

BOARD of SUPERVISORS



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MEMORANDUM

TO: All City Department Heads via Sophia Kittler, Mayor's Office
Emily Murase, Executive Director, Dept. on the Status of Woman

FROM: Victor Young, Assistant Clerk 
Rules Committee

DATE: June 13, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation on June 4, 2019:

File No. 190658

Ordinance amending the Administrative Code to prohibit City-funded travel to states that have enacted laws that prohibit abortion prior to the viability of the fetus, 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; and making technical amendments regarding the travel and contracting provisions of this ban, which also apply to the existing ban on City-funded travel to and City contracts involving states with laws that discriminate based on sexual orientation, gender identity, or gender expression.

If you have 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 or by email at: victor.young@sfgov.org.

c: Andres Power, Mayor's Office
Rebecca Peacock, Mayor's Office
Eddie McCaffrey, Mayor's Office
Minouche Kandel, Dept. on the Status of Women
Elizabeth Newman, Dept. on the Status of Women
Natalie Alvarez, Dept. on the Status of Women

1 [Administrative Code - Ban on City-Funded Travel to and City Contracts Involving States With
2 Restrictive Abortion Laws]

3 **Ordinance amending the Administrative Code to prohibit City-funded travel to states**
4 **that have enacted laws that prohibit abortion prior to the viability of the fetus, and to**
5 **prohibit City contracting with companies headquartered in states that have enacted**
6 **such laws, or where work on the contract would be performed in such states; and**
7 **making technical amendments regarding the travel and contracting provisions of this**
8 **ban, which also apply to the existing ban on City-funded travel to and City contracts**
9 **involving states with laws that discriminate based on sexual orientation, gender**
10 **identity, or gender expression.**

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

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

19 Section 1. Chapter 12X of the Administrative Code is hereby amended by revising
20 Sections 12X.1, 12X.2 (including correct alphabetizing of all defined terms), 12X.3, 12X.4, and
21 12X.5, respectively, to read as follows:

22 **CHAPTER 12X: PROHIBITING TRAVEL AND CONTRACTING IN STATES WITH**
23 **RESTRICTIVE ABORTION LAWS AND STATES THAT ALLOW DISCRIMINATION AGAINST**
24 **LGBT INDIVIDUALS**

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

2 (a) A woman’s right to choose to have an abortion is protected by the Constitutional right to
3 privacy under the Due Process clause of the 14th Amendment. In Roe v. Wade, 410 U.S. 113 (1973),
4 the U.S. Supreme Court held that the U.S. Constitution protects a woman’s personal decision to end a
5 pregnancy.

6 The right to control if and when to have a child is fundamental to gender equality, and
7 protecting a woman’s right to comprehensive reproductive healthcare makes for healthier states with
8 stronger economies. For instance, the ability to make this personal healthcare decision has enabled
9 women to pursue educational and employment opportunities, and is one of the main drivers increasing
10 college enrollment and wage gains for women. In 1992, the Supreme Court noted that “the ability of
11 women to participate equally in the economic and social life of the Nation has been facilitated by their
12 ability to control their reproductive lives.”

13 Abortion is an extremely safe procedure and critical part of reproductive health care. Nearly 1
14 in 4 U.S. women will have an abortion by age 45. Abortion is safer than childbirth, with only 0.23% of
15 all abortions resulting in a major complication compared to 1.3% for childbirth.

16 San Francisco has a legacy of leadership on women’s human rights. In 1998, San Francisco
17 became the first city in the world to adopt the principles of the United Nations’ Convention on the
18 Elimination of All Forms of Discrimination Against Women as a local ordinance committing the City to
19 take proactive measures to eliminate discrimination and advance women’s human rights including the
20 right to sexual and reproductive health.

21 San Francisco has always been a national leader in supporting reproductive freedom.
22 According to the National Institute for Reproductive Health Local Reproductive Freedom Index, San
23 Francisco received the highest scores of 4.5 stars and is listed as having the most reproductive health,
24 rights, and justice policies in place, out of 40 cities across the United States.

1 The City also has a history of protecting reproductive rights. In 2014, the City enacted an
2 ordinance establishing “buffer-zones” to prohibit harassment of people attaining services at
3 reproductive health clinics. The City also banned false and misleading claims by “Crisis Pregnancy
4 Centers,” and enacted multiple resolutions in support of continued state and federal funding for
5 reproductive health services.

6 Abortion access is increasingly restricted in many states across the country. Since 1995, states
7 have enacted 1,041 anti-choice measures, and in 2018, 22 states enacted 50 anti-choice legislative
8 measures. Given the risks that these measures pose to women’s health and access, San Francisco must
9 continue to support vital efforts to protect access to safe and legal abortion services at the local, state
10 and federal levels.

11 The City has a strong interest in dissociating itself from states that enact laws that limit the
12 legal right to abortion guaranteed by the United States Constitution. By prohibiting City-funded travel
13 to such states and by prohibiting the City from entering into contracts with companies headquartered in
14 such states, the City voices its opposition to these severe anti-choice policies by refusing to expend City
15 funds that would support such states through the tax revenue that would result from such expenditures.

16 (b) LGBT individuals are entitled to live free from discrimination on the basis of sexual
17 orientation, gender identity, and gender expression. San Francisco has a long history of
18 protecting and promoting the rights of LGBT individuals. San Francisco is also a city open to
19 the free expression and protection of religious views of all kinds.

20 Since the U.S. Supreme Court’s landmark decision in Obergefell v. Hodges on June
21 26, 2015, recognizing the constitutional right of same-sex couples to marry, states have
22 enacted laws aimed at reducing the legal protections for the LGBT community. In March 2016,
23 North Carolina passed a law nullifying municipal anti-discrimination protections for LGBT
24 individuals in the state. Under the North Carolina law, any existing local LGBT anti-
25 discrimination measure is unenforceable, as would be any future measure adopted by a local

1 government. The law also discriminates against transgender people by requiring them to use
2 public bathrooms that correspond to their biological sex rather than their gender identity.
3 Other states, are considering similar laws. In April 2016, Mississippi enacted a law that would
4 permit discrimination against LGBT individuals if the person choosing to treat LGBT
5 individuals differently claims that the disparate treatment is based on “sincerely held religious
6 beliefs.” Such laws have been proposed in other states. The City and County of San
7 Francisco does not support discrimination against LGBT individuals under any circumstances,
8 including when such discrimination is based on religion.

9 The Board of Supervisors finds that the City should not require its employees, many of
10 whom are LGBT individuals, to be subjected to these discriminatory laws while traveling on
11 City business. No individual, and certainly no employee of the City while conducting City
12 business, should suffer the indignity of being denied services on the basis of being lesbian,
13 gay, bisexual, or transgender. The City and the country have moved in the direction of
14 granting more rights and more protections to LGBT individuals. These new laws represent an
15 affront to progress and to the recognition that the LGBT community is entitled to equal
16 treatment under the law.

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

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

2 “Abortion Covered State” means a state that has enacted a law that prohibits abortion prior to
3 the viability of the fetus, regardless of whether there are exceptions to such prohibition. Examples of
4 such laws include a law prohibiting abortion after fetal pole cardiac activity can be detected but before
5 viability (so-called “fetal heartbeat” laws), and a law that prohibits abortion a set number of weeks
6 after fertilization but before viability.

7 “Award” means, for Contracting Departments with commissions or boards, the time when the
8 commission or board adopts a resolution awarding the Contract. For Contracting Departments which
9 do not have commissions or boards, or for Contracting Departments with commissions or boards,
10 where the commission or board has delegated award authority to the head of the Contracting
11 Department, award means the time when the head of the Contracting Department or Purchaser issues
12 a notice or order of award, as applicable. If none of the above apply, award means the time when the
13 Contract is fully executed.

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

15 “Contract” means an agreement between ~~a Contracting Department~~ the City and any
16 person or entity that provides, at the expense of the City, for public works or public
17 improvements to be purchased under Chapter 6 of the Administrative Code, or for
18 commodities or services to be purchased under Chapter 21 of the Administrative Code.

19 Notwithstanding the foregoing, “Contract” shall not include:

20 (a) Agreements for the investment of trust money or relating to the management of
21 trust assets, agreements to invest City moneys in U.S. government securities, or agreements
22 for the investment, deposit, or safekeeping of City moneys, where, for any such agreement,
23 the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the
24 interest of soundly investing public assets; or

1 (b) Agreements entered into for the issuance, sale, placement, management, trusteeship,
2 or administration of bonds, notes, commercial paper, lease financings, loans, or other similar
3 obligations, and related investment, credit, liquidity, payment exchange, remarketing, repurchase, and
4 other related agreements; underwriting services for the purchase and sale of City bonds, notes, and
5 other forms of indebtedness; or

6 ~~(e) Agreements advertised, solicited, or initiated prior to the Operative Date of this Chapter~~
7 ~~12X, including amendments to existing Contracts.~~

8 (c) Amendments, modifications, or renewals of a Contract; or

9 (d) Agreements for a cumulative amount of \$10,000 or less per Contractor in a fiscal year.

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

12 “Contractor” means any corporation, partnership, individual, sole proprietorship, joint
13 venture (including each joint venture partner), or other legal entity or combination thereof, which
14 enters into a direct Contract with the City.

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

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

19 (b) authorizes or requires discrimination against same-sex couples or their families or
20 that authorizes or requires discrimination on the basis of ~~S~~sexual ~~O~~rientation, ~~G~~gender
21 ~~I~~dentity, or ~~G~~gender ~~E~~xpression, including any law that creates an exemption to
22 antidiscrimination laws in order to permit discrimination against same-sex couples or their
23 families or on the basis of Sexual Orientation, Gender Identity, or Gender Expression.

1 "Covered State List" means the list maintained by the City Administrator of all states
2 that meet the definition of an Abortion Covered State and an LGBT Covered State, in accordance
3 with Section 12X.3.

4 "Gender Expression" has the meaning set forth in Section 3304.1(c) of the Police
5 Code.

6 "Gender Identity" has the meaning set forth in Section 3304.1(c) of the Police Code.

7 ~~"Operative Date" means 90 days after the effective date of Chapter 12X.~~

8 "Sexual Orientation" has the meaning set forth in Section 12B.1(c) of the Administrative
9 Code.

10 "United States Headquarters" means a business entity's principal place of business, or "nerve
11 center," in the United States, which is the location where the business' officers direct, control, and
12 coordinate the entity's activities. For business entities in a parent-subsidary relationship, the United
13 States Headquarters will be that of the Contractor, so long as the parent corporation and subsidiary
14 corporation maintain separate corporate structures and identities.

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

16 (a) The City Administrator shall create and maintain the Covered State List. A state
17 shall be added to the Covered State List when it meets the definition of an LGBT Covered
18 State or an Abortion Covered State. A state shall be removed from the Covered State List where
19 the law or laws that caused the state to meet the definition of an LGBT Covered State or an
20 Abortion Covered State have been repealed or found to be unenforceable by a court of
21 competent jurisdiction. The Covered State List shall be posted on the website of the City
22 Administrator, and shall be reviewed and updated by the City Administrator at least
23 semiannually. The Covered State List shall separately indicate the states that meet the definition of
24 an LGBT Covered State and the states that meet the definition of an Abortion Covered State.

1 (b) Role of the Department on the Status of Women. The Department on the Status of Women
2 shall analyze whether a state's law meets the definition of an Abortion Covered State. Within 30 days
3 of the effective date of the ordinance in File No. _____, amending this Chapter 12X to include
4 provisions regarding Abortion Covered States, the Department on the Status of Women shall submit a
5 recommendation to the City Administrator of states that satisfy the definition of an Abortion Covered
6 State. If the law that caused the state to meet the definition of an Abortion Covered State is enjoined by
7 a court of competent jurisdiction, the Department on the Status of Women shall not recommend that
8 state for inclusion on the Covered State List. The Department on the Status of Women shall thereafter
9 review the Abortion Covered States that appear on the Covered State List on at least a semiannual
10 basis and shall recommend to the City Administrator any states that should be added to or removed
11 from the Covered State List.

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

13 (a) The City shall not:

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

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

18 (b) Subsection (a) shall not apply to travel that is determined by the City department
19 funding the travel to be:

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

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

22 (3) required by law;

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

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

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

4 (d) For purposes of this Section 12X.4, "City-funded travel" includes payment or
5 reimbursement for (1) all modes of transportation including but not limited to costs for airfare, bus or
6 train tickets, car rentals, taxi, ride-sharing, parking and tolls, (2) lodging, (3) per diem, and (4) salary
7 or paid work time. "City-funded travel" does not include paid time off such as vacation, or payment or
8 reimbursement for training-related costs such as conference registration or materials.

9 **SEC. 12X.5. CONTRACTING.**

10 (a) The City shall not ~~Award enter into~~ any Contract ~~with~~ to a Contractor that has its
11 United States ~~h~~Headquarters in a state on the Covered State List or where the Contractor will
12 perform any or all of the work on the Contract ~~will be performed~~ in a state on the Covered State
13 List. For purposes of this subsection (a), "perform any or all of the work" does not include: (1) work
14 performed on a Contract by a subcontractor, subconsultant, or supplier; or (2) the supply of off-the-
15 shelf equipment, products or supplies, which are available immediately and do not need to be specially
16 designed or custom-made for the City.

17 (b) Notwithstanding the foregoing subsection (a) sentence, any of the following
18 circumstances occurring after the City Awards the Contract shall not constitute grounds to terminate
19 the Contract:

20 (1) if, during the term of a Contract, the Contractor moves its headquarters, or the
21 location from which it will provide services to the City, to a state on the Covered State List;

22 (2) the state in which the Contractor is headquartered or from which it will perform
23 work is added to the Covered State List; or

1 (3) the Contractor merges with or is otherwise acquired by an entity whose
2 headquarters are in a state on the Covered State List, such a move shall not constitute grounds to
3 terminate the Contract.

4 (cb) Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to
5 Contracts or solicitations for Contracts, or may be waived, in the following circumstances:

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

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

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

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

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

1 (6) The head of the Contracting Department determines that the requirements of
2 this-Section 12X.5 will violate or are inconsistent with the terms or conditions of a grant,
3 subvention, or agreement with a public agency or the instructions of an authorized
4 representative of any such agency with respect to any such grant, subvention, or agreement,
5 ~~provided that the contracting officer has made a good faith attempt to change the terms or conditions of~~
6 ~~any such grant, subvention, or agreement to authorize application of this Section; or~~

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

16 (ed) For any determination of nonapplicability, exception, or waiver pursuant to
17 subsection (cb), the Contracting Department shall maintain a record documenting the basis for
18 such decision. Each Contracting Department that makes a determination of nonapplicability,
19 exception, or waiver pursuant to subsection (cb) shall submit a report to the City Administrator
20 summarizing the Contract and the basis for inapplicability. Such reports shall be submitted
21 annually within 30 days of the end of the fiscal year.

22 (e) The prohibition of subsection (a) shall not apply to any Contract first advertised, solicited,
23 or initiated prior to February 11, 2017, where such Contract would be prohibited due to a state's
24 appearance on the Covered State List by virtue of meeting the definition of an LGBT Covered State.
25

1 (f) The prohibition of subsection (a) shall not apply to any Contract first advertised, solicited,
2 or initiated prior to January 1, 2020, where such Contract would be prohibited due to a state's
3 appearance on the Covered State List by virtue of meeting the definition of an Abortion Covered State.

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

6 * * *

7
8 Section 2. Effective Date; Retroactivity.

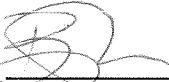
9 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs
10 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
11 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
12 Mayor's veto of the ordinance.

13 (b) All provisions of this ordinance shall be retroactive to February 11, 2017, except (1)
14 provisions exclusively applicable to the addition of Abortion Covered States to Administrative
15 Code Chapter 12X shall not be retroactive, and (2) other provisions of Administrative Code
16 Chapter 12X shall not be retroactive in their application to Abortion Covered States, unless an
17 Abortion Covered State is also an LGBT Covered State.

1 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By:



11 BRADLEY A. RUSSI
12 Deputy City Attorney

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