

LEGISLATIVE DIGEST

[Administrative Code - Minimum Compensation Ordinance]

Ordinance amending the Administrative Code to increase the wage rate requirement for employees of nonprofit corporations and public entities that have contracts covered by the Minimum Compensation Ordinance and to prohibit the use of a waiver from the wage rate requirement currently available to nonprofit corporations.

Existing Law

The Minimum Compensation Ordinance generally requires City contractors to provide “Minimum Compensation” to employees who work at least four hours per week during a pay period on a contract subject to the Ordinance (except for certain Airport-related contracts, in which case it is 10 hours in a two-week pay period). Once the “hours worked” requirement is met, the employer must pay the employee the required hourly wage rate for all hours worked during the applicable pay period, not just the hours worked under the contract subject to the Ordinance.

The Ordinance requires contractors to pay employees a minimum hourly wage rate and paid and unpaid time off.

The Ordinance applies, with some exceptions, to the following types of City contracts:

1. Contracts between the City and a provider of services purchased at the expense of the City or out of trust funds established by Charter, ordinance or memorandum of understanding.
2. Grant agreements for services rendered to the public rather than to City government.
3. Subcontracts for services required under a prime contract with the City.
4. Airport leases and subleases.
5. Contracts between Airport tenants and subtenants and third parties that provide services on the property.

As described below, the minimum hourly wage requirement is different for for-profit contractors than for nonprofit corporations and public entities.

For-Profit Employers

When enacted in 2000, the Ordinance set \$9.00 as the minimum hourly wage rate for for-profit employers, which rate increased by 2.5% for each of the next three years. In 2007, the for-profit hourly wage rate was \$10.77. The Board of Supervisors amended the ordinance in 2007 to require an increase in the \$10.77 wage rate on October 1, 2007 based on the prior year's increase in a consumer price index ("CPI"). It further provided that on January 1, 2008, the \$10.77 rate, or any higher amount obtained from the October 1, 2007 adjustment, would increase by any prior year's CPI increase. Finally, it provided for an ongoing annual CPI adjustment each January 1.

Nonprofit Corporations and Public Entities.

When enacted in 2000, the Ordinance required employers to pay \$9.00 an hour. It also provided for the same CPI increase that applied to for-profit contracts, but the increase was not automatic. It would only apply if it was determined in the budget process that the City had sufficient funds to pay the anticipated costs of the increased rate.

In 2007, the Board of Supervisors amended the Ordinance by increasing the hourly wage rate for nonprofit corporations and public entities to \$10.77. The amendment set up a procedure that provided for an annual CPI increases each January 1, but the increase would not take effect if there was a projected shortfall in the budget for the upcoming fiscal year.

Over time, because of continued budget shortfalls, the minimum hourly wage rate for nonprofits and public entities became lower than the rate for for-profits. Currently, for-profits must pay at least \$12.66 an hour. Nonprofits and public entities must pay at least \$11.03 an hour.

The following procedure currently governs the setting of the Minimum Compensation wage rate for nonprofits and public entities.

Years with a Projected Budget Shortfall. If there is a projected budget shortfall for the upcoming fiscal year, the Mayor must report to the Board of Supervisors whether the budget proposed by the Mayor contains sufficient funds to pay all or a part of the costs of the projected CPI increase for nonprofits and public entities for the upcoming fiscal year and, if not, set forth the basis for the determination that no alternative funding sources or prudent reductions in City expenses are available to enable the City to pay the additional costs of the CPI increase. Upon receiving the report, the Board of Supervisors must hold a hearing to consider the report and whether there are alternative funding sources or prudent reductions in City expenses that would enable the City to pay the additional costs for the upcoming fiscal year. The Board may amend the budget to provide full or partial funding for the cost of the

CPI increase. The hourly wage rate is the rate required in the then-current calendar year plus the amount of any CPI increase provided for in the budget.

Years with No Projected Budget Shortfall. In a year without a projected budget shortfall, the minimum hourly wage rate for nonprofits and public entities is increased by an amount that corresponds to the prior year's CPI increase, if any. If there is disparity between the for-profit rate and the nonprofit/public entity rate, the Mayor must report to the Board whether the budget contains sufficient funds to bring the hourly wage rate into parity with the rate that applies to for-profits. The Board of Supervisor must hold a hearing to consider the report and it may amend the budget to provide full or partial funding toward parity.

Waivers for Nonprofits

The Ordinance provides two waivers from the minimum hourly wage requirement for nonprofits. Each waiver is effective for up to one year and subsequent waivers may be requested and granted.

1. A nonprofit may seek a waiver from the Ordinance's minimum hourly wage requirement if the highest paid managerial position in the organization earns a salary which is not more than six (6) times the lowest wage paid by the organization to employees covered by the Ordinance. The nonprofit must explain to the contracting department the economic hardship or the negative impact on services that would result from compliance with the wage requirement. If the contracting department finds the explanation adequate to justify the waiver, the Office of Labor Standards Enforcement ("OLSE") must grant it.

2. A nonprofit may seek a waiver from the minimum hourly wage requirement if the City has included funds in its budget to pay all or part of an increased wage rate based on the prior year's CPI increase, but the nonprofit does not receive an adequate increase in its contract allocation to pay for the higher rate. The nonprofit must demonstrate to the contracting department that it has not received adequate funding. The contracting department reports to the OLSE whether the nonprofit received an increase in its contract allocation to pay for the CPI increase and, if it received funding to pay only a portion of the CPI increase, what portion of the increase was funded. If the department has not provided adequate funding to the nonprofit for the full CPI increase, it must explain the reason for not doing so to the OLSE. The OLSE must grant a one-year waiver from the CPI increase or the unfunded portion of the increase as reported by the department.

Amendments to Current Law

The proposed legislation increases the hourly wage rate that nonprofits and public entities must pay their employees if they are subject to the Minimum Compensation Ordinance. It makes the wage rate that same rate that applies to for-profit contractors.

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Nonprofit and public entity employers that currently have contracts with the City would not be required to pay the increased wage rate unless and until their current contract is amended.

The proposed legislation eliminates the waivers that a nonprofit may seek based on economic hardship and lack of funding provided by the City to cover the costs of higher wage rates based on CPI increases.

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