

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Micki Callahan, Director, Department of Human Resources  
Theresa Sparks, Executive Director, Human Rights Department  
Trent Rhorer, Executive Director, Human Services Agency  
Barbara A. Garcia, Director, Department of Public Health  
Emily Murase, PhD, Executive Director, Department on the Status of Women  
Laurel Kloomok, Executive Director, Children and Families Commission  
Maria Su, Director, Department of Children, Youth, and Their Families  
Barbara Carlson, Director, Office of Early Care and Education

FROM: Erica Major, Assistant Clerk, Public Safety and Neighborhood Services Committee, Board of Supervisors

DATE: June 1, 2016

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Tang on May 24, 2016:

**File No. 160592**

**Ordinance amending the Administrative Code to require the Department of Human Resources to develop a Lactation in the Workplace Policy for all City departments.**

If you have any 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.

cc:

Susan Gard, Department of Human Resources  
Krista Ballard, Human Services Agency  
Greg Wagner, Department of Public Health  
Colleen Chawla, Department of Public Health  
Minouche Kandell, Department on the Status of Women

1 [Administrative Code - Lactation in the Workplace Policy]

2  
3 **Ordinance amending the Administrative Code to require the Department of Human**  
4 **Resources to develop a Lactation in the Workplace Policy for all City departments.**

5 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
6 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
7 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
8 **Board amendment additions** are in double-underlined Arial font.  
9 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
10 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
11 subsections or parts of tables.

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

13 Section 1. The Administrative Code is hereby amended by adding Section 16.9-26, to  
14 read as follows:

15 **SEC. 16.9-26. LACTATION IN THE WORKPLACE POLICY.**

16 **(a) Findings and Purpose.**

17 *(1) Breastfeeding provides health benefits to babies, as breast milk contains antibodies*  
18 *that protect babies from childhood illnesses including ear infections, respiratory infections, dermatitis,*  
19 *gastrointestinal disorders, asthma, obesity, diabetes, and a reduced risk of Sudden Infant Death*  
20 *Syndrome. The American Academy of Pediatrics recommends that babies be fed exclusively breast*  
21 *milk for the first six months of life and that breastfeeding continue at least until the end of the baby's*  
22 *first year. For some parents, breast milk is readily available and affordable.*

23 *(2) Breastfeeding also provides many health benefits for mothers, including earlier*  
24 *return to pre-pregnancy weight, and reduced risk of maternal postpartum depression, several cancers,*  
25 *type II diabetes, and osteoporosis. If a mother does not regularly express milk, the mother's breasts*  
*can become full and uncomfortable, which may lead to a decrease in milk supply or infection. Most*

1 nursing mothers who return to work are able to sustain their milk supply and avoid discomfort by  
2 simply expressing their milk at intervals and for lengths of time that suit their bodies.

3 (3) According to the Centers for Disease Control and Prevention, approximately 79%  
4 of new mothers breastfeed their babies at some point. Despite the benefits to mother and child of  
5 breastfeeding, only about 42% of babies are exclusively fed breast milk at three months of age. At six  
6 months of age, 19% of babies are exclusively fed with breast milk, and 49% of babies are fed any  
7 breast milk at that age.

8 (4) In the United States, more than one-third of mothers with children under the age of  
9 two work full time outside the home. Employment of mothers outside the home, especially full-time  
10 employment, has a negative influence on the period of time mothers breastfeed. Only 25% of employed  
11 women who are breastfeeding a child under age one continue to breastfeed the child for at least one  
12 month after returning to work. In 2000, only 11% of mothers with a one-year-old child and who  
13 worked full-time were still breastfeeding the child, in comparison to 19% of mothers who worked part-  
14 time while having a one-year-old child, and 22% of such mothers who were not in the labor force.

15 (5) Under the Healthy People 2020 initiative, the U.S. Department of Health and  
16 Human Services' Office of Disease Prevention and Health Promotion developed a set of national  
17 objectives, which include a goal to increase the proportion of mothers who breastfeed their babies in  
18 the early postpartum period to 81.9% by 2020, and to increase the proportion of employers that have  
19 worksite lactation support programs to 14.2%. Through this Section 16.9-26, the City intends to be one  
20 of those employers.

21 (6) An employer with a breastfeeding-friendly environment may have an advantage  
22 when recruiting and retaining employees. Breastfeeding may decrease employee absenteeism due to  
23 illness of a child, to the extent breastfeeding reduces childhood illnesses. The fewer the childhood  
24 illnesses, the fewer sick days mothers and fathers have to take for children's illnesses.

1                   (7) Federal law requires all employers to provide nursing mothers with reasonable  
2 break time to express milk for one year after the child's birth and a private space other than a  
3 bathroom, that is shielded from view and free from intrusion, to express breast milk. (29 U.S.C. 207(r).)  
4 Similarly, California law requires all employers to provide a reasonable amount of break time and to  
5 make a reasonable effort to provide a private space, other than a toilet stall, close to the employee's  
6 work area, to accommodate an employee desiring to express breast milk at work. (Cal. Labor Code §  
7 1030.) Twenty-seven states, the District of Columbia, and Puerto Rico have laws that are supportive of  
8 breastfeeding in the workplace.

9                   (8) A work environment that is supportive of a mother's efforts to breastfeed her child  
10 will likely increase the period of the child's life during which breastfeeding will occur. By  
11 implementing a policy that supports mothers returning to work, the City will enhance mothers' ability  
12 to continue breastfeeding through their child's first year and beyond.

13                   (9) In recognition of the well documented health advantages for mother and child of  
14 breastfeeding, the purpose of this Section 16.9-26 is to provide a supportive work environment to  
15 enable City employees who are nursing mothers to breastfeed or express milk during working hours.  
16 The Board of Supervisors finds that providing a supportive work environment to these employees will  
17 greatly benefit their health and welfare and strengthen their families, and will enhance the City's  
18 ability to attract and retain employees.

19                   (b) Definitions.

20                   (1) "City" shall mean the City and County of San Francisco.

21                   (2) "Department" shall mean any department of the City.

22                   (3) "DHR" shall mean the Department of Human Resources.

23                   (4) "Lactation" or "Lactate" shall mean breastfeeding, or expressing milk by removing  
24 breast milk by hand, manual breast pump, or electric breast pump.

1           (5) “Nursing Mother” shall mean an employee of the City with a child who is feeding  
2 the child by means of Lactation.

3           (6) “Policy” shall mean the City’s Lactation in the Workplace Policy, as described in  
4 subsection (c) and as implemented by DHR.

5           (c) Lactation in the Workplace Policy.

6           (1) DHR shall develop the City’s Lactation in the Workplace Policy. The Policy shall  
7 address the subjects covered in subsections (c)(1)(A), (B), and (C), and meet the minimum standards  
8 set in those subsections. The Policy may also impose other requirements consistent with this Section  
9 16.9-26, that DHR deems necessary or appropriate to facilitate Lactation in the workplace, and that  
10 give due consideration to the privacy of Nursing Mothers engaged in Lactation under the Policy.

11           (A) Work Breaks for Lactation. The Policy shall: (i) require Departments to  
12 allow Nursing Mothers breaks for Lactation during work hours using normal paid breaks and meal  
13 times; (ii) require Departments to accommodate additional unpaid breaks for Lactation to the extent  
14 feasible given the operational demands of the Department; and (iii) require Departments to establish a  
15 process for Nursing Mothers to request breaks for Lactation.

16           (B) Space for Lactation. The Policy shall require Departments to provide a  
17 place for Lactation, other than a bathroom, that is shielded from view and free from intrusion from  
18 coworkers and the public. The Policy shall encourage Departments to provide a private room with (i)  
19 a door that can be locked, (ii) at least one electrical outlet, (iii) a chair or chairs, (iv) adequate  
20 lighting, (v) the ability to add a partition to the room to accommodate multiple Nursing Mothers  
21 simultaneously, and (vi) other amenities such as a refrigerator for storage of breast milk, a sink, and a  
22 hospital-grade electric breast pump or pumps. Rooms designated for Lactation may be used for other  
23 purposes when not needed for Lactation. Rooms designated for Lactation shall be identified with  
24 appropriate signage. The Policy shall require Departments to create a system for Nursing Mothers to  
25 schedule use of the facilities available for Lactation.

1                                    (C) Lactation space in new or renovated City workplaces. The Policy shall  
2 provide that when the City constructs a new building that will be a workplace for City employees,  
3 enters into a new lease for all or part of a building that will be a workplace for City employees, or  
4 engages in a renovation of an existing owned or leased building that is or will be a workplace for City  
5 employees, the Department managing the construction or renovation project or entering into the lease  
6 will consult with DHR to ensure that sufficient space is identified to be used for Lactation to  
7 accommodate the number of City employees anticipated to work in the workplace who are or will be  
8 Nursing Mothers during any one time period.

9                                    (2) Each Department shall comply with the Policy. Departments may seek DHR's  
10 assistance in implementing the Policy. The Policy may require or permit any Department to develop a  
11 department-specific policy consistent with the minimum standards set in subsections (c)(1)(A), (B), and  
12 (C). DHR must approve any department-specific policy.

13                                    (3) The Policy shall be distributed to all new employees and to all employees who  
14 request parental leave, prior to going on parental leave.

15                                    (d) DHR Website and Materials.

16                                    (1) DHR shall develop a website (or webpage on its own website) that contains  
17 informational materials or links to information regarding Lactation and breastfeeding. The website  
18 shall contain information for all expectant parents regarding Lactation and related issues, the  
19 availability of breast milk banks, the Policy, and any department-specific Lactation policies. The  
20 website shall include a list of the locations of all Lactation facilities available to City employees. The  
21 website may also include any other information DHR deems relevant to facilitate Nursing Mothers'  
22 return to work and promote the goals of the Policy and this Section 16.9-26.

23                                    (2) DHR shall develop and/or compile printed informational materials regarding  
24 Lactation resources for distribution to City employees before their parental leave or upon return to  
25 work from parental leave.

1           (e) Undertaking for the General Welfare. In enacting and implementing this Section 16.9-26,  
2 the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it  
3 imposing on its officers and employees, an obligation for breach of which it is liable in money damages  
4 to any person who claims that such breach proximately caused injury.

5           (f) No Conflict with Federal or State Law. Nothing in this Section 16.9-26 shall be interpreted  
6 or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

7           (g) Severability. If any section, subsection, sentence, clause, phrase, or word of this Section  
8 16.9-26, or any application thereof to any person or circumstance, is held to be invalid or  
9 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the  
10 validity of the remaining portions or applications of this Section 16.9-26. The Board of Supervisors  
11 hereby declares that it would have passed this Section 16.9-26 and each and every section, subsection,  
12 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether  
13 any other portion of this Section 16.9-26 or application thereof would be subsequently declared invalid  
14 or unconstitutional.

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16           Section 2. Effective Date. This ordinance shall become effective 30 days after  
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
19 of Supervisors overrides the Mayor's veto of the ordinance.

20  
21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By:   
24           \_\_\_\_\_  
25           BRADLEY A. RUSSI  
              Deputy City Attorney

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