LEGAL TEXT OF PROPOSITION D

Ordinance replacing Chapter 12M of the Administrative Code to protect private information.

Be it ordained by the People of the City and County of San Francisco:

The current Chapter 12M of the Administrative Code is hereby repealed, and a new Chapter 12M reads as follows:

CHAPTER 12M: PROTECTION OF PRIVATE INFORMATION
Sec. 12M.1. Definitions.
Sec. 12M.2. Nondisclosure of Private Information.
Sec. 12M.3. Enforcement.
Sec. 12M.4. Contract Requirements.
Sec. 12M.5. Exceptions.
Sec. 12M.6. Preemption.
Sec. 12M.7. Severability.
Sec. 12M.8. Amendment by the Board of Supervisors

SEC. 12M.1. DEFINITIONS.
For the purposes of this Chapter, the following definitions shall apply to the terms use herein.
(a) "City" shall mean the City and County of San Francisco.
(b) "Contract" shall mean an agreement for goods or services, including without limitation agreements for public works or improvements, or grant agreements (1) to be purchased or 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 of or collected by the City and County or (2) which grants the Contractor the right to receive revenues from sources other than the City based on its services under the agreement.
(c) "Contractor" shall mean any person or persons, associations, cooperatives, firm, partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof, who submits a Bid or Proposal or enters into a Contract with the City and County.
(d) "Contracting Department" shall mean the department that recommends or requests that a Contract be executed by the Office of Contract Administration, the Department of Public Works, or other department or public official authorized to execute the Contract on the department's behalf.
(e) "Private Information" shall mean any information that (1) could be used to identify an individual, including without limitation name, address, social security number, medical information, financial information, date and location of birth, and names of relative; or (2) the law forbids any person from disclosing.
(f) "Subcontractor" shall mean any person or persons, association, cooperative, firm, partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof, including without limitation any subcontractor, subconsultant or supplier at any tier, that has an arrangement or agreement, directly or indirectly, with a Contractor to perform any of Contractor's obligations under the Contract.

SEC. 12M.2. NONDISCLOSURE OF PRIVATE INFORMATION.
(a) The City shall not disclose Private Information to any person or entity unless specifically authorized to do so by the subject individual or by Contract or where required by Federal or State law or judicial order. The City shall not enter into any Contract for the primary purpose of disclosing Private Information and shall not receive any compensation for the disclosure of Private Information.
(b) No Contractor or Subcontractor who receives Private Information from the City in the performance of a Contract may disclose that information to a Subcontractor or any other person or entity, unless the Contract authorizes the disclosure, the Contractor has first received written approval from the Contracting Department to disclose the information, or the disclosure is expressly required by judicial order. The disclosure and the use of the information shall be in accordance with any conditions or restrictions stated in the Contract or the Contracting Department's approval and shall not be used except as necessary in the performance of the obligations under the Contract. The department head or the department head's designee shall sign any approvals of the Contracting Department.

SEC. 12M.3. ENFORCEMENT.
Any failure of a Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

SEC. 12M.4. CONTRACT REQUIREMENTS.
All Contracts and amendments to Contracts entered into after ninety days after the effective date of this Chapter shall incorporate by reference the provisions of Sections 12M.2 and 12M.3 of this Chapter.

SEC. 12M.5. EXCEPTIONS.
This Chapter shall not apply in the following circumstances:
(a) When a Contract involves the expenditure of funds received by the City and County to the extent the application of the Chapter would violate or be inconsistent with the terms or conditions of the applicable grant agreement, subvention or agreement or the instructions of an authorized representative of any such agency with respect to any such grant agreement, subvention or agreement.
(b) When a Contract is for the purchase, sale, transfer or lease of any interest in real property or a license or permit for the use of real property.

SEC. 12M.6. PREEMPTION.
Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

SEC. 12M.7. SEVERABILITY.
If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

SEC. 12M.8. AMENDMENT BY THE BOARD OF SUPERVISORS
The Board of Supervisors may amend this Chapter to ensure the protection of Private Information with a two-thirds vote.