AMENDED IN BOARD 11/25/14

FILE NO. 141001

Establishing Equal Pay Advisory Board

ORDINANCE NO. 251-14

1	
2	
_	

3

4

5 6

7

8

9

10

11

12

13

14

15 16

17

18

19

2021

22

2324

25

Ordinance amending the Administrative Code to require certain City contractors and subcontractors with 20 or more employees to submit an Equal Pay Report regarding compensation paid to employees; and establishing the Equal Pay Advisory Board to analyze and recommend the best methods of data collection that will identify wage gaps, and setting forth the membership and duties of the Advisory Board.

[Administrative Code - Requiring City Contractors to Submit Equal Pay Report and

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font. **Additions to Codes** are in *single-underline italics Times New Roman font*.

Deletions to Codes are in <u>single-underline italics Times New Roman fort</u>.

Deletions to Codes are in <u>strikethrough italics Times New Roman fort</u>.

Board amendment additions are in <u>double-underlined Arial font</u>.

Board amendment deletions are in <u>strikethrough Arial font</u>.

Asterisks (* * * *) indicate the omission of unchanged Code

subsections or parts of tables.

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

Section 1. The Administrative Code is hereby amended by revising Section 12B, to read as follows:

SECTION 12B.2. NONDISCRIMINATION PROVISIONS.

Every contract and property contract for or on behalf of the City shall incorporate by reference and require the contractor to comply with the provisions of Section 12B.2. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements set forth in Sections 12B.2(a) and 12B.2(c) through 12B.2(k), and failure to do so shall constitute a material breach of contract.

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

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

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

In adopting this Section 12B.2(b), the intent of the Board of Supervisors is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.

In particular, consistent with the severability clause set forth in Section 12B.6 below, the Board of Supervisors intends that if a court or agency of competent jurisdiction finds that a State or federal law, rule or regulation invalidates (1) the application of this Section to any business, person, type of compensation or benefit, or location; or (2) any other requirement of this Section, then the court or agency should sever the invalid clause and leave in effect the remainder of this Section.

- (c) The contractor or subcontractor shall provide reasonable accommodation for qualified disabled applicants for employment and for qualified disabled employees. Said contractor or subcontractor need not provide reasonable accommodation if such would present an undue hardship. An undue hardship may include but not be limited to more than a de minimus cost, violation of the seniority rights of other co-workers as established by a bona fide seniority system, or a health or safety risk to the employee or co-employees. The burden of establishing an undue hardship rests on the employer.
- (d) The contractor or subcontractor will in all solicitations or advertisements for employees placed by or on his or her behalf, state that qualified applicants will receive consideration for employment without regard to the fact or perception of their race, creed, religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or AIDS/HIV status.
- (e) The contractor or subcontractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other agreement or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers' representative of the contractor's

or subcontractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The contractor or subcontractor *shall*:

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

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

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

(B) Each contractor or subcontractor shall file a complete and accurate Equal Pay

Report with the Commission commencing on a date set by the Commission but no later than January

31, 2016September 30, 2015. Thereafter, each contractor or subcontractor shall file a Equal Pay Report annually.

(C) The Equal Pay Report requirements of this Subsection (f)(2) shall apply to all qualifying contracts, subcontracts and grants first advertised for bid, request for qualification or proposal is issued, or initiated on a date set by the Commission but no later than January 31, 2016September 30, 2015.

- (D) To the extent If any information in the Equal Pay Report qualifies constitutes as proprietary financial data, or confidential trade secret, or is protected by the right of privacy under the U.S. or California Constitution, the City shall not disclose such the information unless required by law, including under the California Public Records Act and the San Francisco Sunshine Ordinance.
- (g) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Chapter upon:
- (1) A finding by the Director or such other official who may be designated by the Commission, that the contractor or subcontractor has willfully violated such nondiscrimination provisions; or
- (2) A finding by the California Fair Employment and Housing Commission that a contractor or subcontractor has violated any provision of the California Fair Employment and Housing Act or the nondiscrimination provisions of this Chapter, provided that the California Fair Employment and Housing Commission has issued a final order pursuant to Section 12970 of the Government Code, or has obtained a judgment and order enforcing the final order pursuant to Section 12973 of the Government Code; provided further, that for the purposes of these provisions, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.
- (3) Upon such finding by the Director or other official designated by the Commission, or the California Fair Employment and Housing Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission, within such reasonable period as the Commission shall determine, that the

violation has been corrected, action will be taken as set forth in Subparagraphs (h) and (i) hereof.

- (4) The Commission shall, within 10 days of the date of issuance of any finding by the Director or other official designated by the Commission for the enforcement of this Chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.
- (5) For purpose of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 12B.2(g)(1) of this Chapter, that Commissioner may not participate in an appeal under this Section except as a witness.
- (6) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding, and requiring him or her to bring such books, records, documents or other things under his or her control.
- (7) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon

reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

- (8) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.
- (9) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Chapter.
- (h) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Chapter, or may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Chapter. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Chapter or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 12B.2(g) that the contractor has discriminated contrary to the provisions of this Chapter, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.
- (i) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be material breach of contract

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

- (j) If a finding of discrimination is made by either the Director or the Commission, the contract awarding department shall submit a report to the Board of Supervisors, the Mayor's Office, and the Commission that provides details of what actions, if any, the contract awarding department undertook under this Chapter.
- (k) The Commission shall provide an annual report to the Board of Supervisors summarizing the effectiveness of the information obtained from the Equal Pay Reports, recommendations for legislative change if needed, and a summary of the investigations, if any, that stem from the Equal Pay Reports. The Commission's recommendations shall include drafts of one or more ordinances if legislative change is necessary or desirable to implement the recommendations.
- (k<u>i</u>) Nothing contained in this Chapter shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.
 - $(k\underline{m})$ The contractor or subcontractor will meet the following standards for compliance:
- (1) If the contractor or subcontractor has been held to be an irresponsible bidder under Section 12B.2(i) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Chapter.
- (2) The contractor or subcontractor may be required to file with the Commission a basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report

as determined by the Commission. Willful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

- (3) Personally, or through its representatives, the contractor or subcontractor shall, through negotiations with the unions with whom it has collective bargaining or other agreements requiring the contractor or subcontractor to obtain or clear its employees through the union, or when the contractor or subcontractor otherwise uses a union as an employment resource, attempt to develop an agreement which will:
- (A) Define and outline responsibilities for nondiscrimination in hiring, referral, upgrading and training;
- (B) Otherwise implement a nondiscrimination program in terms of the unions' specific areas of skill and geography, such as an apprenticeship program, to the end that minority workers will be available and given an equal opportunity for employment.
- (4) The contractor or subcontractor shall notify the awarding authority of opposition to the nondiscrimination provisions of a contract by individuals, firms or organizations during the term of the contract.

Section 2. The Administrative Code is hereby amended by revising Section 12B, to add Sections 12B.2-1, 12B.2-2, 12B.2-3, 12B.2-4, 12B.2-5, and 12B.2-6, to read as follows:

SECTION 12B.2-1. EQUAL PAY ADVISORY BOARD.

- (a) There is hereby established an Equal Pay Advisory Board ("Advisory Board") consisting of seven voting members, with the Board of Supervisors appointing Seats 1, 2, and 3; the Mayor appointing Seats 4 and 5; and the Commission on the Status of Women appointing Seats 6 and 7 with the following qualifications: who shall be appointed as follows:
 - (1) three persons appointed by the Board of Supervisors;

discrimination or employment law, equal pay advocacy, or working in an industry where wage discrimination according to sex and/or race is common.

(d) All members of the Advisory Board serve at the pleasure of their appointing authority.

Even if a member has been appointed by the Director of the Human Rights Commission under subsection (b), the member serves at the pleasure of the member's appointing authority; provided, however, that the appointing authority may remove a member appointed by the Director of the Human Rights Commission only if the appointing authority replaces that member with another person.

SECTION 12B.2-2. ORGANIZATION AND MEETINGS.

- (a) The initial meeting of the Advisory Board shall be held within 30 days from the date the Board of Supervisors completes its appointments to Seats 1, 2, and 3, provided that a majority of all the members of the Advisory Board have been appointed. There shall be ten days' public notice of the inaugural meeting of the Advisory Board. Such notice shall be posted on the City's website, at a minimum on the website of the Human Rights Commission and the Commission on the Status of Women, and also filed at the Main Branch of the Public Library. Such notice need not include a detailed agenda, which must be published at least three days before the meeting, in accordance with the requirements of the Brown Act and the Sunshine Ordinance. For purposes of this subsection (a), completion of the Board of Supervisors' appointments includes appointments made by the Director of the Human Rights Commission in the event of a vacancy lasting more than 60 days, as specified in Section 12B.2-1(b).
 - (b) The members of the Advisory Board shall designate the Chair of the Advisory Board.

 SECTION 12B.2-3. POWERS AND DUTIES.
- (a) The Advisory Board shall analyze and recommend the best method or methods of data collection that will identify wage gaps between men and women of the same or different races and among members of different races, and that will minimize the burden on City contractors and subcontractors in providing the data. The Advisory Board shall also analyze and recommend data

points that may include but are not limited to employees' education, years of work experience, and specialized skills, that would aid in the analysis of wage disparities. The Advisory Board's recommendations shall include drafts of one or more recommendations for additional ordinances if legislative change is necessary or desirable to implement the recommendations.

(b) The Advisory Board shall make its recommendation to the Board of Supervisors and the Human Rights Commission within six months of its inaugural meeting. Thereafter, the Advisory Board shall meet at least once every four months to evaluate the effectiveness of the data collection methods used and make further recommendations as appropriate.

SECTION 12B.2-4. COMPENSATION.

<u>Members of the Advisory Board shall not be compensated, nor shall they be reimbursed for expenses, if any.</u>

SECTION 12B.2-5. STAFFING.

- (a) The Human Rights Commission shall provide in-kind professional and administrative staff to the Advisory Board.
- (b) All City officials and departments, boards, and commissions, including but not limited to contracting departments, shall cooperate with the Advisory Board in the performance of its duties.

SECTION 12B.2-6. SUNSETTING.

- (a) The Advisory Board and sections pertaining thereto (Sections 12B.2-1 through 12B.2-6) shall expire by operation of law on October 1,2017, unless the Board of Supervisors adopts an ordinance continuing the existence of the Advisory Board.
- (b) The Advisory Board shall submit a report to the Board of Supervisors by May 1, 2017 recommending whether the Advisory Board should continue to operate, and if so, whether the Board of Supervisors should consider legislative changes that would enhance the capacity of the Advisory Board to achieve its goals.

(c) Upon expiration of the Advisory Board as specified in subsection (a), the City Attorney shall cause Sections 12B.2-1, 12B.2-2, 12B.2-3, 12B.2-4, 12B.2-5, and 12B.2-6 to be removed from the Municipal Code.

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

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

Bv:

Alicia Cabréra

Deputy City Attorney

n:\legana\as2014\1500163\00974030.doc

23

24

25



City and County of San Francisco Tails

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

Ordinance

File Number: 141001

Date Passed: December 09, 2014

Ordinance amending the Administrative Code to require certain City contractors and subcontractors with 20 or more employees to submit an Equal Pay Report regarding compensation paid to employees; and establishing the Equal Pay Advisory Board to analyze and recommend the best methods of data collection that will identify wage gaps, and setting forth the membership and duties of the Advisory Board.

October 23, 2014 Neighborhood Services and Safety Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

October 23, 2014 Neighborhood Services and Safety Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

October 28, 2014 Board of Supervisors - AMENDED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

October 28, 2014 Board of Supervisors - AMENDED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

October 28, 2014 Board of Supervisors - CONTINUED AS AMENDED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

November 25, 2014 Board of Supervisors - AMENDED

Ayes: 10 - Avalos, Breed, Campos, Chiu, Farrell, Kim, Mar, Tang, Wiener and Yee Excused: 1 - Cohen

November 25, 2014 Board of Supervisors - AMENDED

Ayes: 10 - Avalos, Breed, Campos, Chiu, Farrell, Kim, Mar, Tang, Wiener and Yee Excused: 1 - Cohen

November 25, 2014 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

Ayes: 10 - Avalos, Breed, Campos, Chiu, Farrell, Kim, Mar, Tang, Wiener and Yee Excused: 1 - Cohen

December 09, 2014 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/9/2014 by the Board of Supervisors of the City and County of San Francisco.

> Angela Calvillo Clerk of the Board

Date Approved