
**CHAPTER 12X:
PROHIBITING CITY TRAVEL AND CONTRACTING IN STATES THAT ALLOW DISCRIMINATION AGAINST
LGBT INDIVIDUALS**

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SEC. 12X.1. FINDINGS AND PURPOSE.

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

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

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

**Editor's note:*

Ord. 189-16, approved October 14, 2016, effective November 13, 2016, and becoming operative February 11, 2017, added provisions designated as a new Ch. 12X, Prohibiting City Travel and Contracting in States That Allow Discrimination Against LGBT Individuals, and redesignated former Ch. 12X, Policy Making Marijuana Offenses the Lowest Law Enforcement Priority, as Ch. 96B.

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

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

(Former Sec. 12X.1 was added by Ord. 297-06, File No. 061295, App. 11/29/2006; renumbered as Sec. 96B.1 by Ord. 189-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

SEC. 12X.2. DEFINITIONS.

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

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

- (a) Agreements for the investment of trust money or relating to the management of trust assets, agreements to invest City moneys in U.S. government securities, or agreements for the investment, deposit, or safekeeping of City moneys, where, for any such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the agreement is in the interest of soundly investing public assets; or
- (b) Agreements entered into for underwriting services for the purchase and sale of City bonds, notes, and other forms of indebtedness; or
- (c) Agreements advertised, solicited, or initiated prior to the Operative Date of this Chapter 12X, including amendments to existing Contracts.

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

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

"Covered State" means any state that after June 26, 2015, has enacted a law that,

- (a) voids or repeals existing state or local protections against discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, or
- (b) authorizes or requires discrimination against same-sex couples or their families or that authorizes or requires discrimination on the basis of sexual orientation, gender identity, or gender expression, including any law that creates an exemption to antidiscrimination laws in order to permit discrimination against same-sex couples or their families or on the basis of Sexual Orientation, Gender Identity, or Gender Expression.

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

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

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

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

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

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

(Former Sec. 12X.2 was added by Ord. 297-06, File No. 061295, App. 11/29/2006; renumbered as Sec. 96B.2 by Ord. 189-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

SEC. 12X.3. COVERED STATE LIST.

The City Administrator shall create and maintain the Covered State List. A state shall be added to the Covered State List when it meets the definition of a Covered State. A state shall be removed from the Covered State List where the law or laws that caused the state to meet the definition of a Covered State have been repealed or found to be unenforceable by a court of competent jurisdiction. The Covered State List shall be posted on the website of the City Administrator, and shall be reviewed and updated by the City Administrator at least semiannually.

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

(Former Sec. 12X.3 was added by Ord. 297-06, File No. 061295, App. 11/29/2006; renumbered as Sec. 96B.3 by Ord. 189-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

SEC. 12X.4. TRAVEL.

(a) The City shall not:

- (1) Require any of its employees or officers to travel to a state on the Covered State List; or
- (2) Approve a request for City-funded travel to a state on the Covered State List.

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

- (1) necessary for the enforcement of any state or City law;
- (2) necessary for the defense of any legal claim against the City;
- (3) required by law;
- (4) required to meet contractual obligations incurred by the City; or
- (5) necessary for the protection of public health, welfare, or safety.

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

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

(Former Sec. 12X.4 was added by Ord. 297-06, File No. 061295, App. 11/29/2006; renumbered as Sec. 96B.4 by Ord. 189-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

SEC. 12X.5. CONTRACTING.

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

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

- (1) The Contracting Department determines that needed services under the applicable Contract are available only from one source pursuant to applicable provisions of the Administrative Code; or
- (2) The Contracting Department determines, pursuant to applicable provisions of the Administrative Code, that the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with subsection (a) and is capable of responding to the emergency is immediately available to perform the required services; or
- (3) The Contracting Department determines that there are no qualified responsive bidders or prospective vendors that comply with the requirements of subsection (a); and the Contract is for a service, project, or property that is essential to the City or the public;

or

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

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

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

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

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

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

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

(Former Sec. 12X.5 was added by Ord. 297-06, File No. 061295, App. 11/29/2006; renumbered as Sec. 96B.5 by Ord. 189-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

SEC. 12X.6. RULES AND REGULATIONS.

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

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

(Former Sec. 12X.6 was added by Ord. 296-06, File No. 061554, App. 11/29/2006; repealed by Ord. 36-14, File No. 140081, App. 4/3/2014, Eff. 5/3/2014; renumbered as Sec. 96B.6 by Ord. 189-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

SEC. 12X.7. PREEMPTION.

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

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

(Former Sec. 12X.7 was added by Ord. 297-06, File No. 061295, App. 11/29/2006; renumbered as Sec. 96B.7 by Ord. 189-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

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

In enacting and implementing this Chapter 12X, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person

who claims that such breach proximately caused injury.

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

(Former Sec. 12X.8 was added by Ord. 297-06, File No. 061295, App. 11/29/2006; renumbered as Sec. 96B.8 by Ord. 189-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

SEC. 12X.9. SEVERABILITY.

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

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

(Former Sec. 12X.9 was added by Ord. 297-06, File No. 061295, App. 11/29/2006; renumbered as Sec. 96B.9 by Ord. 189-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)