the
20 following times: (i) within thirty (30) days following the date on which the applicable Contract or
21 Contract Amendment becomes effective (unless Contractor has already provided such EIC Forms at
22 least once during the calendar year in question); (ii) promptly after any Eligible Employee is hired by
23 Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the
24 term of the Contract.

1 ~~—(b) Failure to comply with the foregoing requirement shall constitute a material breach by~~
2 ~~Contractor of the terms of the Contract.~~

3 ~~—(c) If within thirty (30) days after the Contractor receives written notice of such a breach,~~
4 ~~Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period~~
5 ~~of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails~~
6 ~~to diligently pursue such cure to completion, the City may pursue any rights or remedies available~~
7 ~~under the terms of the Contract or under applicable law.~~

8 **~~SEC. 161.3. PREEMPTION.~~**

9 ~~—Nothing in this Article shall be interpreted or applied so as to create any power or duty in~~
10 ~~conflict with any federal or State law.~~

11 **~~SEC. 161.4. SEVERABILITY.~~**

12 ~~—If any part or provision of this Article, or the application of this Article to any person or~~
13 ~~circumstance, is held invalid, the remainder of this Article, including the application of such part or~~
14 ~~provisions to other persons or circumstances, shall not be affected by such a holding and shall continue~~
15 ~~in full force and effect. To this end, the provisions of this Article are severable.~~

16
17 Section 11. Chapter 10, Article I of the Administrative Code is hereby amended by
18 revising Section 10.6-1, to read as follows:

19
20 **SEC. 10.6-1. MONITORING OF NONPROFITS CONTRACTING WITH THE CITY.**

21 (a) By November 1, 2024, the Controller shall adopt Citywide standards that
22 departments must comply with when contracting with nonprofit organizations. The standards
23 shall include requirements that contracts with nonprofit organizations include performance
24 measures; guidance for how departments should engage contractors in the development and
25 monitoring of such measures; regular financial and performance reporting requirements

1 applicable to nonprofits; standard reporting timeframes and expected elements for ongoing
2 departmental monitoring of nonprofits; a process departments must follow when entering into
3 and managing their contracts with nonprofits and reporting monitoring results to the Controller;
4 and recommendations for departments with the goal of making it easier for nonprofits to do
5 business with the City. The Controller shall have discretion to revise these standards as the
6 Controller deems necessary to achieve the goals of standardizing and ensuring adequate
7 Citywide programmatic and performance monitoring of nonprofit organizations and clarifying
8 departments' obligation to appropriately monitor their contracts with nonprofits.

9 (b) The Controller shall be responsible for administering a Citywide nonprofit
10 contractor corrective action policy to ensure compliance with City funding requirements,
11 accountability, and reliable service delivery. By November 1, 2024, the Controller shall
12 engage with City departments and nonprofit contractors in a review of current standards for
13 corrective action and issue a Citywide policy that establishes clear procedures for identifying
14 areas of concern or poor performance by nonprofit contractors. The policy may include,
15 among other things, specific procedures for identifying nonprofit contractors in need of
16 technical assistance, multi-departmental coordination, and/or escalation protocols including
17 but not limited to audits of nonprofit performance or financial practices.

18 (c) By November 1, 2024, the Controller shall complete a review of the publicly
19 available information the City has about its nonprofit contracted services, including spending,
20 performance, and types of services provided. At the conclusion of the review, the Controller
21 shall issue a report to the Mayor and the Board of Supervisors recommending any policy
22 changes that the Controller concludes would improve public access to this information in the
23 future. Concurrent with the November 1, 2024 report, the Controller shall publish a directory
24 webpage documenting where and how to access existing public information about nonprofit
25 contracted services. The Controller shall maintain and update this directory webpage as

1 additional public information is made transparent through the recommendations in the report,
2 including information gathered by the Controller through the annual review required in
3 subsection (d) below.

4 (d) Each fiscal year, beginning with Fiscal Year 2025-2026, the Controller shall
5 conduct a review of department compliance with the Controller's established contract
6 monitoring standards and shall submit a report summarizing the review to the Mayor and the
7 Board of Supervisors. The Controller may limit the annual review to specific departments,
8 service areas, or contracts as the Controller deems appropriate to achieve the goal of
9 ensuring adequate Citywide programmatic and performance monitoring of nonprofit
10 organizations.

11 (e) Starting with Fiscal Year 2024-2025, nonprofit organizations that received a total
12 of at least ~~\$750,000~~ \$1,000,000 in funding from the City in a fiscal year must submit to the City
13 an audited balance sheet and the related statement of income and cash flows for that fiscal
14 year within six months after the end of the fiscal year, certified by an independent accounting
15 firm as accurately presenting the financial position of the organization. The Controller shall
16 establish procedures and deadlines for submission of such audit materials to the City and
17 distribution of such audit materials to City departments, provided that March 31, 2026 shall be
18 the deadline for the submission of the audit materials for Fiscal Year 2024-2025. This
19 subsection (e) does not limit the authority of the City, through the Controller or any other part
20 of City government, as otherwise authorized by law, to conduct a fiscal review or require
21 alternate documents demonstrating sound financial controls in the absence of an audit,
22 including for nonprofit organizations receiving less than a total of ~~\$750,000~~ \$1,000,000 from the
23 City within a fiscal year. The amount of \$1,000,000 is based upon the Federal Single Audit standard
24 found in 2 CFR 200.501(b). Should the amount of the Federal Single Audit standard threshold for
25

1 application be changed, the \$1,000,000 application threshold in this section shall be administratively
2 interpreted to match the revised threshold.

3 (f) The Controller shall publicly issue on its website a draft version of any proposed
4 policy, standard, or guidance required in subsections (a), (b), and (e) of this Section 10.6-1,
5 and shall provide an opportunity for members of the public to review and provide written
6 comments about the draft for at least 15 days prior to final adoption. In the public review
7 process, the Controller shall make good-faith efforts to ensure community involvement and
8 racial equity in its outreach efforts. Outreach and engagement for public review shall include
9 engaging organizations, regardless of size, with a focus on fostering the growth of new,
10 smaller institutions reflecting the experiences of historically underserved communities,
11 including but not limited to African American communities, Asian American communities,
12 disabled communities, Latinx communities, LGBTQIA+ communities, Native American
13 communities, Pacific Islander communities, and women.

14
15 Section 12. Chapter 12L of the Administrative Code is hereby amended by revising
16 Sections 12L.3 and 12L.4, to read as follows:

17 **CHAPTER 12L: PUBLIC ACCESS TO RECORDS AND MEETINGS**
18 **OF NONPROFIT ORGANIZATIONS**

19
20 **SEC. 12L.3. DEFINITIONS.**

21 As used in this Chapter 12L, the following words and phrases shall have the
22 meanings indicated herein:

23 (a) "Board of Directors" *shall* mean s the Board of Directors, the Board of Trustees, or
24 other principal decision-making body of any nonprofit organization.

25 (b) "City" *shall* mean s the City and County of San Francisco.

1 (c) "Contract" ~~shall~~ means an agreement (however titled, including without limitation a
2 memorandum of understanding) to grant or otherwise provide funds to a nonprofit
3 organization including funds from another governmental entity administered through the City
4 or any City commission, City board, City agency, or City department, for such organization's
5 operation, new or existing programs, events, performances, capital improvements, or for
6 goods or services provided by or through such organization, to all or any portion of the public.
7 "Contract" shall not include: (1) an agreement to provide goods to the City pursuant to bids or
8 requests for proposals, where the City is the end user of the goods; ~~or~~ (2) an agreement to
9 provide services or benefits to City employees and/or to their family members, dependents, or
10 their other designated beneficiaries; or (3) agreements in which the Nonprofit organization will
11 receive less than \$1,000,000 in total City funding per fiscal year and are not subject to the audit
12 requirements of Chapter 10, Article I, Section 10.6.-1(e) of the Administrative Code. The amount of
13 \$1,000,000 is based upon the Federal Single Audit standard found in 2 CFR 200.501(b). Should the
14 amount of the Federal Single Audit standard threshold for application be changed, the \$1,000,000
15 application threshold in this section shall be administratively interpreted to match the revised
16 threshold.

17 (d) "Cost-neutral" ~~shall~~ means that a nonprofit organization's reasonable costs of
18 complying with this Chapter 12L (not including direct costs of duplication, or mailing costs, of
19 financial documents which are paid by a member of the public pursuant to Section 12L.5(a)
20 ~~herein~~) shall not exceed \$500 five hundred dollars per year.

21 (e) "Nonprofit organization" ~~shall~~ means any corporation formed pursuant to
22 California Corporations Code Sections 5000 et seq. for any public or charitable purpose,
23 and/or any organization described within 26 USC Section 501(c), ~~which receives a cumulative~~
24 ~~total per year of at least \$250,000 in City provided or City administered funds.~~

1 (f) "Designated public meeting" ~~shall~~ means any regular or special meeting of the
2 Board of Directors of a nonprofit organization which the Board of Directors designates as
3 open to all members of the public pursuant to Section 12L.4(a)(1) of this Chapter.
4

5 **SEC. 12L.4. PUBLIC ACCESS TO MEETINGS.**

6 (a) **Meetings Open to the Public.** Except as provided in ~~§~~subsections (a)(2) or
7 (a)(3), the following requirements shall be included in all City contracts with nonprofit
8 organizations:

9 (1) Each nonprofit organization shall designate and hold at least ~~two~~ one
10 designated public meetings per year. Issues addressed by the Board of Directors at
11 designated public meetings shall be of approximately the same general nature and
12 significance to the nonprofit organization as issues typically addressed by the Board of
13 Directors at its other regular or special meetings. These issues may include adoption of the
14 nonprofit organization's budget, nomination of members of the organization's Board of
15 Directors, and evaluation of the organization's contract(s) with the City. In aAt least one
16 designated public meeting the public shall have an opportunity to address the Board of
17 Directors on membership on the Board of Directors and to propose candidates for
18 membership on the Board of Directors as provided in Section 12L.6(b).

19 (2) Section 12L.4(a)(1) shall apply to the full extent allowed by State and
20 federal law.

21 (3) Section 12L.4(a)(1) shall not apply to nonprofit organizations engaged
22 primarily in the provision of abortion counseling or services, domestic violence sheltering
23 services, or suicide prevention counseling services.

24 (b) **Closed Meetings.** The Board of Directors may choose to close a portion of a
25 designated public meeting:

1 (1) When discussing any matters pertaining to the particular recipients of the
2 nonprofit organization's goods or services or donors of in-kind or monetary contributions to the
3 nonprofit organization where the discussion would necessarily reveal the identity of clients or
4 donors;

5 (2) When discussing any matters pertaining to litigation; real estate
6 negotiations; the appointment, employment, evaluation of performance, or dismissal of an
7 employee of the nonprofit organization; or labor negotiations in which the nonprofit
8 organization is involved; when hearing complaints or charges against an employee of the
9 nonprofit organization; or when discussing attorney-client privileged information, or
10 information which constitutes a trade secret;

11 (3) Under any circumstances where admitting members of the public is
12 prohibited by State or federal law;

13 (4) Under any other circumstances where the Board of Supervisors has
14 approved the closing of a portion of a designated public meeting by the nonprofit organization.

15 (c) **Public Comment.**

16 (1) At every designated public meeting the public shall have an opportunity to
17 directly address the Board of Directors on any item of interest to the public relating to the
18 operations of or services provided by the nonprofit organization.

19 (2) At any designated public meeting, the Board of Directors may adopt
20 reasonable regulations to ~~ie~~ensure that the intent of this Section 12L.4 is carried out, provided
21 that the Board of Directors allows for at least 30 minutes of public comment at each
22 designated public meeting.

23 (d) **Notice.**

24 (1) Each nonprofit organization shall provide the public with notice of each
25 designated public meeting at least 30 days in advance of the meeting.

1 (2) The Board of Directors shall cause a written notice of the date, time, and
2 location of each designated public meeting to be submitted to the Clerk of the Board of
3 Supervisors who shall post the written notice where notices of meetings of the Board of
4 Supervisors are posted, and to the San Francisco Main Library Government Information
5 Center which shall post the written notice where notices of meetings of City boards and
6 commissions are posted. In addition, upon inquiry by a member of the public, the nonprofit
7 organization shall disclose the date, time and location of the designated public meeting.
8

9 Section 13. Chapter 12N of the Administrative Code is hereby amended by revising
10 Section 12N.1, to read as follows:

11 **CHAPTER 12N: LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND**
12 **QUESTIONING YOUTH: YOUTH SERVICES SENSITIVITY TRAINING**

13
14 **SEC. 12N.1. DEFINITIONS.**

15 As used in this Chapter 12N, the following words and phrases shall have the
16 meanings indicated herein:

17 ~~(a)~~ "City" shall mean the City and County of San Francisco.

18 ~~(b)~~ "Contract" shall mean an agreement (however titled, including, without limitation, a
19 memorandum of understanding) to grant or otherwise provide funds to an organization for
20 youth services, including funds from another governmental entity administered through the
21 City or any City commission, board, agency, or department. "Contract" shall not include (1) an
22 agreement to provide goods to the City pursuant to bids or requests for proposals, where the
23 City is the end user of the goods; ~~or~~ (2) an agreement to provide services or benefits to City
24 employees and/or to their family members, dependents, or their other designated
25

1 beneficiaries; or (3) agreements valued below the Minimum Competitive Amount as defined in Section
2 6.40(a) of the Administrative Code.

3 ~~(e)~~ "Organization" shall mean any corporation formed under California law for any
4 private, public or charitable purpose, or any collaborative, which receives a cumulative total
5 per year of at least \$50,000 in City-provided or City-administered funds.

6 ~~(f)~~ "Sensitivity training" shall mean any program provided from a list of providers
7 whose programs have been reviewed and approved by a joint Human Rights Commission and
8 Youth Commission committee and shall include, but is not limited to, training regarding issues
9 faced by disabled, HIV positive, immigrant, persons of color, sexually abused, runaways from
10 non-accepting households, and homeless lesbian, gay, bisexual, transgender, queer, and
11 questioning youth.

12 ~~(g)~~ "Youth Services" shall mean child care, including after school care; job readiness,
13 training, and placement; health, including mental health and substance abuse; social services;
14 homeless prevention, housing or shelter programs or services; education; recreation;
15 delinquency prevention; and library services programs directed at or designed to serve
16 children or youth between the ages of ten and eighteen years old, or older as defined by the
17 organization.

18 Section 14. Chapter 12Y of the Administrative Code is hereby amended by revising
19 Section 12Y.3, to read as follows:

20 **CHAPTER 12Y: SAN FRANCISCO SLAVERY DISCLOSURE ORDINANCE**

21
22 **SEC. 12Y.3. EXCEPTIONS.**

23 This Chapter 12Y shall not be applicable to the following:

24 (a) Contracts for: (1) the receipt, administration, management, or investment of
25 monies held in trust by the City in the Retirement Fund or the Health Service System Trust

1 Fund; (2) the provision of medical or dental insurance to City employees; (3) the issuance,
2 sale, management, or administration of City bonds, notes or lease financings, or other similar
3 obligations, and related credit, liquidity, payment exchange, and other agreements; (4) the
4 safeguard, deposit, and investment of City funds by the City Treasurer in accordance with
5 Charter Section 6.106; and (5) the subordination or reorganization of debt held by the City.

6 (b) Contracts, loans, or grant agreements with a federal or ~~s~~State agency, if the
7 application of this Chapter 12Y would violate, or be inconsistent with, the terms or conditions
8 of any such grant, loan, or contract, or with the instructions or directions of the applicable
9 ~~F~~federal or State agency.

10 (c) Contracts for urgent litigation expenses, and agreements
11 entered into pursuant to the settlement of legal proceedings.

12 (d) Contracts for needed goods or services where the Director finds that such goods
13 or services are available from only one source that is: (1) willing to enter into a contract with
14 the City on the terms and conditions established by the City and (2) not currently disqualified
15 from doing business with the City.

16 (e) Contracts entered into in emergency situations in which it is necessary to
17 immediately procure commodities or services, or to make repairs to safeguard the lives or
18 property of the citizens of the City, or the property of the City, or to maintain public health or
19 welfare as a result of extraordinary conditions created by war, epidemic, natural disaster, or
20 the breakdown of any plant, equipment, or structure in the City.

21 (f) Contracts valued below the Minimum Competitive Amount as defined in Section 6.40(a)
22 of the Administrative Code. ~~for a cumulative amount of \$5,000.00 or less per vendor in each~~
23 ~~fiscal year.~~

1 Section 15. Chapter 101 of the Administrative Code is hereby amended by revising
2 Section 101.2, to read as follows:

3 **CHAPTER 101: RESTRICTING THE PURCHASE, SALE, OR DISTRIBUTION**
4 **OF SUGAR-SWEETENED BEVERAGES BY OR FOR THE CITY**

5
6 **SEC. 101.2. DEFINITIONS.**

7 For purposes of this Chapter 101,

8 * * * *

9 "Contract" means any agreement between the City and a person to provide or
10 procure labor, materials, equipment, supplies, or services to, for, or on behalf of the City for a
11 price to be paid out of monies deposited in the City Treasury or out of trust monies under the
12 control of or collected by the City, but excluding agreements valued below the Minimum
13 Competitive Amount as defined in Section 6.40(a) of the Administrative Code.~~for a cumulative amount~~
14 ~~of \$5,000 or less per vendor in each fiscal year.~~

15 * * * *

16
17 Section 16. Effective and Operative Dates.

18 This ordinance shall become effective 30 days after enactment. Enactment occurs
19 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
20 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
21 Mayor's veto of the ordinance. The ordinance shall become operative on July 1, 2025.

22
23 Section 17. Scope of Ordinance.

24 In enacting this ordinance, the Board of Supervisors intends to amend only those
25 words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks,

1 charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly
2 shown in this ordinance as additions, deletions, Board amendment additions, and Board
3 amendment deletions in accordance with the "Note" that appears under the official title of the
4 ordinance.

5

6

APPROVED AS TO FORM:
7 DAVID CHIU, City Attorney

8

By: _____
 /s/
 GUSTIN R. GUIBERT
 Deputy City Attorney

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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:

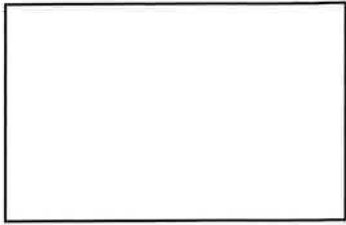
- How the new requirements would affect the ability of suppliers and small businesses to access City contracting opportunities;
- How the new requirements would interact with existing laws;
- Whether the City has available resources to effectively administer and enforce new requirements;
- What changes 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.

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor _____ inquires..."
- 5. City Attorney Request
- 6. Call File No. _____ from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. _____
- 9. Reactivate File No. _____
- 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Mandelman; Dorsey, Mahmood

Subject:

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

Long Title or text listed:

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); 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).

Signature of Sponsoring Supervisor: