

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

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.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline 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. Chapter 12X of the Administrative Code is hereby amended by creating an Article I and codifying existing Sections 12X.1 through 12X.9 under Article I but making no substantive revisions to those Sections, and creating an Article II and adding new Sections 12X.11 through 12X.19 under that Article, ~~revising Sections 12X.1, 12X.2 (including correct alphabetizing of all defined terms), 12X.3, 12X.4, and 12X.5, respectively,~~ to read as follows:

1 **CHAPTER 12X: PROHIBITING CITY TRAVEL AND CONTRACTING IN STATES**
2 **~~WITH RESTRICTIVE ABORTION LAWS AND STATES THAT ALLOW DISCRIMINATION~~**
3 **~~AGAINST LGBT INDIVIDUALS~~**

4
5 **ARTICLE I: STATES THAT ALLOW DISCRIMINATION AGAINST LGBT**
6 **INDIVIDUALS**

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

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

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

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

23 ~~San Francisco has a legacy of leadership on women's human rights. In 1998, San~~
24 ~~Francisco became the first city in the world to adopt the principles of the United Nations'~~
25 ~~Convention on the Elimination of All Forms of Discrimination Against Women as a local~~

1 ordinance committing the City to take proactive measures to eliminate discrimination and
2 advance women's human rights including the right to sexual and reproductive health.

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

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

13 Abortion access is increasingly restricted in many states across the country. Since
14 1995, states have enacted 1,041 anti-choice measures, and in 2018, 22 states enacted 50
15 anti-choice legislative measures. Given the risks that these measures pose to women's
16 health and access, San Francisco must continue to support vital efforts to protect access to
17 safe and legal abortion services at the local, state and federal levels.

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

24 (b) LGBT individuals are entitled to live free from discrimination on the basis of sexual
25 orientation, gender identity, and gender expression. San Francisco has a long history of

1 protecting and promoting the rights of LGBT individuals. San Francisco is also a city open to
2 the free expression and protection of religious views of all kinds.

3 Since the U.S. Supreme Court's landmark decision in Obergefell v. Hodges on June
4 26, 2015, recognizing the constitutional right of same-sex couples to marry, states have
5 enacted laws aimed at reducing the legal protections for the LGBT community. In March 2016,
6 North Carolina passed a law nullifying municipal anti-discrimination protections for LGBT
7 individuals in the state. Under the North Carolina law, any existing local LGBT anti-
8 discrimination measure is unenforceable, as would be any future measure adopted by a local
9 government. The law also discriminates against transgender people by requiring them to use
10 public bathrooms that correspond to their biological sex rather than their gender identity.
11 Other states, are considering similar laws. In April 2016, Mississippi enacted a law that would
12 permit discrimination against LGBT individuals if the person choosing to treat LGBT
13 individuals differently claims that the disparate treatment is based on "sincerely held religious
14 beliefs." Such laws have been proposed in other states. The City and County of San
15 Francisco does not support discrimination against LGBT individuals under any circumstances,
16 including when such discrimination is based on religion.

17 The Board of Supervisors finds that the City should not require its employees, many of
18 whom are LGBT individuals, to be subjected to these discriminatory laws while traveling on
19 City business. No individual, and certainly no employee of the City while conducting City
20 business, should suffer the indignity of being denied services on the basis of being lesbian,
21 gay, bisexual, or transgender. The City and the country have moved in the direction of
22 granting more rights and more protections to LGBT individuals. These new laws represent an
23 affront to progress and to the recognition that the LGBT community is entitled to equal
24 treatment under the law.
25

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

8 9 **SEC. 12X.2. DEFINITIONS.**

10 For purposes of this Article I:

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

16 ~~“Award” means, for Contracting Departments with commissions or boards, the time~~
17 ~~when the commission or board adopts a resolution awarding the Contract. For Contracting~~
18 ~~Departments which do not have commissions or boards, or for Contracting Departments with~~
19 ~~commissions or boards, where the commission or board has delegated award authority to the~~
20 ~~head of the Contracting Department, award means the time when the head of the Contracting~~
21 ~~Department or Purchaser issues a notice or order of award, as applicable. If none of the~~
22 ~~above apply, award means the time when the Contract is fully executed.~~

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

24 “Contract” means an agreement between a Contracting Department ~~a Contracting~~
25 ~~Department~~ the City and any person or entity that provides, at the expense of the City, for

1 public works or public improvements to be purchased under Chapter 6 of the Administrative
2 Code, or for commodities or services to be purchased under Chapter 21 of the Administrative
3 Code. Notwithstanding the foregoing, "Contract" shall not include:

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

9 (b) Agreements entered into for underwriting services for the purchase and
10 sale of City bonds, notes, and other forms of indebtedness; ~~the issuance, sale, placement,~~
11 ~~management, trusteeship, or administration of bonds, notes, commercial paper, lease~~
12 ~~financings, loans, or other similar obligations, and related investment, credit, liquidity, payment~~
13 ~~exchange, remarketing, repurchase, and other related agreements; underwriting services for the~~
14 ~~purchase and sale of City bonds, notes, and other forms of indebtedness;~~ or

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

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

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

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

22 "Contracting Department" means the City department, office, board, commission, or
23 other City agency that enters into ~~administers enters into~~ a Contract on behalf of the City.
24
25

1 "Contractor" means any corporation, partnership, individual, sole proprietorship, joint
2 venture ~~(including each joint venture partner)~~, or other legal entity or combination thereof,
3 which enters into a ~~direct~~ Contract with the City.

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

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

8 (b) authorizes or requires discrimination against same-sex couples or their
9 families or that authorizes or requires discrimination on the basis of ~~S~~exual ~~O~~rientation,
10 ~~G~~ender ~~I~~ntity, or ~~G~~ender ~~E~~xpression, including any law that creates an exemption to
11 antidiscrimination laws in order to permit discrimination against same-sex couples or their
12 families or on the basis of Sexual Orientation, Gender Identity, or Gender Expression.

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

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

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

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

20 "Operative Date" means February 11, 2017.

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

23 ~~"United States Headquarters" means a business entity's principal place of business, or~~
24 ~~"nerve center," in the United States, which is the location where the business' officers direct,~~
25 ~~control, and coordinate the entity's activities. For business entities in a parent-subsidary~~

1 ~~relationship, the United States Headquarters will be that of the Contractor, so long as the~~
2 ~~parent corporation and subsidiary corporation maintain separate corporate structures and~~
3 ~~identities.~~

4 5 **SEC. 12X.3. COVERED STATE LIST.**

6 (a) ~~The City Administrator shall create and maintain the Covered State List. A state~~
7 ~~shall be added to the Covered State List when it meets the definition of an LGBT Covered~~
8 ~~State or an Abortion Covered State. A state shall be removed from the Covered State List~~
9 ~~where the law or laws that caused the state to meet the definition of an LGBT Covered State~~
10 ~~or an Abortion Covered State have been repealed or found to be unenforceable by a court of~~
11 ~~competent jurisdiction. The Covered State List shall be posted on the website of the City~~
12 ~~Administrator, and shall be reviewed and updated by the City Administrator at least~~
13 ~~semiannually. The Covered State List shall separately indicate the states that meet the~~
14 ~~definition of an LGBT Covered State and the states that meet the definition of an Abortion~~
15 ~~Covered State.~~

16 (b) ~~Role of the Department on the Status of Women. The Department on the Status of~~
17 ~~Women shall analyze whether a state's law meets the definition of an Abortion Covered State.~~
18 ~~Within 30 days of the effective date of the ordinance in File No. _____, amending this~~
19 ~~Chapter 12X to include provisions regarding Abortion Covered States, the Department on the~~
20 ~~Status of Women shall submit a recommendation to the City Administrator of states that~~
21 ~~satisfy the definition of an Abortion Covered State. If the law that caused the state to meet the~~
22 ~~definition of an Abortion Covered State is enjoined by a court of competent jurisdiction, the~~
23 ~~Department on the Status of Women shall not recommend that state for inclusion on the~~
24 ~~Covered State List. The Department on the Status of Women shall thereafter review the~~
25 ~~Abortion Covered States that appear on the Covered State List on at least a semiannual basis~~

1 ~~and shall recommend to the City Administrator any states that should be added to or removed~~
2 ~~from the Covered State List.~~

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
7 State List; or

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

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

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

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

14 (3) required by law;

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

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

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

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

1 **SEC. 12X.5. CONTRACTING.**

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

10 ~~(b)~~ Notwithstanding the foregoing sentence ~~subsection (a)~~ ~~sentence~~, any of the following
11 circumstances ~~occurring after the City Awards the Contract shall not constitute grounds to~~
12 ~~terminate the Contract:~~

13 ~~(1) if, during the term of a Contract,~~ if, during the term of a Contract, the Contractor
14 moves its headquarters, or the location from which it will provide services to the City, to a
15 state on the Covered State List, such a move shall not constitute grounds to terminate the
16 Contract;

17 ~~_____ (2) the state in which the Contractor is headquartered or from which it will~~
18 ~~perform work is added to the Covered State List; or~~

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

22 ~~(be)~~ Nonapplicability, Exceptions, and Waivers. Subsection (a) shall not apply to
23 Contracts ~~or solicitations for Contracts, or may be waived,~~ in the following circumstances:
24
25

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

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

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

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

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

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

1 conditions of any such grant, subvention, or agreement to authorize application of this
2 Section, provided that the contracting officer has made a good faith attempt to change the terms or
3 conditions of any such grant, subvention, or agreement to authorize application of this Section; or

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

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

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

23 (~~f~~) ~~The prohibition of subsection (a) shall not apply to any Contract first advertised,~~
24 ~~solicited, or initiated prior to January 1, 2020, where such Contract would be prohibited due to~~
25

1 a state's appearance on the Covered State List by virtue of meeting the definition of an
2 Abortion Covered State.

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

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

7
8 **SEC. 12X.6. RULES AND REGULATIONS.**

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

11
12 **SEC. 12X.7. PREEMPTION.**

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

20
21 **SEC. 12X.8. UNDERTAKING FOR THE GENERAL WELFARE.**

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

1
2 **SEC. 12X.9. SEVERABILITY.**

3 If any section, subsection, sentence, clause, phrase, or word of this Article I, Chapter
4 12X, or any application thereof to any person or circumstance, is held to be invalid or
5 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
6 affect the validity of the remaining portions or applications of the Chapter. The Board of
7 Supervisors hereby declares that it would have passed this Chapter and each and every
8 section, subsection, sentence, clause, phrase, and word not declared invalid or
9 unconstitutional without regard to whether any other portion of this Chapter or application
10 thereof would be subsequently declared invalid or unconstitutional.

11
12 **ARTICLE II: STATES WITH RESTRICTIVE ABORTION LAWS**

13 **SEC. 12X.11. FINDINGS AND PURPOSE.**

14 The right to choose to have an abortion is protected by the Constitutional right to
15 privacy under the Due Process clause of the 14th Amendment. In Roe v. Wade, 410 U.S. 113
16 (1973), the U.S. Supreme Court held that the U.S. Constitution protects a personal decision to
17 end a pregnancy.

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

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

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

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

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

23 The City also has a history of protecting reproductive rights. In 2014, the City enacted
24 an ordinance establishing "buffer-zones" to prohibit harassment of people attaining services at
25 reproductive health clinics. The City also banned false and misleading claims by "Crisis

1 Pregnancy Centers,” and enacted multiple resolutions in support of continued state and
2 federal funding for reproductive health services.

3 Abortion access is increasingly restricted in many states across the country. Since
4 1995, states have enacted 1,041 anti-choice measures, and in 2018, 22 states enacted 50
5 anti-choice legislative measures. Given the risks that these measures pose to health and
6 access, San Francisco must continue to support vital efforts to protect access to safe and
7 legal abortion services at the local, state and federal levels.

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

14
15 **SEC. 12X.12. DEFINITIONS.**

16 For purposes of this Article II:

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

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

23 (a) Agreements for the investment of trust money or relating to the
24 management of trust assets, agreements to invest City moneys in U.S. government securities,
25 or agreements for the investment, deposit, or safekeeping of City moneys, where, for any

1 such agreement, the Treasurer, as a fiduciary of the City, determines that entering into the
2 agreement is in the interest of soundly investing public assets; or

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

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

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

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

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

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

18 “Operative Date” means January 1, 2020.

19 “Viability” has the meaning articulated by the United States Supreme Court in Roe v.
20 Wade: “potentially able to live outside the mother's womb, albeit with artificial aid,” and as
21 further articulated in the California Reproductive Privacy Act, (Health & Safety Code Sec.
22 123464): “the point in a pregnancy when, in the good faith medical judgment of a physician,
23 on the particular facts of the case before that physician, there is a reasonable likelihood of the
24 fetus’s sustained survival outside the uterus without the application of extraordinary medical
25 measures.”

1
2 **SEC. 12X.13. COVERED STATE LIST.**

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

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

21
22 **SEC. 12X.14. TRAVEL.**

23 (a) The City shall not:

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

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

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

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

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

6 (3) required by law;

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

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

9 (c) For purposes of this Section 12X.14, "travel" does not include landing in a state by
10 plane to make a connecting flight to a destination outside that state, or traversing a state by
11 automobile, train, bus, or otherwise, to reach a destination outside that state.

12
13 **SEC. 12X.15. CONTRACTING.**

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

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

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

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

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

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

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

18 (6) The Contracting Department determines that the requirements of this
19 Section 12X.15 will violate or are inconsistent with the terms or conditions of a grant,
20 subvention, or agreement with a public agency or the instructions of an authorized
21 representative of any such agency with respect to any such grant, subvention, or agreement,
22 provided that the contracting officer has made a good faith attempt to change the terms or
23 conditions of any such grant, subvention, or agreement to authorize application of this
24 Section; or

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

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

16 (d) The requirements of this Section 12X.15 shall apply to Contracts first advertised,
17 solicited, or initiated on or after the Operative Date.

18
19 **SEC. 12X.16. RULES AND REGULATIONS; REPORTING.**

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

22 (b) By December 31, 2023, the Controller shall conduct an evaluation and submit a
23 report to the Board of Supervisors regarding the economic impact of this Article II of Chapter
24 12X on the City.
25

1 **SEC. 12X.17. PREEMPTION.**

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

9
10 **SEC. 12X.18. UNDERTAKING FOR THE GENERAL WELFARE.**

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

15
16 **SEC. 12X.19. SEVERABILITY.**

17 If any section, subsection, sentence, clause, phrase, or word of this Article II, Chapter
18 12X, or any application thereof to any person or circumstance, is held to be invalid or
19 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
20 affect the validity of the remaining portions or applications of the Chapter. The Board of
21 Supervisors hereby declares that it would have passed this Chapter and each and every
22 section, subsection, sentence, clause, phrase, and word not declared invalid or
23 unconstitutional without regard to whether any other portion of this Chapter or application
24 thereof would be subsequently declared invalid or unconstitutional.
25

1 Section 2. Effective Date; ~~Retroactivity.~~

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

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

11
12 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
13 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
14 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
15 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
16 additions, and Board amendment deletions in accordance with the "Note" that appears under
17 the official title of the ordinance.

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

21 By: 

22 BRADLEY A. RUSSI
23 Deputy City Attorney

24 n:\legana\as2019\1900601\01375352.docx



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 190658

Date Passed: July 30, 2019

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.

July 11, 2019 Government Audit and Oversight Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

July 11, 2019 Government Audit and Oversight Committee - RECOMMENDED AS AMENDED

July 23, 2019 Board of Supervisors - PASSED ON FIRST READING

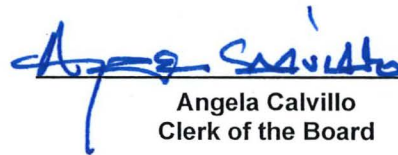
Ayes: 11 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani, Walton and Yee

July 30, 2019 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Brown, Fewer, Haney, Mandelman, Mar, Peskin, Ronen, Safai, Stefani and Yee
Excused: 1 - Walton

File No. 190658

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
7/30/2019 by the Board of Supervisors of
the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


London N. Breed
Mayor

8.9.19

Date Approved