

File No. 170350

Committee Item No. 9

Board Item No. 4

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: June 21, 2017

Board of Supervisors Meeting:

Date: July 11, 2017

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance Version 3 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest Version 3 |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Public Correspondence |

OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Office of Small Business Letter/SBC Recommendation -</u>
<u>Received June 16, 2017</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Department on Status of Women Memo - Received June 7, 2017</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Office of Small Business Letter/SBC Recommendation -</u>
<u>Received May 31, 2017</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral FYI - April 11, 2017</u> |
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Prepared by: John Carroll

Date: June 16, 2017

Prepared by: John Carroll

Date: June 22, 2017

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

2
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.**

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

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

1 ARTICLE 33J: PARITY IN PAY

2
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 on average 84 cents for every dollar a man makes,
7 according to the 2015 United States Census Bureau report. Women of color are paid even less. African
8 American women are paid only 60 cents to each dollar paid to men. Latinas are paid only 55 cents to
9 each dollar 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
25

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 solicited,
24 received, processed or considered, whether or not through an interview, in the City. “Applicant”
25 shall not include a person 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. Salary History shall
22 not include any objective measure of the applicant's productivity such as revenue, sales, or
23 other production reports.

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

1 ~~(a) An Employer shall not Inquire about an Applicant's Salary History. An Employer shall~~
2 not consider or rely on an applicant's Salary History as a factor in determining whether to offer
3 Employment to an Applicant or what Salary to offer an Applicant.

4 ~~(b) An Employer shall not Inquire about an Applicant's Salary History. An Employer~~
5 ~~shall not consider an applicant's Salary History as a factor in determining whether to offer~~
6 ~~Employment to or what Salary to offer an Applicant. This prohibition applies even if, absent~~
7 ~~an Inquiry from the Employer, the Applicant discloses Salary History to the Employer.~~

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

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

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

18 ~~(f) Where an Applicant voluntarily and without prompting discloses Salary History to a~~
19 ~~prospective Employer, or provides written authorization pursuant to subsection (d) above,~~
20 ~~nothing in this Article 33J shall prohibit that Employer from considering that voluntarily~~
21 ~~disclosed Salary History in determining Salary for such Applicant or verifying such Applicant's~~
22 ~~Salary History. Salary History by itself shall not be used to justify paying any employee of a~~
23 ~~different sex, race or ethnicity less than such Applicant or prospective employee for doing~~
24 ~~substantially similar work under similar working conditions, in accordance with California~~
25 ~~Labor Code Section 1197.5.~~

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

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

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

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

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

1 SEC. 3300J.65. IMPLEMENTATION AND ENFORCEMENT.

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

4 (b) An employee, or Applicant, organization, or other person may report to the OLSE any
5 suspected violation of this Article within 180 days of the date of the suspected violation. The
6 OLSE shall encourage reporting pursuant to this subsection (b) by keeping confidential, to the
7 maximum extent permitted by applicable law, the name and other identifying information of any
8 employee or person reporting the violation; provided, however, that with the authorization of such
9 person, the OLSE may disclose his or her the name and identifying information as necessary to
10 enforce this Article.

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

1 (d) Where the OLSE determines in its sole discretion that prompt compliance is not
2 forthcoming, the OLSE may refer the action to the City Attorney, who may initiate a civil action
3 pursuant to subsection (i).

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

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

10 (g) By no later than the operative date of this Article, ~~The~~ Director of OLSE shall
11 establish rules governing the administrative process for determining and appealing violations of this
12 Article. The Rules shall include procedures for:

13 (1) Providing the Employer with notice that it may have violated this Article;

14 (2) Providing the Employer with a right to respond to the notice;

15 (3) Providing the Employer with notice of the OLSE's determination of a violation; and,

16 (4) Providing the Employer with an opportunity to appeal the OLSE's determination to a
17 hearing officer, appointed by the Controller or the Controller's designee.

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

22 (i) If there is an appeal of OLSE's determination of a violation, the hearing before the hearing
23 officer shall be conducted in a manner that satisfies the requirements of due process. In any such
24 hearing, the OLSE's determination of a violation shall be considered prima facie evidence of a
25 violation. The hearing officer's decision of the appeal shall constitute the City's final decision. The

1 sole means of review of the City's final decision, rendered by the hearing officer, shall be by filing in
2 the San Francisco Superior Court a petition for writ of mandate under Section 1094.5 of the California
3 Code of Civil Procedure. OLSE shall notify the Employer of this right of review after issuance of the
4 City's final decision by the hearing officer.

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

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

12 (l) Remedies Cumulative. The remedies, penalties, and procedures provided under this Article
13 are cumulative.

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

17 (n) A violation of this Article 33J shall be an infraction.

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

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

23 **SEC. 3300J.87. SEVERABILITY.**

24 If any section, subsection, sentence, clause, phrase, or word of this Article 33J, or any
25 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a

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

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

10
11 **CHAPTER 12K: SALARY HISTORY**

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

15 "Applicant" shall mean a person applying for Employment to be performed on a
16 Contract or Property Contract or in furtherance of a Contract or Property Contract, and whose
17 application, in whole or part, will be solicited, received, processed or considered, whether or
18 not through an interview, in the City or on City property in the City. "Applicant" shall not
19 include a person applying for Employment with their current Employer.

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

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

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

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

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

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

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

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

16 "Employer" shall mean any Contractor or Subcontractor, whether an individual, firm,
17 corporation, partnership, labor organization, group of persons, association, or other
18 organization however organized. "Employer" includes job placement and referral agencies
19 and other employment agencies working on behalf of a Contractor or Subcontractor.

20 "Employer" does not include any unit of local, state, or federal government. The physical
21 location of the employment or prospective employment of an Applicant must be at least eight
22 (8) hours per week on City property.

23 "Employment" shall mean any occupation, vocation, job, or work, including but not
24 limited to temporary or seasonal work, part-time work, contracted work, contingent work, work
25 on commission, and work through the services of a temporary or other employment agency.

1 for which the Applicant is to receive a Salary. Employment doesn't include work as an
2 independent contractor.

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

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

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

13 (a) An agreement with a public entity or public utility;

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

16 (c) Regulatory permits, including street or public right of way construction,
17 excavation and use permits;

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

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

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

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

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

5 "Subcontract" shall mean an agreement to (ia) provide goods and/or services, including
6 construction labor, materials or equipment, to a Contractor, if such goods or services are
7 procured or used in the fulfillment of the Contractor's obligations arising from a Contract with
8 the City, or (iib) to transfer the right to occupy or use all or a portion of a real property interest
9 subject to a Property Contract to a Subcontractor and pursuant to which the Contractor
10 remains obligated under the Property Contract.

11 "Subcontractor" shall mean any person or persons, firm, partnership, corporation or
12 any combination thereof who enters into a Subcontract with a Contractor. Such term shall
13 include any person or entity who enters into an agreement with any Subcontractor for the
14 performance of 10% percent or more of any Subcontract.

15 **SEC. 12K.2. APPLICABILITY OF CHAPTER TO CONTRACTORS AND**
16 **SUBCONTRACTORS.**

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

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

24 All contracting agencies of the City, or any department thereof, acting for or on behalf
25 of the City, shall include in all Contracts and Property Contracts a provision requiring

1 Contractor's compliance with this Chapter 12K and shall require such Contractor to include a
2 similar provision in all Subcontracts executed and amended thereunder, and failure to do so
3 shall constitute a material breach of contract.

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

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

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

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

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

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

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

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

24 (h) Nothing in this Chapter 12K shall prohibit an Employer from verifying non-Salary
25 related information disclosed by the Applicant or from conducting a background check

1 provided that when such verification or background check discloses the Applicant's Salary
2 History, the disclosed Salary History shall not be considered for purposes of determining the
3 Salary to be offered to the Applicant during the hiring process.

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

5 (a) Section 12K.4 shall not apply to Contracts, Subcontracts, or Property Contracts in
6 the following circumstances:

7 (1) The contracting City department determines that needed services under the
8 applicable Contract are available only from one source pursuant to applicable provisions of
9 the Administrative Code; or

10 (2) The contracting City Department determines, pursuant to applicable
11 provisions of the Administrative Code, that the Contract is necessary to respond to an
12 emergency which endangers the public health or safety; and no entity that complies with
13 Section 12K.4 and is capable of responding to the emergency is immediately available to
14 perform the required services; or

15 (3) The contracting City department determines that there are no qualified
16 responsive bidders or prospective vendors that comply with the requirements of Section
17 12K.4; and the Contract is for a service, project, or property that is essential to the City or the
18 public; or

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

22 (5) The contracting City department determines that the services to be
23 purchased are available under a bulk purchasing arrangement with a federal, state, or local
24 governmental entity or a group purchasing organization; purchase under such arrangement
25

1 will substantially reduce the City's cost of purchasing such services; and purchase under such
2 an arrangement is in the best interest of the City; or

3 (6) The contracting City department determines that the requirements of
4 Section 12K.4 will violate or are inconsistent with the terms or conditions of a grant,
5 subvention, or agreement with a public agency or the instructions of an authorized
6 representative of any such agency with respect to any such grant, subvention, or agreement,
7 provided that the contracting officer has made a good faith attempt to change the terms or
8 conditions of any such grant, subvention, or agreement to authorize application of this
9 Section; or

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

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

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

1 Employers shall post the notice described in Police Code Section 3300J.65(a) in a
2 conspicuous place at every workplace, job site, or other location or on City property, under the
3 Employer's control and frequently visited by their employees or Applicants, and shall send a
4 copy of this notice to each labor union or representative of workers with which the Employer
5 has a collective bargaining agreement or other agreement or understanding, that is applicable
6 to employees in the City or on City property. The notice shall be posted in English, Spanish,
7 Chinese, and any language spoken by at least 5% of the employees at the workplace, job
8 site, or other location at which it is posted.

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

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

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

19 (c) A Contractor or Subcontractor shall be deemed to have breached the provisions of
20 this Chapter upon a finding by the OLSE that the Contractor or Subcontractor has willfully
21 violated these provisions, provided, however, that for a first violation, or for any violation
22 during the first ~~twelve~~12 months following the operative date of this Chapter, the OLSE must
23 issue warnings and notices to correct, and offer the Contractor or Subcontractor technical
24 assistance on how to comply with the requirements of this Chapter.

1 (d) Upon a subsequent finding of a violation of this Chapter, the awarding authority
2 shall notify the Contractor or Subcontractor that unless the Contractor or Subcontractor
3 demonstrates to the satisfaction of the OLSE within such reasonable period as the OLSE shall
4 determine, that the violation has been corrected, action will be taken as set forth in
5 subparagraphs (ge) through (ji) hereof.

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

9 _____ (1) Providing the Contractor or Subcontractor with notice that it may have
10 violated this Chapter;

11 _____ (2) Providing the Contractor or Subcontractor with a right to respond to the
12 notice;

13 _____ (3) Providing the Contractor or Subcontractor with notice of the OLSE's
14 determination of a violation; and,

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

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

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

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

12 (i) A violation of the provisions of this Chapter during the performance of a Contract or
13 Property Contract shall be deemed by the City to be a material breach of contract and may
14 provide a basis for determination by the awarding authority that the Contractor or
15 Subcontractor is an irresponsible bidder subject to debarment procedures set forth in Chapter
16 28.

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

20 (k) The Director of OLSE shall have authority to adopt regulations or guidelines that
21 implement the provisions of this Chapter. Regulations or guidelines shall be adopted only
22 after consultation with the Director of the Office of Contract Administration OCA.

23 (l) OLSE shall maintain a record of the number and types of complaints it receives
24 alleging a violation of this Chapter, and the resolution of those complaints. This information
25

1 shall be compiled on an annual calendar year basis and reported to the Board of Supervisors
2 by January 31 of each year.

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

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

8 **SEC. 12K.9. SEVERABILITY.**

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

17
18 Section 3. Renumbering of Chapter and Sections. Existing Chapter 12K of the
19 Administrative Code, consisting of existing Sections 12K.1-12K.6, shall be renumbered as
20 Chapter 33A of the Administrative Code, consisting of Sections 33A.1-33A.6; and any cross-
21 references in the Municipal Code to existing Chapter 12K or its component sections shall be
22 renumbered accordingly. These changes are not made for any substantive reason and shall
23 have no substantive effect. The changes are made solely for the purpose of renumbering the
24 affected chapter and sections, so as to permit this ordinance to be codified in Chapter 12K of
25

1 the Administrative Code. The City Attorney shall direct the publisher of the Municipal Code to
2 take all appropriate steps to effectuate this provision.

3
4 Section 24. Effective and Operative Dates.

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

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

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: 
18 JANA CLARK
Deputy City Attorney

19 n:\leganas2017\1700124\01199719.docx

REVISED LEGISLATIVE DIGEST
(Amended in Committee - June 21, 2017)

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

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

Existing Law

Existing law permits consideration of current or past salary in setting a job applicant's salary. In addition, existing law permits asking job applicants questions about their current or past salary and doesn't require that an employer have a current or former employee's permission to share that employee's current or past salary.

Amendments to Current Law

This Ordinance adds Article 33 to the Police Code and Chapter 12K to the Administrative Code to prohibit consideration of current or past salary in determining whether to offer employment to an applicant or what salary to offer. The Ordinance also prohibits employers from asking applicants about their current or past salary. The Ordinance also prohibits disclosure of a current or former employee's salary without that employee's permission, with specified exceptions. The Ordinance does permit an employer to consider current or past salary, if the applicant discloses his or her current or past salary voluntarily and without prompting.

The Ordinance would apply to applicants for employment with non-governmental employers when the applicants' work would be performed in whole or in part in San Francisco. With some exceptions, the Ordinance would also apply to applicants for employment with non-governmental employers when the applicants' work would be performed under a contract with the City, or when the work would be performed on City property used under a lease, permit, or license.

The Ordinance authorizes the Office of Labor Standards Enforcement ("OLSE") to implement and enforce the law. The Ordinance requires OLSE to publish notices in multiple languages describing employees' rights under the Ordinance, and requires employers to post the notices

FILE NO. 170350

in a conspicuous site at every workplace in the City. Finally, the Ordinance authorizes the City to bring a civil action against an employer for violations of the Ordinance.

Employers' obligations under the Ordinance would become operative on July 1, 2018.

Background Information

The purpose of the Ordinance is to narrow or close the gender-based wage gap. By prohibiting consideration of current or past salary in setting salary and prohibiting inquiry about or the sharing of current or past salary as part of the application process, the Ordinance is intended to prevent the perpetuation of historical patterns of gender bias and discrimination.

This legislative digest reflects amendments adopted by the Government Audit and Oversight Committee on June 7, 2017. Among other changes, the amendments added Chapter 12K of the Administrative Code to apply to applicants for employment under City contracts and on City property.

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Carroll, John (BOS)

From: Board of Supervisors, (BOS)
Sent: Monday, June 26, 2017 8:12 AM
To: kevin@hotelcouncilsf.org
Cc: BOS-Supervisors; Carroll, John (BOS); Major, Erica (BOS)
Subject: FW: Hotel Council Letter of Support for Wage Parity Ordinance (170350)
Attachments: Hotel Council Support Letter Wage Parity.pdf

Categories: 170350

Hello,

Thank you for your letter, it has been sent to the Board Members and it will appear in the Petitions and Communications section of our July 11, 2017 agenda. Looping in the Government Audit and Oversight Clerk to add it to the official file.

Regards,

Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7703 | Fax: (415) 554-5163
Board.of.supervisors@sfgov.org | 415-554-5184

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From: Kevin Carroll [mailto:kevin@hotelcouncilsf.org]
Sent: Friday, June 23, 2017 3:25 PM
Subject: Hotel Council Letter of Support for Wage Parity Ordinance (170350)

Hello Supervisor,

Attached find a letter of support from the Hotel Council of San Francisco for the Wage Parity Ordinance that will be before the Board for approval on June 27th.

Thank you

Kevin



Hotel Council
OF
SAN FRANCISCO

Kevin Carroll

Executive Director

Hotel Council of San Francisco

323 Geary Street, Suite 405

San Francisco, CA 94102

P (415) 391-5197 | F (415) 391-6070

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Please consider the environment before printing this email.



June 23, 2017

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

RE: Hotel Council Support of Wage Parity Ordinance (170350)

Dear Supervisors,

I write on behalf of the Hotel Council of San Francisco and our Board of Directors to express our support for the wage parity ordinance that will be presented to the board for approval on June 27, 2017.

Our Council and our industry remain committed to equity in compensation for all employees regardless of gender, race, age or sexual orientation. The Council believes this ordinance will help to address the wage disparity that exists between equal pay for men and women.

We want to thank Supervisor Farrell and his staff for introducing this legislation and including the Hotel Industry in the development of the ordinance.

The Hotel Council encourages the Board of Supervisors to approve the legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Carroll". The signature is fluid and cursive.

Kevin Carroll
Executive Director

CC:
Angela Calvillo, Clerk, San Francisco Board of Supervisors



SAN FRANCISCO
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

June 15, 2017

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 170350 [Pay Parity Ordinance]

Small Business Commission Recommendation to the Board of Supervisors: Approval with Proposed Amendments.

Dear Ms. Calvillo,

On June 12, 2017, the Small Business Commission (SBC) voted (6-0, 1 absent) to recommend that the Board of Supervisors approve BOS File No. 170350. The SBC supports the intent of the legislation and recommends approval, conditional upon the striking of the phrase "organization or other person" from proposed Police Code Section 33300J.6(b) and from proposed Administrative Code Section 12K.7(b) in the final version of the legislation.

The SBC supports the amendments made in committee on June 6, 2017, particularly the extension of the implementation date to July 1, 2018 to coincide with the annual minimum wage increase posting requirements, and the inclusion of a 180-day time period for an applicant or employee to file a complaint.

Similar to the SBC response to the Lactation in the Workplace ordinance, additional outreach and education needs to be given to business with fewer than 50 employees, as they are less likely to have legal counsel and in-house HR support. Many small businesses purchase off-the-shelf employment applications, which often have a section for the applicant to fill in salary history. In order for small businesses to be successful in complying with this ordinance, the City must do more than simply inform the small business of the new regulation when the regulatory posting is updated.

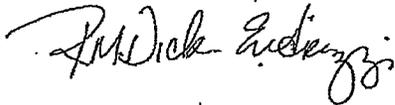
For each new employment regulation that is passed, the SBC encourages the Board of Supervisors to ensure adequate support for the Office of Labor Standards Enforcement (OLSE) and other offices involved in the implementation, education, and outreach.

Supervisor Farrell's staff was proactive in scheduling a presentation at the Small Business Commission meeting and responsive to proposed amendments. The Commission appreciates this collaborative approach to ensuring that relevant stakeholders – including the small business community – are properly engaged in the legislative process.

Thank you for considering the Commission's comments. Please feel free to contact me should you have any questions.

OFFICE OF SMALL BUSINESS • SMALL BUSINESS COMMISSION
1 DR. CARLTON B. GOODLETT PLACE, ROOM 110, SAN FRANCISCO, CALIFORNIA 94102-4681
(415) 554-6408

Sincerely,



Regina Dick-Endrizzi
Director, Office of Small Business

cc: Mark Farrell, Board of Supervisors
Kanishka Karunaratne, Office of Supervisor Mark Farrell
Katy Tang, Board of Supervisors
Hillary Ronen, Board of Supervisors
Malia Cohen, Board of Supervisors
London Breed, Board of Supervisors
Nicole Elliott, Mayor's Office
Mawuli Tugbenyoh, Mayor's Office
Lisa Pagan, Office of Economic and Workforce Development
Erica Major, Public Safety & Neighborhood Services Committee



185 Berry Street
Suite 5000
San Francisco, CA 94107

June 6, 2017

Supervisors Jane Kim, Aaron Peskin, and London Breed
Government Audit and Oversight Committee
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: SUPPORT – Parity in Pay Ordinance

Dear Committee Members,

Lyft writes in strong support of San Francisco's Parity in Pay legislation, which will prohibit employers from asking about a job candidate's previous pay during the application process.

This legislation will ensure that prospective employees will not have previous salary disparities held against them as they seek to rise in their careers. This is especially important for women, who earn 84 cents for every dollar a man makes in San Francisco, and people of color, whose average yearly household incomes trail significantly below those of white residents.

Lyft has joined the chorus of companies, local governments, and other private-sector employers who are taking proactive steps to prevent pay disparity based on gender or race. Our current policy dictates that we do not ask job applicants for their prior or current compensation.

We do this because we believe that basing decisions on prior pay inevitably continues entrenched disparities among impacted groups. Instead we look to align compensation with the qualifications of the applicant and the responsibilities of the position. This type of policy makes sense not only for workers but also for businesses who want to hire and retain a talented and diverse workforce.

For these reasons, we respectfully urge the San Francisco Board of Supervisors to adopt this vital legislation.

Sincerely,

Timothy Burr, Jr.
Director of Public Policy

cc Supervisor Mark Farrell
Supervisor Katy Tang
Supervisor Hillary Ronen
Supervisor Malia Cohen



Emily M. Murase, PhD
Director

City and County of San Francisco
Department on the Status of Women



Edwin M. Lee
Mayor

MEMORANDUM

Date: April 17, 2017
To: Angela Calvillo, Clerk of the Board of Supervisors
Cc: Supervisor Mark Farrell; Mawuli Tugbenyoh, Mayor's Office
From: Emily Murase, Director
Re: File #170350: Proposal to Ban Salary History

Below is the analysis prepared by Policy Fellow Allie Walker on the proposed ban on salary history as reflected in File #170350. Please do not hesitate to contact her directly with any questions, allie.walker@sfgov.org.

I. EXISTING SALARY HISTORY POLICIES

A. United States Salary History Policies

The United States Equal Pay Act of 1963 which amends the Fair Labor Standards Act of 1938 prohibits an employer from discriminating between employees on the basis of sex by paying wages to employees at a rate less than the rate at which he or she pays wages to employees of the opposite sex for equal work, when taking into account skill, effort, and responsibility, performed under similar working conditions. Under the Equal Pay Act, there are some exceptions to the rule of equal pay for equal work, including a) a seniority system, b) a merit system, c) a system which measures earnings by quantity or quality of production, or d) a differential based on any other factor than sex. The Equal Pay Act does not include salary history as a potential method of discriminating against an employee in terms of pay.

On September 14, 2016, Representative Eleanor Holmes Norton (DC) introduced the Pay Equity for All Act of 2016 to amends the Fair Labor Standards Act of 1938 and make it an unlawful practice for an employer to screen prospective employees based on their previous wages or salary histories and to seek the previous wages or salary history of any prospective employee from any current or former employer of such employee. This bill was last referred to the House Committee on Education and the Workforce.

B. State Salary History Policies

In August 2016, Massachusetts become the first state to pass an equal pay law that prohibits employers from asking prospective hires about their salary histories until after they make a job offer that includes compensation, unless the applicants voluntarily disclose the information.¹

California's Fair Pay Act prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when taking into account skill, effort, and responsibility, performed under similar working conditions, unless the employer demonstrates that specific, reasonably applied factors account for the entire wage differential. The California Fair Pay Act was expanded in 2016 with Senate Bill No. 1063, which prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work. This bill also states that prior salary shall not, by itself, justify any disparity in compensation.²

On January 17, 2017, Assemblymember Susan Eggman (D-Stockton) introduced Assembly Bill No. 168 which would prohibit an employer, including state and local government employers, from seeking salary history information about an applicant for employment, except as otherwise provided. AB 168 would require an employer, except state and local government employers, to provide the pay scale for a position to an applicant for employment upon reasonable request.³

C. Local Salary History Policies

1. Municipal Policies

The following cities have proposed and implemented legislation that prohibits employers from asking prospective hires about their salary histories: Philadelphia, PA; New York City, NY.

Signed by Mayor Jim Kenney on January 23, 2017, the Philadelphia ordinance, which takes effect on May 23, 2017, aims to end the cycle of pay discrimination by prohibiting employers from inquiring about or requiring applicants to provide information on past compensation. It also prohibits employers from relying on applicants' salary histories to set their salary, unless applicants voluntarily offer up that information, and prohibits retaliation against applicants who refuse to disclose their wage history.⁴

The legislation in New York City, NY prohibits employers from inquiring about a prospective employee's salary history during all stages of the employment, and goes so far as to state that if an employer is already aware of a prospective employee's salary history, they cannot rely on that information in the determination of a salary. The city's Public Advocate Letitia James notes that the bill is a response to wage inequality, considering that the wage gap costs women \$5.8 billion a year in New York City alone.⁵ Mayor Bill de Blasio is expected to sign the legislation into law shortly, and the law will become effective within 180 days of signing.

D. Private Sector Salary History Policies

Some U.S. employers have voluntarily adopted policies of not asking applicants about salary history to decide upon current compensation. Google in particular has noted that the gender wage gap is greatly affected by "anchoring bias," a cognitive bias in which a hiring manager's brain becomes fixated on a certain number and will not move far from that.⁶ To combat this bias, Google sets a pay target for each job when hiring promoting, using industry surveys, and offers that salary to every new employee, rather than basing compensation on the employee's prior salary. Google representatives note that by paying for the role, not the person, the employer mitigates any bias embedded within the employee's prior salary.

II. IMPACT AND IMPLEMENTATION OF SALARY HISTORY POLICIES

A. Benefits of Salary History Policies

Research shows that the pay gap between men and women starts as early as college graduation. One year after graduation, the American Association of University Women found that there is an unexplainable 7% difference in the earnings of male and female college graduates, when holding all factors equal (college major, occupation, economic sector, hours worked, months unemployed since graduation, GPA, type of undergraduate institution, institution selectivity, age, geographical location, and marital status), which increases over time.⁷ Over the course of her 35-year career, a woman with a college degree will make an average of \$1.2 million less than a man with

the same level of education. If the gender wage gap were to close and women were to receive equitable salaries, the Institute for Women's Policy Research estimates that the stimulus effect would grow the U.S. economy by at least three to four percentage point.⁸

This gap affects women from all backgrounds, at all ages, and of all levels of educational achievement, but particularly disadvantages women of color. Among full-time workers in 2016, black women and Hispanic and Latina women were paid only 65% and 59%, respectively, of what white men were paid.⁹ Not relying on salary history to inform current compensation will prevent the cycle of systemic underpayment of women, especially women of color, by paying for the role based on industry standards rather than on past discriminatory compensation.

Furthermore, reliance on existing salary to decide on pay could potentially adversely affect a candidate who is returning to the workplace after having taken extended time off from her career or for whom existing rate of pay is not reflective of the candidate's current qualifications or existing labor market conditions. In a recent study based on the National Longitudinal Survey of Youth from 1979 to 2006, Professor Michelle Budig from the University of Massachusetts, Amherst, found that, on average, men's earnings increased more than 6% when men became fathers, while women's earnings *decreased* 4% for each child they had.¹⁰ While in the past, men were considered the breadwinners of families, nowadays, 71% of mothers with children at home work, according to the Bureau of Labor Statistics.¹¹ Women are the sole or primary earner in 40% of households with children, according to the Pew Research Center, but many employers still view fathers as stable and committed to their work while mothers are considered more distractible.¹² Thus, creating a target salary based on the job, not based on the candidate's prior salary history, will help eliminate the bias against women and in particular against mothers.

B. Components of Salary History Policies

The 5 most important aspects of salary history policies are:

1. An employer may not inquire about an applicant's salary history;
2. An employer may not use an applicant's salary history as a factor in determining what salary to offer the applicant, even if the salary history has been disclosed to the employer voluntarily from the applicant;
3. An employer may not refuse to hire or retaliate against an applicant for not disclosing his or her salary history to the employer; and
4. An employer may not release the salary history of any current or former employee to that person's employer or prospective employer without written consent from the current or former employee.

Salary history policies have the potential to help close the wage gap by ending the historical patterns of gender bias and discrimination embedded in prior compensation. Women are paid less than men in 99.6% of occupations and are more likely to endure financial losses for taking time out of the paid workforce for childbearing and family caregiving responsibilities.¹³ Prohibiting an employer from dictating a prospective employee's salary based on prior compensation will help to eliminate the wage gap no matter where the employee is in his or her career path.

C. Authority to Implement Policies at Local Level

Local governments may regulate private-sector employers by setting minimum labor standards and imposing requirements on companies that do business with the local government (market participants).¹⁴ Under the doctrine of preemption, local regulations can be struck down if they conflict with state laws or interfere in an area that falls within the exclusive power of the state.¹⁵ In any case, the proposed language should be reviewed by the City Attorney.

1. Examples from San Francisco

San Francisco created an ordinance that required employers to “either provide health benefit plans to their employees or make equivalent payments to the state to help fund a city health care program that uninsured employees could use if they met certain age and income requirements.”¹⁶ In 2008, the Ninth Circuit Court of Appeals found that the ordinance was not preempted.¹⁷

The San Francisco Paid Sick Leave Ordinance was adopted by voters in 2006.¹⁸ The ordinance requires all employers to provide paid sick leave to each employee who performs work in San Francisco.¹⁹ San Francisco was the first city in California to require all employers to provide paid sick leave.

D. Conclusion

For these reasons, we conclude that the proposed legislation would be an important step towards closing the gender pay gap.

¹ Covert, Bryce, “Massachusetts Becomes First State Ever to Ban Employers from Asking for Salary Histories” (Aug 1, 2016), *ThinkProgress*.

² Senator Hall, Isadore, Senate Bill No. 1063, (2016).

³ Assembly Member Eggman, Susan, Assembly Bill No. 168, (2017).

⁴ Nagele-Piazza, “Philadelphia Employers Can’t Ask About Salary History” (Feb. 9, 2017), *Society for Human Resource Management*.

⁵ Wong, Kristin, “Why Banning the Salary-History Question is Good for Job Applicants” (Apr. 11, 2017), *New York Magazine*.

⁶ Bock, Laszlo, “How the ‘What’s Your Current Salary’ Question Hurts the Gender Pay Gap” (Apr. 29, 2016), *The Washington Post*.

⁷ Corbett, Christianne and Catherine Hill, “Graduating to a Pay Gap: The Earnings of Women and Men One Year After Graduation” (Oct. 2012), *American Association of University Women*.

⁸ Bassett, Laura, “Closing the Gender Wage Gap Would Create ‘Huge’ Economic Stimulus, Economists Say” (Oct. 24, 2012), *The Huffington Post*.

⁹ Miller, Kevin and Kathleen Benson, “The Simple Truth about the Gender Pay Gap” (2016), *American Association of University Women*.

¹⁰ Cain Miller, Claire, “The Motherhood Penalty vs. the Fatherhood Bonus” (Sep. 6, 2014), *The New York Times*.

¹¹ Data & Statistics: Women in the Labor Force (2017), *United States Department of Labor Women’s Bureau*.

¹² Wang, Wendy, Kim Parker, and Paul Taylor, “Breadwinner Moms” (2013), *Pew Research Center*.

¹³ The Gender Wage Gap, *U.S. Bureau of Labor Statistics & Department of Commerce* (2017), Equal Means Equal.

¹⁴ Holtzman, Jonathan and Steven Shaw, Employee-Friendly Local Employment Laws in California (2010) 20 No. 10 Cal. Emp. L. Letter 5.

¹⁵ Id.

¹⁶ Employee-Friendly Local Employment Laws in California.

¹⁷ Id.

¹⁸ San Francisco Paid Sick Leave Ordinance- Fact Sheet (2007) *City and County of San Francisco, Department of Administrative Services, Office of Labor Standards Enforcement.*

¹⁹ Id.



SAN FRANCISCO

OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

May 31, 2017

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 170350 [Pay Parity Ordinance]

Small Business Commission Recommendation to the Board of Supervisors: **Amend**

Dear Ms. Calvillo,

On May 22, 2017, the Small Business Commission voted (5-0, 2 absent) to recommend the following amendments:

1. Removal of the words "organization" and "other person" from Section 3300J.5(b).
2. Clarification of exceptions related to voluntary disclosure and publicly available salary information.

The Commission also supported the sponsor's amendment to remove subsection 3300J.4(b) in the version of the legislation that will be considered at the June 5 Government Audit and Oversight Committee meeting.

The Commission supports the legislation's goal of advancing pay equality and offered guidance to mitigate unintended consequences and to facilitate compliance. It recommended removal of the terms "organization" and "other person" from Section 3300J.5(b) in order to reduce the risk of litigious behavior by third parties against small businesses. The Commission also noted that the smallest businesses often lack human resources support, which affects their ability to stay up to date on new legislation. Greater outreach and extra sensitivity will therefore be required for businesses with fewer than 20 employees.

Thank you for considering the Commission's comments. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Regina Dick-Endrizzi", written in a cursive style.

Regina Dick-Endrizzi
Director, Office of Small Business

OFFICE OF SMALL BUSINESS • SMALL BUSINESS COMMISSION
1 DR. CARLTON B. GOODLETT PLACE, ROOM 110, SAN FRANCISCO, CALIFORNIA 94102-4681
(415) 554-6408

cc: Mark Farrell, Board of Supervisors
Katy Tang, Board of Supervisors
Hillary Ronen, Board of Supervisors
Malia Cohen, Board of Supervisors
London Breed, Board of Supervisors
Nicole Elliott, Mayor's Office
Mawuli Tugbenyoh, Mayor's Office
Lisa Pagan, Office of Economic and Workforce Development
Erica Major, Public Safety & Neighborhood Services Committee

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Patrick Mulligan, Director, Office of Labor Standards Enforcement
Jon Givner, Deputy City Attorney, Office of the City Attorney
Ben Rosenfield, City Controller, Office of the Controller
William Scott, Police Chief, Police Department
Emily Murase, PhD, Executive Director, Department on the Status of Women

FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee,
Board of Supervisors

DATE: April 11, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Farrell on April 4, 2017:

File No. 170350

Ordinance amending the Police Code to ban employers from considering current or past salary of an applicant in determining what salary to offer the applicant, and from asking applicants about their current or past salary; to prohibit employers from disclosing a current or former employee's salary history without that employee's authorization; authorizing the Office of Labor Standards Enforcement to implement and enforce these provisions; and authorizing the City to bring a civil action against an employer for violations.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102, or by email at: erica.major@sfgov.org.

c: Donna Levitt, Division Manager, Office of Labor Standards Enforcement
Todd Rydstrom, Office of the Controller
Rowena Carr, Assistant to the Police Chief
Kristine Demafeliz, Executive Secretary to Assistant Chief Hector Sainez
Minouche Kandel, Policy Director, Department on the Status of Women

Introduction Form

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

By a Member of the Board of Supervisors or the Mayor

2017 APR -4 PM 3:08 Time stamp or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor Farrell; Tang, Ronen, *Cohen, BREED*

Subject:

Police Code - Employer Consideration of Applicant's Salary History

The text is listed below or attached:

Ordinance amending the Police Code to ban employers from considering current or past salary of an applicant in determining what salary to offer the applicant, and from asking applicants about their current or past salary; and to prohibit employers from disclosing a current or former employee's salary history without that employee's authorization; authorizing the Office of Labor Standards Enforcement to implement and enforce these provisions; and authorizing the City to bring a civil action against an employer for violations.

Signature of Sponsoring Supervisor: *[Signature]*

For Clerk's Use Only: