

1 [Police, Administrative Codes - Employer Consideration of Applicant’s Salary History]

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3 **Ordinance amending the Police and Administrative Codes to ban employers, including**
4 **City contractors and subcontractors, from considering current or past salary of an**
5 **applicant in determining whether to hire an applicant or what salary to offer the**
6 **applicant, and from asking applicants about their current or past salary; to prohibit**
7 **employers, including City contractors and subcontractors, from disclosing a current or**
8 **former employee’s salary history without that employee’s authorization unless the**
9 **salary history is publicly available; authorizing the Office of Labor Standards**
10 **Enforcement to implement and enforce these provisions; and authorizing the City to**
11 **bring a civil action against an employer for violations.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
15 **Board amendment additions** are in double-underlined Arial font.
16 **Board amendment deletions** are in ~~Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

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

20 Section 1. The Police Code is hereby amended by adding Article 33J, entitled “Parity in
21 Pay,” consisting of Sections 3300J.1, 3300J.2, 3300J.3, 3300J.4, 3300J.5, 3300J.6, and
22 3300J.7, and 3300J.8, to read as follows:
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1 ARTICLE 33J: PARITY IN PAY

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3 SEC. 3300J.1. TITLE.

4 This Article 33J shall be known as the “Parity in Pay Ordinance.”

5 SEC. 3300J.2. FINDINGS.

6 (a) In San Francisco, women are paid 84 cents for every dollar a man makes, according to the
7 2015 United States Census Bureau report. Women of color are paid even less. African American
8 women are paid only 60 cents to each dollar paid to men. Latinas are paid only 55 cents to each dollar
9 paid to men.

10 (b) According to the National Committee on Pay Equity, the gender wage gap has narrowed by
11 less than one-half a penny per year in the United States since 1963, when Congress passed the Equal
12 Pay Act, the first law aimed at prohibiting gender-based pay discrimination.

13 (c) The problematic practices of seeking salary history from job applicants and relying on their
14 current or past salaries to set employees’ pay rates contribute to the gender wage gap by perpetuating
15 wage inequalities across the occupational spectrum. Women are paid less than men in 99.6% of the
16 occupations and are more likely to face enduring financial losses for taking time out of the paid
17 workforce due to childbearing and family caregiving responsibilities.

18 (d) When employers make salary decisions during the hiring process based on prospective
19 employees’ current or past salaries or require employees to disclose current or past salaries as part of
20 the application process or during salary negotiations, women applicants often end up at a significant
21 disadvantage. In effect, to the extent employers consider applicants’ salary history in setting salaries
22 of new hires, historical patterns of gender bias and discrimination repeat themselves, causing women
23 to continue earning less than their male counterparts and less than they would have earned, but for
24 their gender.

1 (e) In 2015, on Equal Pay Day, the Chair of the Equal Employment Opportunity Commission
2 (EEOC) advised employers on important steps they could take to ensure equal pay for equal work,
3 including eliminating “discriminatory pay gaps on the basis of prior salary” and the 2005 EEOC
4 Compliance Manual states that “prior salary cannot, by itself, justify a compensation disparity.”

5 (f) In July 2015, the acting director of the Federal Office of Personnel Management provided
6 guidance on advancing pay equality in the federal government, warning that reliance on salary history
7 “could potentially adversely affect a candidate who is returning to the workplace after having taken
8 extended time off from his or her career or for whom an existing rate of pay is not reflective of the
9 candidate’s current qualifications or existing labor market conditions.”

10 (g) Courts also have warned against relying on salary history and have stated that prior salary
11 cannot, by itself, justify a wage disparity. In Corning Glass Works v. Brennan, (1974) 417 U.S. 188, at
12 205, the United States Supreme Court held that a pay differential which “ar[ises] simply because men
13 would not work at the low rates paid women . . . and reflect[s] a job market in which [the employer]
14 could pay women less than men for the same work” is not based on a cognizable factor other than sex
15 under the Equal Pay Act (Public Law 88-38).

16 (h) More recently, in its order in Rizo v. Yovino, Fresno County Superintendent of Schools,
17 (Case No. 1:14-cv-0423-MJS (E.D. Cal. December 18, 2015), pp. 16-17), the federal district court
18 denied summary judgment on defendant’s motion under the federal Equal Pay Act based on finding
19 that, “a pay structure based exclusively on prior wages is so inherently fraught with the risk – indeed,
20 here, the virtual certainty – that it will perpetuate a discriminatory wage disparity between men and
21 women that it cannot stand, even if motivated by a legitimate non-discriminatory business purpose.”
22 The court went on to explain that, “say[ing] an otherwise unjustified pay differential between women
23 and men performing equal work is based on a factor other than sex because it reflects historical market
24 forces which value the equal work of one sex over the other perpetuates the market’s sex-based
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1 subjective assumptions and stereotyped misconceptions Congress passed the Equal Pay Act to
2 eradicate.”

3 (i) Since women are paid on average lower wages than men, basing wages upon a worker’s
4 wage at a previous job often serves to perpetuate gender wage inequalities and leaves families with less
5 money to spend on food, housing, and other essential goods and services.

6 (j) In August 2016, the California State Assembly passed AB 1676 specifying that prior salary
7 cannot, by itself, justify any disparity in compensation.

8 (k) Combatting gender discrimination by prohibiting consideration of an applicant’s current or
9 past salary is emerging as an important policy for promoting gender equity in employee salaries. In
10 August 2016, Massachusetts became the first state to enact a law prohibiting employers from seeking
11 or requiring a prospective employee’s wage history.

12 (l) If an employer is able to ask a potential employee for their prior salary, it is unlikely that this
13 information would not be a factor in negotiating or setting a salary offer.

14 (m) This Article 33J will help ensure that an individual’s prior earnings, which may reflect
15 widespread, longstanding, gender-based wage disparities in the labor market, do not continue to weigh
16 down a woman’s salary throughout her career.

17 (n) This measure will also help ensure that both employers and workers are able to negotiate
18 and set salaries based on the qualifications of the person and the job in question, rather than on an
19 individual’s prior earnings, which may reflect widespread, longstanding, gender-based wage
20 disparities in the labor market.

21 **SEC. 3300J.3. DEFINITIONS.**

22 “Applicant” shall mean a person applying for a job ~~Employment~~ to be performed in the
23 geographic boundaries of the City and whose application, in whole or part, will be processed or
24 considered, whether or not through an interview, in the City. “Applicant” shall not include a person
25 applying for a job ~~Employment~~ with their current Employer.

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

2 "Employer" shall mean any individual, firm, corporation, partnership, labor organization,
3 group of persons, association, or other organization however organized, which is ~~or should be~~
4 required to be registered to do business in the City. "Employer" includes job placement and referral
5 agencies and other employment agencies. "Employer" does not include any unit of local, state, or
6 federal government, except that it does include the City.

7 "Employment" shall mean any occupation, vocation, job, or work, including but not
8 limited to temporary or seasonal work, part-time work, contracted work, contingent work, work
9 on commission, and work through the services of a temporary or other employment agency,
10 for which the Applicant is to receive a Salary. Employment does not include work as an
11 independent contractor.

12 "Inquire" shall mean any direct or indirect statement, question, prompting, or other
13 communication, orally or in writing, personally or through an agent, to gather information from or
14 about an Applicant, using any mode of communication, including but not limited to application forms
15 and interviews.

16 "OLSE" shall mean the Office of Labor Standards Enforcement or any successor department or
17 office. The "Director" of OLSE shall mean the head of OLSE.

18 "Salary" shall mean an Applicant's financial compensation in exchange for labor, including
19 but not limited to wages, commissions, and any monetary emolument ~~benefits~~.

20 "Salary History" shall mean an Applicant's current and past Salary in the Applicant's current
21 position, or in a prior position with the current Employer or a prior Employer.

22 **SEC. 3300J.4. PROHIBITIONS ON USE OF SALARY HISTORY IN HIRING.**

23 (a) An Employer shall not Inquire about an Applicant's Salary History.

24 (b) An Employer shall not consider an applicant's Salary History as a factor in determining
25 whether to offer Employment to or what Salary to offer an Applicant. ~~This prohibition applies~~

1 even if, ~~absent an Inquiry from the Employer, the Applicant discloses Salary History to the~~
2 ~~Employer.~~

3 (c) An Employer shall not refuse to hire, or otherwise disfavor, injure, or retaliate against an
4 Applicant for not disclosing his or her Salary History to the Employer.

5 (d) An Employer shall not release the Salary ~~H~~History of any current or former employee to that
6 person's ~~Employer or~~ prospective Employer without written authorization from the current or former
7 employee unless the release of Salary History is required by law, is part of a publicly available
8 record, or is subject to a collective bargaining agreement.

9 (e) Nothing in this Article 33J shall prohibit an Applicant from voluntarily and without
10 prompting disclosing Salary History ~~following an Employer's initial salary offer in order to~~
11 ~~negotiate a different salary or prohibit an Employer from considering that applicant's Salary~~
12 ~~History in determining a counter-offer.~~

13 (f) Where an Applicant voluntarily and without prompting discloses Salary History to a
14 prospective Employer, nothing in this Article 33J shall prohibit that Employer from considering
15 that voluntarily disclosed Salary History in determining Salary for such Applicant or verifying
16 such Applicant's Salary History.

17 (g) An Employer may, without inquiring about Salary History, engage in discussion with
18 the Applicant about the Applicant's expectations with respect to Salary, including but not
19 limited to unvested equity or deferred compensation or bonus that an Applicant would forfeit
20 or have cancelled by virtue of the Applicant's resignation from their current Employer.

21 (h) Nothing in this Article 33J shall prohibit an Employer from verifying non-Salary
22 related information disclosed by the Applicant or from conducting a background check
23 provided that if such verification or background check discloses the Applicant's Salary History,
24 the disclosed Salary History shall not be considered for purposes of determining the Salary to
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1 be offered to the Applicant during the hiring process or whether to offer Employment to the
2 Applicant.

3 **SEC. 3300J.5. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.**

4 (a) The OLSE shall, by no later than the operative date of this Article 33J, publish and
5 make available to Employers, in English, Spanish, Chinese, and all languages spoken by
6 more than 5% of the workforce in San Francisco, a notice suitable for posting by Employers in
7 the workplace informing Applicants and employees of their rights under this Article. The
8 OLSE shall update this notice on December 1 of any year in which there is a change in the
9 languages spoken by more than 5% of the workforce in San Francisco.

10 (b) Employers shall post the notice described in subsection (a) in a conspicuous place
11 at every workplace, job site, or other location in the City or on City property, under the
12 Employer's control and frequently visited by their employees or Applicants, and shall send a
13 copy of this notice to each labor union or representative of workers with which the Employer
14 has a collective bargaining agreement or other agreement or understanding, that is applicable
15 to employees in the City or on City property. The notice shall be posted in English, Spanish,
16 Chinese, and any language spoken by at least 5% of the employees at the workplace, job
17 site, or other location at which it is posted.

18 **SEC. 3300J.65. IMPLEMENTATION AND ENFORCEMENT.**

19 (a) The OLSE is authorized to take appropriate steps to enforce and coordinate enforcement of
20 this Article 33J, including the investigation of possible violations of this Article.

21 (b) An employee, Applicant, organization, or other person may report to the OLSE any
22 suspected violation of this Article within 180 days of the date of the suspected violation. The
23 OLSE shall encourage reporting pursuant to this subsection (b) by keeping confidential, to the
24 maximum extent permitted by applicable law, the name and other identifying information of any
25 employee or person reporting the violation; provided, however, that with the authorization of such

1 person, the OLSE may disclose his or her the name and identifying information as necessary to
2 enforce this Article.

3 (c) Where the OLSE determines that a violation has occurred, it may issue a determination;
4 provided however, that for a first violation occurring any time, or for any violation occurring during
5 the first 12 months following the operative date of this Article from July 1, 2018 through June
6 30, 2019, the OLSE must issue a warning and notice to correct. Following the initial 12-month
7 period referenced in the prior sentence Starting July 1, 2019, for any subsequent violation other
8 than a first violation (including a first violation occurring before that date during the initial 12-
9 month period), the OLSE may impose an administrative penalty of no more than \$100 that the
10 Employer must pay to the City for each employee or applicant Applicant as to whom the violation
11 occurred. Thereafter, for subsequent violations occurring within 12 months of that violation, the
12 penalty may increase to no more than \$200 for the second violation, and to no more than \$500 for each
13 additional violation. The penalty shall be payable to the City for each employee or Applicant whose
14 rights were violated. Such funds shall be allocated to the OLSE and used to offset the costs of
15 implementing and enforcing this Article.

16 (d) Where the OLSE determines in its sole discretion that prompt compliance is not
17 forthcoming, the OLSE may refer the action to the City Attorney, who may initiate a civil action
18 pursuant to subsection (j).

19 (e) OLSE may initiate an administrative enforcement action for any suspected violation of this
20 Article within one year of the date the suspected violation occurred.

21 (f) If multiple employees or Applicants are impacted by the same violation (e.g., all
22 Applicants for a certain job opening are asked for their Salary History Information on the initial
23 application), OLSE shall have discretion to treat those violations as as a single violation rather
24 than multiple violations.

1 (gf) By no later than the operative date of this Article, the Director of OLSE shall
2 establish rules governing the administrative process for determining and appealing violations of this
3 Article. The Rules shall include procedures for:

- 4 _____ (1) Providing the Employer with notice that it may have violated this Article;
5 _____ (2) Providing the Employer with a right to respond to the notice;
6 _____ (3) Providing the Employer with notice of the OLSE's determination of a violation; and,
7 _____ (4) Providing the Employer with an opportunity to appeal the OLSE's determination to a
8 hearing officer, appointed by the Controller or the Controller's designee.

9 (hg) If there is no appeal of OLSE's determination of a violation, the absence of an appeal shall
10 constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any
11 petition or claim brought by the Employer against the City regarding OLSE's determination of a
12 violation.

13 (ih) If there is an appeal of OLSE's determination of a violation, the hearing before the hearing
14 officer shall be conducted in a manner that satisfies the requirements of due process. In any such
15 hearing, the OLSE's determination of a violation shall be considered prima facie evidence of a
16 violation. The hearing officer's decision of the appeal shall constitute the City's final decision. The
17 sole means of review of the City's final decision, rendered by the hearing officer, shall be by filing in
18 the San Francisco Superior Court a petition for writ of mandate under Section 1094.5 of the California
19 Code of Civil Procedure. OLSE shall notify the Employer of this right of review after issuance of the
20 City's final decision by the hearing officer.

21 (j) Civil Enforcement. Following OLSE's referral pursuant to subsection (d), the City may
22 bring a civil action in a court of competent jurisdiction against the Employer violating this Article, and,
23 upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the
24 violation.

1 (kj) Interest. In any administrative or civil action brought under this Article, OLSE or the court,
2 as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified
3 in subdivision (b) of Section 3289 of the California Civil Code.

4 (lk) Remedies Cumulative. The remedies, penalties, and procedures provided under this Article
5 are cumulative.

6 (ml) Limitation on Actions. Civil actions to enforce this Article must be filed within one year
7 after the date of the violation. This limitations period shall not commence until the date the violation
8 was discovered or could reasonably have been discovered.

9 (nm) A violation of this Article 33J shall be an infraction.

10 **SEC. 3300J.76. UNDERTAKING FOR THE GENERAL WELFARE.**

11 In enacting and implementing this Article 33J, the City is assuming an undertaking only to
12 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
13 obligation for breach of which it is liable in money damages to any person who claims that such breach
14 proximately caused injury.

15 **SEC. 3300J.87. SEVERABILITY.**

16 If any section, subsection, sentence, clause, phrase, or word of this Article 33J, or any
17 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
18 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
19 portions or applications of this Article. The Board of Supervisors hereby declares that it would have
20 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not
21 declared invalid or unconstitutional without regard to whether any other portion of this ordinance or
22 application thereof would be subsequently declared invalid or unconstitutional.

1 Section 2. The Administrative Code is hereby amended by adding Chapter 12K,
2 entitled “Salary History,” consisting of Sections 12K.1, 12K.2, 12K.3, 12K.4, 12K.5, 12K.6,
3 12K.7, 12K.8, and 12K.9, to read as follows:

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5 **CHAPTER 12K: SALARY HISTORY**

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7 **SEC. 12K.1. DEFINITIONS.** As used in this Chapter 12K, the following terms have
8 the following meanings:

9 “Applicant” shall mean a person applying for Employment to be performed on a
10 Contract or Property Contract or in furtherance of a Contract or Property Contract, whether or
11 not through an interview, in the City. “Applicant” shall not include a person applying for
12 Employment with their current Employer.

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

14 “Contract” shall mean an agreement between a City department and any person or
15 entity that provides, at the expense of the City, for public works or public improvements to be
16 purchased under Chapter 6 of the Administrative Code, or for commodities or services to be
17 purchased under Chapter 21 of the Administrative Code. “Contract” shall not include:

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

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

1 (c) Agreements advertised, solicited, or initiated prior to the Operative Date of
2 this Chapter 12K, including amendments to existing Contracts; or

3 (d) Agreements for a cumulative amount of \$10,000 or less per Contractor in
4 each fiscal year; or

5 (e) Agreements with a public entity or public utility.

6 "Contractor" shall mean shall mean any person or persons, firm, partnership,
7 corporation, or combination thereof who enters into a Contract or Property Contract with the
8 City.

9 "Employer" shall mean any Contractor or Subcontractor, whether an individual, firm,
10 corporation, partnership, labor organization, group of persons, association, or other
11 organization however organized. "Employer" includes job placement and referral agencies
12 and other employment agencies. "Employer" does not include any unit of local, state, or
13 federal government.

14 "Employment" shall mean any occupation, vocation, job, or work, including but not
15 limited to temporary or seasonal work, part-time work, contracted work, contingent work, work
16 on commission, and work through the services of a temporary or other employment agency,
17 for which the Applicant is to receive a Salary. Employment doesn't include work as an
18 independent contractor.

19 "Inquire" shall mean any direct or indirect statement, question, prompting, or other
20 communication, orally or in writing, personally or through an agent, to gather information from
21 or about an Applicant, using any mode of communication, including but not limited to
22 application forms and interviews.

23 "OLSE" shall mean the Office of Labor Standards Enforcement or any successor
24 department or office. The "Director" of OLSE shall mean the head of OLSE.

1 "Property Contract" shall mean a lease, permit, or license, through which the City gives
2 to a person or entity the right to exclusively use or occupy real property owned or controlled
3 by the City for a period of more than 29 days in any calendar year. "Property Contract" shall
4 not mean:

5 _____ (a) An agreement with a public entity or public utility;

6 _____ (b) A revocable at-will permit regardless of the ultimate duration of such permit,
7 unless the permittee engages in a for-profit activity on the City property;

8 _____ (c) Regulatory permits, including street or public right of way construction,
9 excavation and use permits;

10 _____ (d) Agreements governing the use of City property which constitutes a public
11 forum for activities that are primarily for the purpose of espousing or advocating causes or
12 ideas and that are generally recognized as protected by the First Amendment to the U.S.
13 Constitution; or

14 _____ (e) Agreements for activities which are primarily recreational in nature, unless
15 the user engages in a for-profit activity on the City property; or

16 _____ (f) Agreements advertised, solicited, or initiated prior to the Operative Date of
17 this Chapter 12K, including amendments to existing Contracts.

18 "Salary" shall mean an Applicant's financial compensation in exchange for labor,
19 including but not limited to wages, commissions, and any monetary emolument.

20 "Salary History" shall mean an Applicant's current and past Salary in the Applicant's
21 current position, or in a prior position with the current Employer or a prior Employer.

22 "Subcontract" shall mean an agreement to (i) provide goods and/or services, including
23 construction labor, materials or equipment, to a Contractor, if such goods or services are
24 procured or used in the fulfillment of the Contractor's obligations arising from a Contract with
25 the City, or (ii) to transfer the right to occupy or use all or a portion of a real property interest

1 subject to a Property Contract to a Subcontractor and pursuant to which the Contractor
2 remains obligated under the Property Contract.

3 "Subcontractor" shall mean any person or persons, firm, partnership, corporation or
4 any combination thereof who enters into a Subcontract with a Contractor. Such term shall
5 include any person or entity who enters into an agreement with any Subcontractor for the
6 performance of 10 percent or more of any Subcontract.

7 **SEC. 12K.2. APPLICABILITY OF CHAPTER TO CONTRACTORS AND**
8 **SUBCONTRACTORS.**

9 The requirements of this Chapter 12K shall only apply to a Contractor's or
10 Subcontractor's operations to the extent those operations are in furtherance of performing a
11 Contract or Property Contract with the City. Accordingly, the protections of this Chapter apply
12 only to applicants and employees who would be or are performing work in furtherance of
13 performing a Contract or Property Contract with the City.

14 **SEC. 12K.3. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE**
15 **PROVISION REQUIRING COMPLIANCE WITH THIS CHAPTER.**

16 All contracting agencies of the City, or any department thereof, acting for or on behalf
17 of the City, shall include in all Contracts and Property Contracts a provision requiring
18 Contractor's compliance with this Chapter 12K and shall require such Contractor to include a
19 similar provision in all Subcontracts executed and amended thereunder, and failure to do so
20 shall constitute a material breach of contract.

21 **SEC. 12K.4. PROHIBITIONS ON USE OF SALARY HISTORY IN HIRING.**

22 (a) An Employer shall not Inquire about an Applicant's Salary History.

23 (b) An Employer shall not consider an applicant's Salary History as a factor in
24 determining whether to offer Employment or what Salary to offer an Applicant.

1 (c) An Employer shall not refuse to hire, or otherwise disfavor, injure, or retaliate
2 against an Applicant for not disclosing his or her Salary History to the Employer.

3 (d) An Employer shall not release the Salary History of any current or former employee
4 to that person's Employer or prospective Employer without written authorization from the
5 current or former employee unless the release of Salary History is required by law, is part of a
6 publicly available record, or is subject to a collective bargaining agreement.

7 (e) Nothing in this Chapter 12K shall prohibit an Applicant from voluntarily and without
8 prompting disclosing Salary History.

9 (f) Where an Applicant voluntarily and without prompting discloses Salary History to a
10 prospective Employer, nothing in this Chapter 12K shall prohibit that Employer from
11 considering that voluntarily disclosed Salary History in determining Salary for such Applicant
12 or verifying such Applicant's Salary History.

13 (g) An Employer may, without inquiring about Salary History, engage in discussion
14 with the Applicant about the Applicant's expectations with respect to Salary, including but not
15 limited to unvested equity or deferred compensation or bonus that an Applicant would forfeit
16 or have cancelled by virtue of the Applicant's resignation from their current Employer.

17 (h) Nothing in this Chapter 12K shall prohibit an Employer from verifying non-Salary
18 related information disclosed by the Applicant or from conducting a background check
19 provided that when such verification or background check discloses the Applicant's Salary
20 History, the disclosed Salary History shall not be considered for purposes of determining the
21 Salary to be offered to the Applicant during the hiring process.

22 **SEC. 12K.5. NONAPPLICABILITY, EXCEPTIONS, AND WAIVERS.**

23 (a) Section 12K.4 shall not apply to Contracts in the following circumstances:
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1 (1) The contracting City department determines that needed services under the
2 applicable Contract are available only from one source pursuant to applicable provisions of
3 the Administrative Code; or

4 (2) The contracting City 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 Section 12K.4 and is capable of responding to the emergency is immediately available to
8 perform the required services; or

9 (3) The contracting City department determines that there are no qualified
10 responsive bidders or prospective vendors that comply with the requirements of Section
11 12K.4; and the Contract is for a service, project, or property that is essential to the City or the
12 public; or

13 (4) The contracting City department determines that the public interest warrants
14 the granting of a waiver because application of Section 12K.4 would have an adverse impact
15 on services or a substantial adverse financial impact on the City; or

16 (5) The contracting City 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 contracting City department determines that the requirements of
22 Section 12K.4 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; or

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

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

18 **SEC. 12K.6. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.**

19 Employers shall post the notice described in Police Code Section 3300J.6(a) in a
20 conspicuous place at every workplace, job site, or other location or on City property, under the
21 Employer's control and frequently visited by their employees or Applicants, and shall send a
22 copy of this notice to each labor union or representative of workers with which the Employer
23 has a collective bargaining agreement or other agreement or understanding, that is applicable
24 to employees in the City or on City property. The notice shall be posted in English, Spanish,
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1 Chinese, and any language spoken by at least 5% of the employees at the workplace, job
2 site, or other location at which it is posted.

3 **SEC. 12K.7. IMPLEMENTATION AND ENFORCEMENT.**

4 (a) The OLSE is authorized to take appropriate steps to enforce and coordinate
5 enforcement of this Chapter 12K, including the investigation of possible violations of this
6 Chapter.

7 (b) An employee, Applicant or other person may report to the OLSE any suspected
8 violation of this Chapter. The OLSE shall encourage reporting pursuant to this subsection by
9 keeping confidential, to the maximum extent permitted by applicable laws, the name and other
10 identifying information off he employee or person reporting the violation; provided, however,
11 that with the authorization of such person, the OLSE may disclose his or her name and
12 identifying information as necessary to enforce this Chapter or for other appropriate purposes.

13 (c) A Contractor or Subcontractor shall be deemed to have breached the provisions of
14 this Chapter upon a finding by the OLSE that the Contractor or Subcontractor has willfully
15 violated these provisions, provided, however, that for a first violation, or for any violation
16 during the first twelve months following the operative date of this Chapter, the OLSE must
17 issue warnings and notices to correct, and offer the Contractor or Subcontractor technical
18 assistance on how to comply with the requirements of this Chapter.

19 (d) Upon a subsequent finding of a violation of this Chapter, the awarding authority
20 shall notify the Contractor or Subcontractor that unless the Contractor or Subcontractor
21 demonstrates to the satisfaction of the OLSE within such reasonable period as the OLSE shall
22 determine, that the violation has been corrected, action will be taken as set forth in
23 subparagraphs (g) through (j) hereof.

1 (e) The Director of the OLSE shall establish rules governing the administrative process
2 for determining and appealing violations of this Chapter. The rules shall include procedures
3 for:

4 _____ (1) Providing the Contractor or Subcontractor with notice that it may have
5 violated this Chapter:

6 _____ (2) Providing the Contractor or Subcontractor with a right to respond to the
7 notice:

8 _____ (3) Providing the Contractor or Subcontractor with notice of the OLSE's
9 determination of a violation:

10 _____ (4) Providing the Contractor with an opportunity to appeal the OLSE's
11 determination to a hearing officer, who is appointed by the City Controller or his or her
12 designee.

13 (f) If there is an appeal of the OLSE's determination of a violation, the hearing before
14 the hearing officer shall be conducted in a manner that satisfies the requirements of due
15 process. In any such hearing, the OLSE's determination of a violation shall be considered
16 prima facie evidence of a violation, and the Contractor or Subcontractor shall have the burden
17 of proving, by a preponderance of the evidence, that the OLSE's determination of a violation
18 is incorrect. The hearing officer's decision of the appeal shall constitute the City's final
19 decision.

20 (g) For a second violation, the awarding authority may deduct from the amount
21 payable to the Contractor or Subcontractor by the City under any Contract subject to this
22 Chapter, or the OLSE may impose upon the Contractor or Subcontractor, a penalty of \$50 for
23 each employee, applicant or other person as to whom the violation occurred or continued.
24 Thereafter, for subsequent violations, the penalty may increase to no more than \$100, for
25 each employee or applicant whose rights were, or continue to be, violated.

1 (h) In addition to any other penalties provided for the violation of this Chapter, the
2 Contract or Property Contract may be terminated or suspended, in whole or in part, by the
3 awarding authority upon the basis of a finding under this Section 12K.7 that the Contractor or
4 Subcontractor has violated the provisions of this Chapter, and all moneys due or to become
5 due hereunder may be forfeited to, and retained by, the City.

6 (i) A violation of the provisions of this Chapter during the performance of a Contract or
7 Property Contract shall be deemed by the City to be a material breach of contract and may
8 provide a basis for determination by the awarding authority that the Contractor or
9 Subcontractor is an irresponsible bidder subject to debarment procedures set forth in Chapter
10 28.

11 (j) Nothing contained in this Chapter shall be construed in any manner so as to prevent
12 the City from pursuing any other remedies that may be available at law, equity or under any
13 Contract or Property Contract.

14 (k) The Director of OLSE shall have authority to adopt regulations or guidelines that
15 implement the provisions of this Chapter. Regulations or guidelines shall be adopted only
16 after consultation with the Director of OCA.

17 (l) OLSE shall maintain a record of the number and types of complaints it receives
18 alleging a violation of this Chapter, and the resolution of those complaints. This information
19 shall be compiled on an annual calendar year basis and reported to the Board of Supervisors
20 by January 31 of each year.

21 **SEC. 12K.8. UNDERTAKING FOR THE GENERAL WELFARE.**

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

1 **SEC. 12K.9. SEVERABILITY.**

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

10
11 Section 3. Renumbering of Chapter and Sections. Existing Chapter 12K of the
12 Administrative Code, consisting of existing Sections 12K.1-12K.6, shall be renumbered as
13 Chapter 33A of the Administrative Code, consisting of Sections 33A.1-33A.6; and any cross-
14 references in the Municipal Code to existing Chapter 12K or its component sections shall be
15 renumbered accordingly. These changes are not made for any substantive reason and shall
16 have no substantive effect. The changes are made solely for the purpose of renumbering the
17 affected chapter and sections, so as to permit this ordinance to be codified in Chapter 12K of
18 the Administrative Code. The City Attorney shall direct the publisher of the Municipal Code to
19 take all appropriate steps to effectuate this provision.

20
21 Section 24. Effective and Operative Dates.

22 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
23 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
24 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
25 Supervisors overrides the Mayor’s veto of the ordinance.

1 (b) Operative Date. This ordinance shall become operative on ~~January~~ July 1, 2018,
2 except that the responsibility of the Office of Labor Standards Enforcement to develop a
3 notice, as required by Police Code Section 3300J.5, and to develop rules for implementation
4 and enforcement of the ordinance, as required by Police Code Section 3300J.6(f) and
5 Adminstrative Code 12K.7, shall begin as of the effective date of the ordinance.
6

7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9 By: _____
10 JANA CLARK
Deputy City Attorney

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