

ARTICLE 131: NONDISCRIMINATION IN CONTRACTS*

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***Editor's Note:**

Former Administrative Code Chapter 12B ("Nondiscrimination in Contracts") was redesignated as Labor and Employment Code Article 131 by Ord. [221-23](#), File No. 230835, approved November 3, 2023, effective December 4, 2023, and operative January 4, 2024.

SEC. 131.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS; DEFINITIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts hereinafter executed or amended in any manner or as to any portion thereof, a provision obligating the contractor not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this Article or in retaliation for opposition to any practices forbidden under this Article against any employee of, any City employee working with, or applicant for employment with such contractor and shall require such contractor to include a similar provision in all subcontracts executed or amended thereunder.

(b) No contracting agency of the City, or any department thereof, acting for or on behalf of the City and County, shall execute or amend any contract or property contract with any contractor that discriminates in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent.

(c) **Definitions.** As used in this Article 131, the following words and phrases shall have the meanings indicated herein:

"Age" shall mean the age of any employee or applicant for employment who has attained the age of 40 years. For the purposes of this Article, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of their age, if such person has attained the age of 40 years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this Article.

"Amend" shall mean to substantively change the terms of a pre-existing contract, and shall not include amendments to decrease the scope of work or the amount to be paid under a contract. Construction change orders shall not be construed as contract amendments for the purposes of this Article.

"City" shall mean the City and County of San Francisco.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into after June 1, 1997 pursuant to settlement of legal proceedings, contracts for urgent litigation expenses, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

"Director" shall mean the Director of the Human Rights Commission.

“Disability” shall mean a physical or mental impairment which limits one or more major life activities, and includes being regarded as having such an impairment, or having a record of such an impairment.

“Domestic partner” shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

“Gender Expression” shall mean the outward expression of one’s gender identity, which may include, but is not limited to, clothing, hair styles, gestures, makeup, or behavior which may or may not conform to societal expectations typically related to traits associated with a person’s gender identity, sexual orientation, or assigned sex at birth.

“Gender identity” shall mean how a person self-identifies their gender, or their internal understanding of their gender. A person’s gender identity may or may not correspond with social norms or stereotypes related to the sex they were assigned at birth. There are many terms related to gender with which a person may identify, including but not limited to: agender; androgynous; bigender; cisgender; cisgender man; cisgender woman; gender fluid; gender non-conforming; gender-expansive; genderqueer, non-binary, pangender, Two-Spirit, transgender, trans, transgender man, transgender woman, masculine, and feminine. One’s gender identity may be described through any number of ever-expanding terms or definitions, and one’s gender identity may be subject to change by the individual.

“Property contract” shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City’s use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Article, “exclusive use” means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. “Property contract” shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that “property contract” shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. “Property contract” shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

“Qualified disabled employee” shall mean a person able to perform the essential functions of a job with reasonable accommodation.

“Sex” shall mean one’s anatomical, physiological, genetic, or physical attributes, and the variation in these attributes that may or may not indicate male, female, or a different sex such as intersex. These attributes may include but are not limited to both primary and secondary sex characteristics, including internal and external reproductive organs, hormone levels, hormone receptors, chromosomes and genes, all of which may change over time. A person’s sex may or may not align with their gender identity.

“Sexual orientation” shall mean one’s physical, emotional, romantic, or sexual attraction to people of a particular gender or multiple genders, or lack thereof, and is distinct from their gender expression or gender identity. A person’s sexual orientation may be identified by terms including, but not limited to, asexual, bisexual, gay, lesbian, heterosexual, homosexual, pansexual, and queer.

“Subcontract” shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor’s obligations arising from a contract with the City, or (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

“Subcontractor” means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

(d) The requirements of this Article shall apply to (i) any of a contractor’s operations within San Francisco; (ii) a contractor’s operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor’s presence at that location is connected to a contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor’s operations elsewhere within the United States.

(Added as Administrative Code Sec. 12B.1; amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 215-96, App. 5/30/96; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000;

■ Ord. [250-22](#), File No. 220702, App. 12/16/2022, Eff. 1/16/2022; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.2. NONDISCRIMINATION PROVISIONS.

Every contract and property contract for or on behalf of the City shall incorporate by reference and require the contractor to comply with the provisions of Section 131.2. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements set forth in this Section 131.2, and failure to do so shall constitute a material breach of contract.

In the performance of a contract the contractor agrees as follows:

(a) The contractor or subcontractor will not discriminate against any employee, City and County employee working with such contractor or subcontractor, or applicant for employment with such contractor or subcontractor on the basis of the fact or perception of that person’s race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, AIDS/HIV status, or association with members of classes protected under this Article or in retaliation for opposition to any practices forbidden under this Article. Discrimination on the basis of sex includes sexual harassment as defined in

Section 16.9-25(b) of the Administrative Code. The contractor or subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this Article shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this Section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, and (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor or subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this Section.

(b) The prime contractor shall state that the prime contractor does not, and will not during the term of the contract discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent. The Director shall be the final arbiter of a contractor's or property contractor's compliance or substantial compliance with this Article and the Director's determination shall not be appealable to the Commission. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of contractor's insurance provider any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

In adopting this Section 131.2(b), the intent of the Board of Supervisors is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.

In particular, consistent with the severability clause set forth in Section 131.7 below, the Board of Supervisors intends that if a court or agency of competent jurisdiction finds that a State or federal law, rule or regulation invalidates (1) the application of this Section to any business, person, type of compensation or benefit, or location; or (2) any other requirement of this Section, then the court or agency should sever the invalid clause and leave in effect the remainder of this Section.

(c) The contractor or subcontractor shall provide reasonable accommodation for qualified disabled applicants for employment and for qualified disabled employees. Said contractor or subcontractor need not provide reasonable accommodation if such would present an undue hardship. An undue hardship may include but not be limited to more than a de minimus cost, violation of the seniority rights of other co-workers as established by a bona fide seniority system, or a health or safety risk to the employee or co-employees. The burden of establishing an undue hardship rests on the employer.

(d) The contractor or subcontractor will in all solicitations or advertisements for employees placed by or on his or her behalf, state that qualified applicants will receive consideration for employment without regard to the fact or perception of their race, creed, religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or AIDS/HIV status.

(e) The contractor or subcontractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other agreement or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers' representative of the contractor's or subcontractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The contractor or subcontractor shall:

(1) Permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Commission, the City's awarding authority or the Fair Employment and Housing Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Article, and upon request shall provide evidence that the contractor has complied or will comply with the nondiscrimination provisions of this Article.

(2) Submit an Equal Pay Report if the contractor or subcontractor has at least 20 employees worldwide and, for a contract or subcontract, the agreement has a value equal to or in excess of the Threshold Amount set forth in Administrative Code Chapter 6 or the Minimum Competitive Amount set forth in Administrative Code Chapter 21, as applicable, or, for a grant, the agreement has a value equal to or in excess of \$50,000.

(A) The Equal Pay Report shall provide summary information on compensation paid to employees identified by sex, race, sex and race, and data points the Commission has adopted by regulation.

(B) Each contractor or subcontractor shall file a complete and accurate Equal Pay Report with the Commission commencing on a date set by the Commission but no later than July 3, 2017. Thereafter, each contractor or subcontractor shall file a Equal Pay Report annually.

(C) The Equal Pay Report requirements of this Subsection (f)(2) shall apply to all qualifying contracts, subcontracts and grants first advertised for bid, request for qualification or proposal is issued or initiated on a date set by the Commission but no later than July 3, 2017.

(D) If any information in the Equal Pay Report constitutes proprietary financial data, or confidential trade secret, or is protected by the right of privacy under the U.S. or California Constitution, the City shall not disclose such information unless required by law, including under the California Public Records Act and the San Francisco Sunshine Ordinance.

(g) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Article upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that the contractor or subcontractor has wilfully violated such nondiscrimination provisions; or

(2) A finding by the California Fair Employment and Housing Commission that a contractor or subcontractor has violated any provision of the California Fair Employment and Housing Act or the nondiscrimination provisions of this Article, provided that the California Fair Employment and Housing Commission has issued a final order pursuant to Section 12970 of the Government Code, or has obtained a judgment and order enforcing the final order pursuant to Section 12973 of the Government Code; provided further, that for the purposes of these provisions, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

(3) Upon such finding by the Director or other official designated by the Commission, or the California Fair Employment and Housing Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission, within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Subparagraphs (h) and (i) hereof.

(4) The Commission shall, within 10 days of the date of issuance of any finding by the Director or other official designated by the Commission for the enforcement of this Article, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

(5) For purpose of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 131.2(g)(1) of this Article, that Commissioner may not participate in an appeal under this Section except as a witness.

(6) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding, and requiring him or her to bring such books, records, documents or other things under his or her control.

(7) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

(8) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(9) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Article.

(h) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Article, or may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Article. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Article or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 131.2(g) that the contractor has discriminated contrary to the provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

(i) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible bidder as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Article, be allowed to act as a contractor or subcontractor under any contract or property contract.

(j) If a finding of discrimination is made by either the Director or the Commission, the contract awarding department shall submit a report to the Board of Supervisors, the Mayor's Office, and the Commission that provides details of what actions, if any, the contract

awarding department undertook under this Article.

(k) The Commission shall provide an annual report to the Board of Supervisors summarizing the effectiveness of the information obtained from the Equal Pay Reports, recommendations for legislative change if needed, and a summary of the investigations, if any, that stem from the Equal Pay Reports. The Commission's recommendations shall include drafts of one or more ordinances if legislative change is necessary or desirable to implement the recommendations.

(l) Nothing contained in this Article shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.

(m) The contractor or subcontractor will meet the following standards for compliance:

(1) If the contractor or subcontractor has been held to be an irresponsible bidder under Section 131.2(i) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Article.

(2) The contractor or subcontractor may be required to file with the Commission a basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report as determined by the Commission. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

(3) Personally, or through its representatives, the contractor or subcontractor shall, through negotiations with the unions with whom it has collective bargaining or other agreements requiring the contractor or subcontractor to obtain or clear its employees through the union, or when the contractor or subcontractor otherwise uses a union as an employment resource, attempt to develop an agreement which will:

(A) Define and outline responsibilities for nondiscrimination in hiring, referral, upgrading and training;

(B) Otherwise implement a nondiscrimination program in terms of the unions' specific areas of skill and geography, such as an apprenticeship program, to the end that minority workers will be available and given an equal opportunity for employment.

(4) The contractor or subcontractor shall notify the awarding authority of opposition to the nondiscrimination provisions of a contract by individuals, firms or organizations during the term of the contract.

(Added as Administrative Code Sec. 12B.2; amended by Ord. 489-86, App. 12/18/86; Ord. 84-87, App. 3/20/87; Ord. 433-94, App. 12/30/94; Ord. 215-96, App. 5/30/96; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000; Ord. [251-14](#), File No. 141001, App. 12/17/2014, Eff. 1/16/2015; Ord. [16-16](#), File No. 151227, App. 2/18/2016, Eff. 3/19/2016; Ord. [6-17](#), File No. 161081, App. 1/20/2017, Eff. 2/19/2017; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

Editor's Note:

Former Administrative Code Sections 12B.2-1 through 12B.2-6 (now at Labor and Employment Code Sections 131.2-1 through 131.2-6), establishing an "Equal Pay Advisory Board," expired per the terms of the sunset provision (former Administration Code Section 12B.2-6) and were removed from the Code at the direction of the Office of the City Attorney.

SEC. 131.2-1. [RESERVED.]

(Added as Administrative Code Sec. 12B.2-1 by Ord. [251-14](#), File No. 141001, App. 12/17/2014, Eff. 1/16/2015; expired 7/2/2018; redesignated in accordance with Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.2-2. [RESERVED.]

(Added as Administrative Code Sec. 12B.2-2 by Ord. [251-14](#), File No. 141001, App. 12/17/2014, Eff. 1/16/2015; expired 7/2/2018; redesignated in accordance with Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.2-3. [RESERVED.]

(Added as Administrative Code Sec. 12B.2-3 by Ord. [251-14](#), File No. 141001, App. 12/17/2014, Eff. 1/16/2015; amended by Ord. [16-16](#), File No. 151227, App. 2/18/2016, Eff. 3/19/2016; expired 7/2/2018; redesignated in accordance with Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.2-4. [RESERVED.]

(Added as Administrative Code Sec. 12B.2-4 by Ord. [251-14](#), File No. 141001, App. 12/17/2014, Eff. 1/16/2015; expired 7/2/2018; redesignated in accordance with Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.2-5. [RESERVED.]

(Added as Administrative Code Sec. 12B.2-5 by Ord. [251-14](#), File No. 141001, App. 12/17/2014, Eff. 1/16/2015; expired 7/2/2018; redesignated in accordance with Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.2-6. [RESERVED.]

(Added as Administrative Code Sec. 12B.2-6 by Ord. [251-14](#), File No. 141001, App. 12/17/2014, Eff. 1/16/2015; amended by Ord. [16-16](#), File No. 151227, App. 2/18/2016, Eff. 3/19/2016; expired 7/2/2018; redesignated in accordance with Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.3. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 131.2 hereof.

■ (Added as Administrative Code Sec. 12B.3 by Ord. 261-66, App. 10/21/66; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.4. NONDISCRIMINATION GUIDELINES.

The following nondiscrimination guidelines shall apply to all contracts and property contracts subject to this Article.

In order to be eligible to submit a bid or proposal or to have a bid or proposal considered by the awarding authority, the prospective contractor shall agree to abide by a nondiscrimination program which conforms to the requirements of the Commission.

The Commission may also require contractors and subcontractors to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying nondiscrimination program.

(a) Nondiscrimination programs developed pursuant to this Section shall be effective for a period of 12 months from the date of approval by the Commission. Contractors or subcontractors who are members in good standing of a trade association which has negotiated a nondiscrimination program with the Commission may make this association program their commitment for the specific contract or property contract upon approval of the Commission without the process of a separate pre-bid or pre-award conference. Such an association agreement shall be effective for a period of 12 months from the date of approval by the Commission. Trade associations shall provide the Commission with a list of members in good standing in such association. The Commission shall annually supply contracting agencies of the City and County with a list of contractors and subcontractors who have developed approved nondiscrimination programs.

(b) The awarding authority shall be responsible for notifying all prospective bidders or proposers of the requirements of this Section and, when requested by the Commission, for notifying the Commission of each contract or property contract which is being proposed to be put to public bid.

(c) The proposed nondiscrimination program described by this Section, and the pre-bid or pre-award conference which may be required by the Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

- (1) Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;
- (2) Classroom preparation for the job when not apprenticeable;
- (3) Pre-apprenticeship education and preparation;
- (4) Upgrading training and opportunities;
- (5) Encouraging the use of contractors and subcontractors of all ethnic groups, provided, however, that any contract or property contract subject to this Article shall require the contractor or subcontractor to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City for such work; and
- (6) The entry of qualified minority journeypersons into the industry.

(d) Nondiscrimination agreements resulting from the proposed nondiscrimination programs or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the Commission at its discretion. In addition, the Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this Article.

(e) Any job training or education program using the funds, facilities, or staff of the City which, in the judgment of the Board of Supervisors or the Commission, can make a contribution to the implementation of this Article shall submit reports to the Commission as requested and shall be required to cooperate with the contractors, subcontractors and unions and with the Commission for the effectuation of the nondiscrimination programs developed under this Article.

■ (Added as Administrative Code Sec. 12B.4; amended by Ord. 498-75, App. 1/5/75; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.5. ARTICLE APPLIES ONLY TO DISCRIMINATORY EMPLOYMENT PRACTICES.

(a) This Article shall not confer upon the City and County of San Francisco or any agency, board or commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or subcontractors engaged in the performance of City and County contracts or property contracts.

(b) The Board of Supervisors shall appropriate such funds from the General Fund of the City, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for the enforcement of this Article.

■ (Added as Administrative Code Sec. 12B.5; amended by Ord. 340-68, App. 12/6/68; Ord. 201-97, App. 5/27/97; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.6. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Article under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department, board or commission certifies in writing to the Director that pursuant to Administrative Code Sections 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Article capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Article.

(b) This Article shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Article shall not apply where the contracting officer finds that the requirements of this Article 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 Article.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Article for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Article and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Article would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Article, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Article;

(4) The waiver authority granted to contracting officers in this Section 131.6(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Article and why the waiver does not defeat the intent of this Article, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Article. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 131.6(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 131.6(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 131.6(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 131.6(d);

(5) Nothing in this Section 131.6(d) shall limit the right of the Board of Supervisors to waive the provisions of this Article.

(e) This Article shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Article is capable of performing the desired transactions(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Article.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Article 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 exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco.

(g) Sections 131.1(b) and 131.2(b) shall not apply to any contracts or property contracts executed or amended prior to June 1, 1997, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City, prior to June 1, 1997, unless and until such contracts or property contracts are amended after June 1, 1997, and would otherwise be subject to this Article.

(Added as Administrative Code Sec. 12B.5-1 by Ord. 481-96, App. 12/20/96; amended by Ord. 401-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 431-97, App. 11/21/97; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 131.7. SEVERABILITY.

This Article shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Article shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall remain in effect.

(Added as Administrative Code Sec. 12B.6; amended by Ord. 261-66, App. 10/21/66; Ord. 286-97, App. 7/18/97; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

ARTICLE 132: NONDISCRIMINATION IN PROPERTY CONTRACTS*

Sec. 132.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions.

Sec. 132.2. Definitions.

Sec. 132.3. Nondiscrimination Provisions.

Sec. 132.4. Human Rights Commission Empowered.

Sec. 132.5. Funding.

Sec. 132.6. Nonapplicability, Exceptions and Waivers.

Sec. 132.7. Severability.

*Editor's Note:

Former Administrative Code Chapter 12C ("Nondiscrimination in Property Contracts") was redesignated as Labor and Employment Code Article 132 by Ord. [221-23](#), File No. 230835, approved November 3, 2023, effective December 4, 2023, and operative January 4, 2024.

SEC. 132.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts a provision obligating the contractor not to discriminate on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this Article or in retaliation for opposition to any practices forbidden under this Article against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operated by that contractor, and shall require such contractor to include a similar provision in all subcontracts.

(b) The requirements of this Article shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to as contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States.

(Added as Administrative Code Sec. 12C.1; amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 132.2. DEFINITIONS.

As used in this Article 132, the term:

“Age” for the purpose of membership refers to the age of any person who has attained the age of 18 years, except for bona fide senior citizen organizations.

“City” shall mean the City and County of San Francisco.

“Commission” shall mean the Human Rights Commission of the City and County of San Francisco.

“Contract” shall mean an agreement for public works or improvements to be performed, or grants to be provided, or for goods or services to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into pursuant to settlement of legal proceedings, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

“Contractor” means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

“Director” shall mean the Director of the Human Rights Commission.

“Disability” is a physical or mental impairment which limits one or more major life activities, and includes being regarded as having such an impairment, or having a record of such an impairment.

“Domestic partner” shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

“Gender Expression” shall mean the outward expression of one’s gender identity, which may include, but is not limited to, clothing, hair styles, gestures, make up, or behavior which may or may not conform to societal expectations typically related to traits associated with a person’s gender identity, sexual orientation, or assigned sex at birth.

“Gender identity” shall mean how a person self-identifies their gender, or their internal understanding of their gender. A person’s gender identity may or may not correspond with social norms or stereotypes related to the sex they were assigned at birth. There are many terms related to gender with which a person may identify, including but not limited to: agender; androgynous; bigender; cisgender; cisgender man; cisgender woman; gender fluid; gender non-conforming; gender-expansive; genderqueer, non-binary, pangender, Two-Spirit, transgender, trans, transgender man, transgender woman, masculine, and feminine. One’s gender identity may be described through any number of ever-expanding terms or definitions, and one’s gender identity may be subject to change by the individual.

“Property contract” shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City’s use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Article, “exclusive use” means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. “Property contract” shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that “property contract” shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. “Property contract” shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

“Qualified disabled employee” shall mean a person able to perform the essential functions of a job with reasonable accommodation.

“Sex” shall mean one’s anatomical, physiological, genetic, or physical attributes, and the variation in these attributes that may or may not indicate male, female, or a different sex such as intersex. These attributes may include but are not limited to both primary and secondary sex characteristics, including internal and external reproductive organs, hormone levels, hormone receptors, chromosomes and genes, all of which may change over time. A person’s sex may or may not align with their gender identity.

“Sexual orientation” shall mean one’s physical, emotional, romantic, or sexual attraction to people of a particular gender or multiple genders, or lack thereof, and is distinct from their gender expression or gender identity. A person’s sexual orientation may be identified by terms including, but not limited to, asexual, bisexual, gay, lesbian, heterosexual, homosexual, pansexual, and queer.

“Subcontract” shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor’s obligations arising from a contract with the City, (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

“Subcontractor” means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

SEC. 132.3. NONDISCRIMINATION PROVISIONS.

Every contract and property contract entered into by any agency of the City shall incorporate by reference and require contractor to comply with the nondiscrimination provisions of Section 132.3. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements of this Section 132.3, and failure to do so shall constitute a material breach of contract.

In the performance of a contract, the contractor or subcontractor shall agree as follows:

(a) The contractor or subcontractor will not discriminate against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization operated by the contractor or subcontractor on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, AIDS/HIV status, weight, height, association with members of classes protected under this Article or in retaliation for opposition to any practices forbidden under this Article. Services provided by contractor or subcontractor to the public shall be provided regardless of disability of persons otherwise entitled to or qualified for such services.

(b) Should the contractor or subcontractor operate as a membership organization, the contractor or subcontractor will permit access to its membership records, rules, regulations and other pertinent data, by the City's awarding authority, or the Commission, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Article, and on request provide evidence that the contractor or subcontractor has complied or will comply with the nondiscrimination provisions of this Article. The Director shall be the final arbiter of a contractor's or subcontractor's compliance or substantial compliance with this Article and the Director's determination shall not be appealable to the Commission.

(c) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Article upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that contractor or subcontractor has wilfully violated such nondiscrimination provisions.

(2) Upon such finding by the Director or other official designated by the Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Section 132.3(d) and/or Section 132.3(g).

(3) The Commission shall, within 10 days of the date of issuance of any findings by the Director or other official designated by the Commission for the enforcement of this Article, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

(4) For purposes of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 132.3(c)(1) of this Article, that Commissioner may not participate in an appeal under this Section except as a witness.

(5) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding and requiring him or her to bring such books, records, documents or other things under his or her control.

(6) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

(7) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(8) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Article.

(d) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be a material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible contractor or subcontractor as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not, for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Article, be allowed to act as a contractor or subcontractor under any contract or property contract.

(e) Nothing contained in this Article shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.

(f) The contractor or subcontractor will meet the following standards for compliance:

(1) If the contractor or subcontractor has been held to be irresponsible under Section 132.3(d) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Article.

(2) The contractor or subcontractor may be required to file with the Commission a basic compliance report. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

(g) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Article, or may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Article. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Article or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 132.3(d) that the contractor or subcontractor has discriminated contrary to the provisions of this Article, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

(Added as Administrative Code Sec. 12C.3; amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper.

■ 1/4/2024)

SEC. 132.4. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 132.3 thereof.

(Added as Administrative Code Sec. 12C.4; amended by Ord. 84-77, App. 3/11/77; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper.

■ 1/4/2024)

SEC. 132.5. FUNDING.

The Board of Supervisors shall appropriate such funds from the General Fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for enforcement of this ordinance.

(Added as Administrative Code Sec. 12C.5; amended by Ord. 84-77, App. 3/11/77; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper.

■ 1/4/2024)

SEC. 132.6. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Article under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department or commission certifies in writing to the Director that pursuant to Administrative Code Section 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Article capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Article.

(b) This Article shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Article shall not apply where the contracting officer finds that the requirements of this Article 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 Article.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Article for any contract,

property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Article and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Article would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Article, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Article;

(4) The waiver authority granted to contracting officers in this Section 132.6(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Article and why the waiver does not defeat the intent of this Article, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Article. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 132.6(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 132.6(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 132.6(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 132.6(d);

(5) Nothing in this Section 132.6(d) shall limit the right of the Board of Supervisors to waive the provisions of this Article.

(e) This Article shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Article is capable of performing the desired transactions(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Article.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Article 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 exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco.

(Added as Administrative Code Sec. 12C.5-1 by Ord. 481-96, App. 12/20/96; amended by Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 431-97, App. 11/21/97; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)

SEC. 132.7. SEVERABILITY.

This Article shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Article shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall remain in effect.

(Added as Administrative Code Sec. 12C.6; amended by Ord. 84-77, App. 3/11/77; Ord. 286-97, App. 7/18/97; redesignated by Ord. [221-23](#), File No. 230835, App. 11/3/2023, Eff. 12/4/2023, Oper. 1/4/2024)