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San Francisco Administrative Code

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

Article

- I. STATES THAT ALLOW DISCRIMINATION AGAINST LGBT INDIVIDUALS**
- II. STATES WITH RESTRICTIVE ABORTION LAWS**

***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. Ord. 200-19, approved August 9, 2019, effective September 9, 2019, renamed current Ch. 12X, created Article I to contain existing Secs. 12X.1 through 12X.9, and created Article II, containing new Secs. 12X.11 through 12X.19.

ARTICLE I: 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.
- Sec. 12X.7. Preemption.
- Sec. 12X.8. Undertaking for the General Welfare.
- Sec. 12X.9. Severability.

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.

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017; amended by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

(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.

For purposes of this Article I:

“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 Sexualexual¹ 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 February 11, 2017.

“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; amended by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

(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)

CODIFICATION NOTE

1. So in Ord. [200-19](#).

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; amended by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

(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; amended by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

(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; amended by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

(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 Article I, Chapter 12X.

(Added by Ord. [189-16](#), File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017; amended by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

(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. 18[189-16](#)9-16, File No. 160425, App. 10/14/2016, Eff. 11/13/2016, Oper. 2/11/2017)

SEC. 12X.7. PREEMPTION.

Nothing in this Article I, 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 Article I, 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; amended by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

(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 Article I, 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; amended by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

(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 Article I, 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; amended by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

(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)

ARTICLE II: STATES WITH RESTRICTIVE ABORTION LAWS

- Sec. 12X.11. Findings and Purpose.
- Sec. 12X.12. Definitions.
- Sec. 12X.13. Covered State List.
- Sec. 12X.14. Travel.
- Sec. 12X.15. Contracting.
- Sec. 12X.16. Rules and Regulations; Reporting.
- Sec. 12X.17. Preemption.
- Sec. 12X.18. Undertaking for the General Welfare.
- Sec. 12X.19. Severability.

SEC. 12X.11. FINDINGS AND PURPOSE.

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

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

Restrictive abortion bans can impact anyone who is capable of becoming pregnant, including trans-men, non-binary, and intersex people. Further, roll backs on reproductive rights, including passing abortion bans or restricting funding for clinical healthcare facilities that provide reproductive healthcare services, including abortions, contraception, and other healthcare services, have a disproportionate impact on LGBTQI individuals. These individuals access healthcare services at clinical healthcare facilities like Planned Parenthood— including abortions, contraception and other healthcare services such as HIV and AIDS related services, hormone therapy, and other LGBTQI related care.

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

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

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

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

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

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

(Added by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

SEC. 12X.12. DEFINITIONS.

For purposes of this Article II:

“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 Article II, 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 a state that has enacted a law that prohibits abortion prior to the Viability of the fetus, regardless of whether there are exceptions to such prohibition. Examples of such restrictive laws include a law prohibiting abortion after fetal pole cardiac activity can be detected but before viability (so-called “fetal heartbeat” laws), and a law that prohibits abortion a set number of weeks after fertilization but before Viability.

“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.13.

“Operative Date” means January 1, 2020.

“Viability” has the meaning articulated by the United States Supreme Court in *Roe v. Wade*: “potentially able to live outside the mother’s womb, albeit with artificial aid,” and as further articulated in the California Reproductive Privacy Act, (Health & Safety Code Sec. 123464): “the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus’s sustained survival outside the uterus without the application of extraordinary medical measures.”

(Added by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

SEC. 12X.13. COVERED STATE LIST.

(a) 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.

(b) Role of the Department on the Status of Women. The Department on the Status of Women shall analyze whether a state's law meets the definition of a Covered State. Within 30 days of the effective date of the ordinance in File No. 190658, creating this Article II of Chapter 12X, the Department on the Status of Women shall submit a recommendation to the City Administrator of states that satisfy the definition of a Covered State. If the law that caused the state to meet the definition of a Covered State is enjoined by a court of competent jurisdiction, the Department on the Status of Women shall not recommend that state for inclusion on the Covered State List. The Department on the Status of Women shall thereafter review the Covered States that appear on the Covered State List on at least a semiannual basis and shall recommend to the City Administrator any states that should be added to or removed from the Covered State List.

(Added by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

SEC. 12X.14. 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.14, "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. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

SEC. 12X.15. 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.15 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.15 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.15 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.15 shall apply to Contracts first advertised, solicited, or initiated on or after the Operative Date.

(Added by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

SEC. 12X.16. RULES AND REGULATIONS; REPORTING.

(a) The City Administrator may adopt rules, regulations, and guidelines to implement this Article II, Chapter 12X.

(b) By December 31, 2023, the Controller shall conduct an evaluation and submit a report to the Board of Supervisors regarding the economic impact of this Article II of Chapter 12X on the City.

(Added by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

SEC. 12X.17. PREEMPTION.

Nothing in this Article II, 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 Article II, Chapter 12X when such laws, rules, or regulations are in conflict.

(Added by Ord. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

12X.12SEC. 12X.18. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Article II, 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. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)

SEC. 12X.19. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Article II, 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. [200-19](#), File No. 190658, App. 8/9/2019, Eff. 9/9/2019)
