

BOARD of SUPERVISORS



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MEMORANDUM

TO: Barbara A. Garcia, Director, Department of Public Health
Micki Callahan, Director, Department of Human Resources
Naomi Kelly, City Administrator, Office of the City Administrator
Ben Rosenfield, City Controller, Office of the Controller
Jaci Fong, Director, Office of Contract Administration
Jose Cisneros, Treasurer, Office of the Treasurer and Tax Collector
Harlan Kelly, Jr., General Manager, Public Utilities Commission
Mohammed Nuru, Director, Public Works

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: May 3, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by the Supervisor Wiener on April 26, 2016:

File No. 160425

Ordinance amending the Administrative Code to prohibit City-funded travel to states that have enacted laws after June 26, 2015, reversing anti-discrimination protections for LGBT individuals or permitting discrimination against LGBT individuals, and to prohibit City contracting with companies headquartered in states that have enacted such laws, or where work on the contract would be performed in such states.

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.

Referral from the Office of the Clerk of the Board

Government Audit and Oversight Committee

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c:

Greg Wagner, Department of Public Health

Colleen Chawla, Department of Public Health

Susan Gard, Department of Human Resources

Todd Rydstrom, Office of the Controller

Amanda Kahn Fried, Office of the Treasurer and Tax Collector

Juliet Ellis, Public Utilities Commission

Donna Hood, Public Utilities Commission

Frank Lee, Public Works

Fuad Swiss, Public Works

[Administrative Code - Ban on City-Funded Travel to and City Contracts Involving States With Anti-LGBT Laws]

Ordinance amending the Administrative Code to prohibit City-funded travel to states that have enacted laws after June 26, 2015, reversing anti-discrimination protections for LGBT individuals or permitting discrimination against LGBT individuals, and to prohibit City contracting with companies headquartered in states that have enacted such laws, or where work on the contract would be performed in such states.

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

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

Section 1. The Administrative Code is hereby amended by Adding Chapter 12X, to read as follows:

CHAPTER 12X: PROHIBITING CITY TRAVEL AND CONTRACTING IN STATES THAT

ALLOW DISCRIMINATION AGAINST LGBT INDIVIDUALS

SEC. 12X.1. Findings and Purpose.

SEC. 12X.2. Definitions.

SEC. 12X.3. Covered State List.

SEC. 12X.4. Travel.

SEC. 12X.5. Contracting.

SEC. 12X.6. Rules and Regulations.

1 **SEC. 12X.7. Preemption.**

2 **SEC. 12X.8. Undertaking for the General Welfare.**

3 **SEC. 12X.9. Severability.**

5 **SEC. 12X.1. FINDINGS AND PURPOSE.**

6 LGBT individuals are entitled to live free from discrimination on the basis of sexual orientation,
7 gender identity, and gender expression. San Francisco has a long history of protecting and promoting
8 the rights of LGBT individuals. San Francisco is also a city open to the free expression and protection
9 of religious views of all kinds.

10 Since the U.S. Supreme Court's landmark decision in Obergefell v. Hodges on June 26, 2015,
11 recognizing the constitutional right of same-sex couples to marry, states have enacted laws aimed at
12 reducing the legal protections for the LGBT community. In March 2016, North Carolina passed a law
13 nullifying municipal anti-discrimination protections for LGBT individuals in the state. Under the North
14 Carolina law, any existing local LGBT anti-discrimination measure is unenforceable, as would be any
15 future measure adopted by a local government. The law also discriminates against transgender people
16 by requiring them to use public bathrooms that correspond to their biological sex rather than their
17 gender identity. Other states, are considering similar laws. In April 2016, Mississippi enacted a law
18 that would permit discrimination against LGBT individuals if the person choosing to treat LGBT
19 individuals differently claims that the disparate treatment is based on "sincerely held religious
20 beliefs." Such laws have been proposed in other states. The City and County of San Francisco does
21 not support discrimination against LGBT individuals under any circumstances, including when such
22 discrimination is based on religion.

23 The Board of Supervisors finds that the City should not require its employees, many of whom
24 are LGBT individuals, to be subjected to these discriminatory laws while traveling on City business.
25 No individual, and certainly no employee of the City while conducting City business, should suffer the

1 indignity of being denied services on the basis of being lesbian, gay, bisexual, or transgender. The City
2 and the country have moved in the direction of granting more rights and more protections to LGBT
3 individuals. These new laws represent an affront to progress and to the recognition that the LGBT
4 community is entitled to equal treatment under the law.

5 Further, the City has a strong interest in dissociating itself from the discriminatory practices of
6 states that have enacted or in the future might enact such laws, and from companies that choose to have
7 their headquarters therein. City funds should not be expended, directly or indirectly, in states that
8 perpetuate unequal treatment of the LGBT community. The Board finds that supporting such states
9 through the tax revenue that would result from the expenditure of City funds therein is inconsistent with
10 the principles of equality that San Francisco strives to promote.

11

12 **SEC. 12X.2. DEFINITIONS.**

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

14 “Contract” means an agreement between a Contracting Department and any person or entity
15 that provides, at the expense of the City, for public works or public improvements to be purchased
16 under Chapter 6 of the Administrative Code, or for commodities or services to be purchased under
17 Chapter 21 of the Administrative Code. Notwithstanding the foregoing, “Contract” shall not include:

18 (a) Agreements for the investment of trust money or relating to the management of trust
19 assets, agreements to invest City moneys in U.S. government securities, or agreements for the
20 investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer finds
21 that failing to enter into the agreement would violate his or her fiduciary duties; or

22 (b) Agreements entered into for underwriting services for the purchase and sale of
23 City bonds, notes, and other forms of indebtedness; or

24 (c) Agreements advertised, solicited, or initiated prior to the Operative Date of this
25 Chapter 12X, including amendments to existing Contracts.

1 “Contracting Department” means the City department, office, board, commission, or other City
2 agency that enters into a Contract on behalf of the City.

3 “Contractor” means any corporation, partnership, individual, sole proprietorship, joint
4 venture, or other legal entity or combination thereof, which enters into a Contract with the City.

5 “Covered State” means any state that after June 26, 2015, has enacted a law that,

6 (a) voids or repeals existing state or local protections against discrimination on the
7 basis of Sexual Orientation, Gender Identity, or Gender Expression, or

8 (b) authorizes or requires discrimination against same-sex couples or their families or
9 that authorizes or requires discrimination on the basis of sexual orientation, gender identity, or gender
10 expression, including any law that creates an exemption to antidiscrimination laws in order to permit
11 discrimination against same-sex couples or their families or on the basis of Sexual Orientation, Gender
12 Identity, or Gender Expression.

13 “Covered State List” means the list maintained by the City Administrator of all states that meet
14 the definition of a Covered State, in accordance with Section 12X.3.

15 “Gender Expression” has the meaning set forth in Section 3304.1(c) of the Police Code.

16 “Gender Identity” has the meaning set forth in Section 3304.1(c) of the Police Code.

17 “Operative Date” means 90 days after the effective date of Chapter 12X.

18 “Sexual Orientation” has the meaning set forth in Section 12B.1(c) of the Administrative Code.

20 **SEC. 12X.3. COVERED STATE LIST.**

21 The City Administrator shall create and maintain the Covered State List. A state shall be added
22 to the Covered State List when it meets the definition of a Covered State. A state shall be removed from
23 the Covered State List where the law or laws that caused the state to meet the definition of a Covered
24 State have been repealed or found to be unenforceable by a court of competent jurisdiction. The

1 Covered State List shall be posted on the website of the City Administrator, and shall be reviewed and
2 updated by the City Administrator at least semiannually.

3

4 **SEC. 12X.4. TRAVEL.**

5 (a) The City shall not:

6 (1) Require any of its employees or officers to travel to a state on the Covered State
7 List; or

8 (2) Approve a request for City-funded travel to a state on the Covered State List.

9 (b) Subsection (a) shall not apply to travel that is:

10 (1) necessary for the enforcement of any state or City law;

11 (2) necessary for the defense of any legal claim against the City;

12 (3) required by law;

13 (4) required to meet contractual obligations incurred by the City; or

14 (5) necessary for the protection of public health, welfare, or safety.

15 (c) For purposes of this Section 12X.4, "travel" does not include landing in a state by plane to
16 make a connecting flight to a destination outside that state, or traversing a state by automobile, train,
17 bus, or otherwise, to reach a destination outside that state.

18

19 **SEC. 12X.5. CONTRACTING.**

20 (a) The City shall not enter into any Contract with a Contractor that has its United States
21 headquarters in a state on the Covered State List or where any or all of the work on the Contract will
22 be performed in a state on the Covered State List. Notwithstanding the foregoing sentence, if, during
23 the term of a Contract, the Contractor moves its headquarters, or the location from which it will
24 provide services to the City, to a state on the Covered State List, such a move shall not constitute
25 grounds to terminate the Contract.

1 **(b) Nonapplicability, Exceptions, and Waivers.** Subsection (a) shall not apply to Contracts in
2 the following circumstances:

3 (1) The Contracting Department determines that needed services under the
4 applicable Contract are available only from one source pursuant to applicable provisions of the
5 Administrative Code; or

6 (2) The Contracting Department determines, pursuant to applicable provisions of
7 the Administrative Code, that the Contract is necessary to respond to an emergency which endangers
8 the public health or safety; and no entity that complies with subsection (a) and is capable of responding
9 to the emergency is immediately available to perform the required services; or

10 (3) The Contracting Department determines that there are no qualified responsive
11 bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is
12 for a service, project, or property that is essential to the City or the public; or

13 (4) The Contracting Department determines that the public interest warrants the
14 granting of a waiver because application of this Section 12X.5 would have an adverse impact on
15 services or a substantial adverse financial impact on the City; or

16 (5) The Contracting Department determines that the services to be purchased are
17 available under a bulk purchasing arrangement with a federal, state, or local governmental entity or a
18 group purchasing organization; purchase under such arrangement will substantially reduce the City's
19 cost of purchasing such services; and purchase under such an arrangement is in the best interest of the
20 City; or

21 (6) The Contracting Department determines that the requirements of this Section
22 12X.5 will violate or are inconsistent with the terms or conditions of a grant, subvention, or agreement
23 with a public agency or the instructions of an authorized representative of any such agency with
24 respect to any such grant, subvention, or agreement, provided that the contracting officer has made a
25

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

3 (7) The General Manager of the Public Utilities Commission may waive the
4 requirements of this Section 12X.5 where the Contractor is providing wholesale or bulk water, power,
5 or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve,
6 voltage control, or loading scheduling, as required for assuring reliable services in accordance with
7 good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that
8 the purchase of same may not practically be accomplished through the City's standard competitive
9 bidding procedures; and further provided that this waiver provision shall not apply to Contractors or
10 franchisees providing direct, retail services to end users within the City.

11 (c) For any determination of nonapplicability, exception, or waiver pursuant to subsection (b),
12 the Contracting Department shall maintain a record documenting the basis for such decision. Each
13 Contracting Department that makes a determination of nonapplicability, exception, or waiver pursuant
14 to subsection (b) shall submit a report to the City Administrator summarizing the Contract and the
15 basis for inapplicability. Such reports shall be submitted annually within 30 days of the end of the
16 fiscal year.

17 (d) The requirements of this Section 12X.5 shall apply to Contracts first advertised, solicited,
18 or initiated on or after the Operative Date.

19
20 **SEC. 12X.6. RULES AND REGULATIONS.**

21 The City Administrator may adopt rules, regulations, and guidelines to implement this Chapter
22 12X.

1 **SEC. 12X.7. PREEMPTION.**

2 *Nothing in this Chapter 12X shall be interpreted or applied so as to create any requirement,*
3 *power, or duty in conflict with any federal or state law. In Contracts that involve the use of any funds*
4 *furnished, given, or loaned by the Government of the United States or the State of California, all laws,*
5 *rules, and regulations of the United States or California or of any federal or State departments relative*
6 *to the performance of such work and the conditions under which the work is to be performed, shall*
7 *prevail over the requirements of this Chapter 12X when such laws, rules, or regulations are in conflict.*

9 **SEC. 12X.8. UNDERTAKING FOR THE GENERAL WELFARE.**

10 *In enacting and implementing this Chapter 12X, the City is assuming an undertaking only to*
11 *promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an*
12 *obligation for breach of which it is liable in money damages to any person who claims that such breach*
13 *proximately caused injury.*

15 **SEC. 12X.9. SEVERABILITY.**

16 *If any section, subsection, sentence, clause, phrase, or word of this Chapter 12X, or any*
17 *application thereof to any person or circumstance, is held to be invalid or unconstitutional by a*
18 *decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining*
19 *portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have*
20 *passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not*
21 *declared invalid or unconstitutional without regard to whether any other portion of this Chapter or*
22 *application thereof would be subsequently declared invalid or unconstitutional.*

24 Section 2. RENUMBERING OF CHAPTER AND SECTIONS. Existing Chapter 12X of the
25 Administrative Code, consisting of existing Sections 12X.1-12X.9 (with Section 12X.6 having

1 been repealed), shall be renumbered as Chapter 96B of the Administrative Code, consisting
2 of Sections 96B.1-96B.9 (with Section 96B.6 having been repealed); and any cross-
3 references in the Municipal Code to existing Chapter 12X or its component sections shall be
4 renumbered accordingly. These changes are not made for any substantive reason and shall
5 have no substantive effect. The changes are made solely for the purpose of renumbering the
6 affected chapter and sections, so as to permit this ordinance to be codified in Chapter 12X of
7 the Administrative Code. The City Attorney shall direct the publisher of the Municipal Code to
8 take all appropriate steps to effectuate this provision.

9

10 Section 3. Effective and Operative Date.

11 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
12 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
13 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
14 Mayor's veto of the ordinance.

15 (b) This ordinance shall become operative 90 days after the effective date.

16

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18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: 
21 _____
22 BRADLEY A. RUSSI
23 Deputy City Attorney

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