MEMORANDUM

TO: Department Heads
City Financial Officers
Contracting Officers

FROM: Naomi M. Kelly, City Administrator

CC: Alaric Degrafaried, Purchaser and Director of Office of Contract Administration
Dr. Emily Murase, Director, Department on the Status of Women
Clair Farley, Executive Director, Office of Transgender Initiatives

SUBJECT: Ban on City Contracts and Travel to States with Certain Laws - Addition of States with Abortion-Restrictive Laws

DATE: October 16, 2019

This memorandum addresses recent legislative changes to Chapter 12X of the Administrative Code concerning prohibitions on City-funded travel and contracting in certain states, and updates the list of states falling within the scope of Chapter 12X’s prohibitions.

On October 14, 2016, the Board of Supervisors enacted Chapter 12X of the Administrative Code (Ordinance No. 189-16, file No. 160425), which prohibits city-funded travel and City contracts involving states with certain anti-LGBT laws. Administrative Code Section 12X.3 requires the City Administrator to create and maintain a list of states with laws meeting the definition of a “Covered State.”

On August 9, 2019, the Board of Supervisors enacted an ordinance amending Chapter 12X (Ordinance No. 200-19, file No. 190658). The ordinance moved the existing provisions concerning states with anti-LGBT laws into Article I and created a new Article II, which prohibits city-funded travel and City contracts involving states with laws that prohibit abortion prior to the viability of the fetus. Administrative Code Section 12X.13 requires the Department on the Status of Women to submit a recommendation to the City Administrator concerning which states have enacted abortion prohibitions meeting the definition of a Covered State under Article II, and requires the City Administrator to create and maintain the Covered State List based on the recommendation.

On October 8, 2019, the Department on the Status of Women submitted its recommendation of states meeting the definition of a Covered State under Article II. That recommendation is attached, and the City Administrator concurs in the recommendation.
Generally:

Subject to certain exceptions, Chapter 12X prohibits the City from funding travel to states on the Covered State List under Article I or under Article II. Chapter 12X provides that the City shall not enter into any Contract with a Contractor that has its United States headquarters in a state or where any or all of the work on the Contract will be performed in a state on the Covered State List under Article I or Article II. Unless otherwise exempted, this contracting ban applies to all contracts entered into by the City. (See Administrative Code Sec. 12X.5(b) and 12X.15(b) for specific circumstances where the contracting prohibition is not applicable, exempted, or eligible for a waiver). However, please note that the contracting ban only applies to the prime contractor and does not extend to lower tier subcontractors, suppliers, or vendors.

Update to the Covered State List:

Under Chapter 12X, Article II, the following states are added to the Covered State List. Under Section 12X.15(d), the addition of these states applies only to contracts that were first advertised, solicited, or initiated on or after January 1, 2020, and does not apply to amendments to pre-existing contracts:

- Arkansas
- Florida
- Georgia
- Indiana
- Louisiana
- Massachusetts
- Nebraska
- Nevada
- North Dakota
- Ohio
- Pennsylvania
- West Virginia
- Wisconsin

The list below indicates the states currently on the Covered State List. States with an asterisk have anti-LGBT laws meeting the definition of a Covered State under Article I of Chapter 12X and also have anti-abortion laws meeting the definition of a Covered State under Article II of Chapter 12X.

- Alabama (effective 6/30/2017)*
- Iowa (effective 10/4/2019)*
- Kansas (effective 2/11/2017)*
- Kentucky (effective 6/30/2017)*
- Mississippi (effective 2/11/2017)*
- North Carolina (effective 2/11/2017)
- Oklahoma (effective 11/1/2018)*
- South Carolina (effective 04/15/2019)*
- South Dakota (effective 3/14/2017)*
- Tennessee (effective 2/11/2017)
- Texas (effective 9/1/2017)*
The Covered State List is reviewed on a semiannual basis. When a state is removed or added, the Office of the City Administrator will make that information public and post the updated list on its website, available at http://sfgsa.org/chapter-12x-anti-lgbt-state-ban-list.

If you have questions or require further clarification on City-funded travel, please contact your Financial Officer or accountant representative.
DATE: Wednesday, October 9, 2019
TO: Naomi Kelly, City Administrator
FROM: Elizabeth Newman, MPP, Policy and Projects Director
THROUGH: Emily M. Murase, PhD, Director
SUBJECT: Ban on City Contracts Involving and Travel to States with Restrictive Abortion Laws – Recommendation of States that Satisfy Definition of Covered States

On July 30, 2019, the San Francisco Board of Supervisors passed Ordinance No. 200-19 (file No. 190658) ("Ordinance"), which bans City-funded travel to states that have enacted laws that prohibit abortion prior to the viability of the fetus and which prohibits City contracting involving such states.

Covered states are defined in the Ordinance under Administrative Code 12X.12 as those that have, "enacted a law that prohibits abortion prior to the Viability of the fetus, regardless of whether there are exceptions to such prohibition." Viability refers to the point in a pregnancy when a fetus can sustain survival outside the uterus without the assistance of extraordinary medical measures and may vary on an individual basis. A fetus typically reaches viability between 24 and 28 weeks (gestational age) after the start of the pregnant person’s last menstrual period (LMP), whereas an average pregnancy lasts approximately 40 weeks from LMP. 1 Because a ban on abortion at 24 weeks could prohibit a person from terminating a pregnancy of a non-viable fetus, such states are included in the list below.

In accordance with the Ordinance, the Department on the Status of Women recommends the following states that have enacted a law prohibiting abortion prior to the viability of the fetus. This does not include states that have such laws which are repealed or enjoined by court order.

States that prohibit abortion before viability:

1. Alabama
2. Arkansas
3. Florida
4. Georgia
5. Indiana
6. Iowa
7. Kansas
8. Kentucky
9. Louisiana
10. Massachusetts
11. Mississippi
12. Nebraska
13. Nevada
14. North Dakota
15. Ohio
16. Oklahoma
17. Pennsylvania
18. South Carolina
19. South Dakota
20. Texas
21. West Virginia
22. Wisconsin

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<tr>
<th>STATE</th>
<th>STATUTORY LIMIT</th>
<th>STATUTE</th>
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<tbody>
<tr>
<td>Alabama</td>
<td>Conception</td>
<td>HR 314</td>
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<tr>
<td></td>
<td>22 weeks LMP</td>
<td>HB 18; AL Code 26-238-5</td>
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<tr>
<td>Arkansas</td>
<td>22 weeks LMP</td>
<td>HB 1037 (Act 171); Ark. Code Ann 20-16-1405</td>
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<tr>
<td>Georgia</td>
<td>20 weeks LMP</td>
<td>HB 954; Ga. Code Ann. § 16-12-141(c)</td>
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<td>22 weeks LMP</td>
<td>Ga. Code Ann. § 16-12-141</td>
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<tr>
<td>Indiana</td>
<td>22 weeks LMP</td>
<td>HEA 1210; Ind. Code Ann. §§ 16-34-2-1</td>
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<tr>
<td>Iowa</td>
<td>22 weeks LMP</td>
<td>SF 471; Iowa Code Ann. §146B.2</td>
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<tr>
<td>Kansas</td>
<td>22 weeks LMP</td>
<td>HB 2218; K.S.A. 65-6703</td>
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<td>Louisiana</td>
<td>6 weeks LMP</td>
<td>SB 184</td>
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<tr>
<td>Massachusetts</td>
<td>24 weeks LMP</td>
<td>MGL c.112, § 12M</td>
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<td>Mississippi</td>
<td>20 weeks LMP</td>
<td>HB 1400; Miss. Code Ann. § 41-41-137</td>
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<td>Nebraska</td>
<td>22 weeks LMP</td>
<td>LB 1103; Neb. Rev. Stat. §§ 28-3,102 to 111</td>
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<td>Nevada</td>
<td>24 weeks LMP</td>
<td>NRS 442.250</td>
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<td>North Dakota</td>
<td>22 weeks LMP</td>
<td>SB 2368; N.D. Cent. Code § 14-02.1-05.3</td>
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<td>Ohio</td>
<td>22 weeks LMP</td>
<td>SB 127; Ohio RC 2919.201</td>
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<tr>
<td>South Carolina</td>
<td>22 weeks LMP</td>
<td>H 3114; S.C. Code Ann. § 44-41-450</td>
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<td>South Dakota</td>
<td>22 weeks LMP</td>
<td>SB 72; S.D. Codified Laws §§ 34-23A-70</td>
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<tr>
<td>Texas</td>
<td>22 weeks LMP</td>
<td>HB 2; Tex. Health &amp; Safety Code Ann. §171.044</td>
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<tr>
<td>West Virginia</td>
<td>22 weeks LMP</td>
<td>HB 2568; W. VA. Code Ann. §16-2M-4</td>
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Last menstrual period (LMP) is typically used to determine the gestational age of a fetus. A fetus usually reaches viability between 24 and 28 weeks, whereas an average pregnancy lasts approximately 40 weeks from LMP.