

File No. 130622

Committee Item No. 1
Board Item No. 50

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Rules

Date 7/23/13

Board of Supervisors Meeting

Date JULY 30, 2013

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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OTHER

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Completed by: Linda Wong
Completed by: L.W.

Date 7/19/13
Date 7/23/13

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [San Francisco Family Friendly Workplace Ordinance]

2

3 **Motion ordering submitted to the voters an ordinance amending the Administrative**
4 **Code to: allow San Francisco-based employees to request flexible or predictable**
5 **working arrangements to assist with caregiving responsibilities, subject to the**
6 **employer's right to deny a request based on business reasons; prohibit adverse**
7 **employment actions based on caregiver status; prohibit interference with rights or**
8 **retaliation against employees for exercising rights under the Ordinance; require**
9 **employers to post a notice informing employees of their rights under the Ordinance;**
10 **require employers to maintain records regarding compliance with the Ordinance;**
11 **authorize enforcement by the Office of Labor Standards Enforcement, including the**
12 **imposition of remedies and penalties for a violation, and an appeal process for an**
13 **employer to an independent hearing officer; authorize waiver of the provisions of the**
14 **Ordinance in a collective bargaining agreement; and making environmental findings, to**
15 **the voters of the City and County of San Francisco at an election to be held on**
16 **November 5, 2013.**

17

18 **MOVED, That the Board of Supervisors hereby submits the following ordinance to the**
19 **voters of the City and County of San Francisco, at an election to be held on November 5,**
20 **2013.**

21

22 **Ordinance amending the Administrative Code to: allow San Francisco-based**
23 **employees to request flexible or predictable working arrangements to assist with**
24 **caregiving responsibilities, subject to the employer's right to deny a request based on**
25 **business reasons; prohibit adverse employment actions based on caregiver status;**

1 prohibit interference with rights or retaliation against employees for exercising rights
2 under the Ordinance; require employers to post a notice informing employees of their
3 rights under the Ordinance; require employers to maintain records regarding
4 compliance with the Ordinance; authorize enforcement by the Office of Labor
5 Standards Enforcement, including the imposition of remedies and penalties for a
6 violation and an appeal process for an employer to an independent hearing officer;
7 authorize waiver of the provisions of the Ordinance in a collective bargaining
8 agreement; and making environmental findings.

9
10 NOTE: Additions are *single-underline italics Times New Roman*;
11 deletions are *strike-through italics Times New Roman*.

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

13 Section 1. Environmental Findings. The Planning Department has determined that the
14 actions contemplated in this ordinance comply with the California Environmental Quality Act.
15 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with
16 the Clerk of the Board of Supervisors in File No. ¹³⁰⁶²² ___ and is incorporated herein by reference.

17 Section 2. The San Francisco Administrative Code is hereby amended by adding
18 Chapter 12Z to read as follows:

19 **CHAPTER 12Z. SAN FRANCISCO FAMILY FRIENDLY WORKPLACE ORDINANCE**

20 **SEC. 12Z.1. TITLE.**

21 *This Chapter shall be known as the "San Francisco Family Friendly Workplace Ordinance."*

22 **SEC. 12Z.2. FINDINGS.**

23 *1. Over the last few decades, the demographics of the nation's workforce and the structures of*
24 *the nation's families have undergone significant changes. As detailed below, these changes include an*
25 *increased number of women in the workforce; fewer households with children that have at least one*

1 parent staying at home full-time; and more single-parent households. As a result of these and other
2 changes, the demands placed on workers with family responsibilities are greater and more complex
3 today than they were in an earlier era. As in every American city, San Francisco's workforce and
4 families have experienced these changes.

5 2. A marked change in the workforce, and consequently in families, is the large increase in
6 numbers of women who now work outside the home. In 1960, the wife was employed in approximately
7 26 percent of families. In April 2013, in approximately 68 percent of families, married mothers worked
8 outside the home.

9 3. Another marked change from an earlier era is that now far fewer households have a parent
10 who does not work outside the home. Nationally, more than seventy percent of children are raised in
11 households that are headed by either a working single parent or two working parents. In 1975, a little
12 more than a third of households with married parents and children had both parents in the workforce.
13 Now, the figure is approximately two-thirds. In San Francisco in 2010, approximately eighty percent
14 of parents living with at least one child under the age of five were in the workforce.

15 4. The number of single-parent households has increased substantially, more than doubling
16 over the last fifty years. Today, at least 15-20 percent of households are single-parent. Approximately
17 half of all births to women under age 30 are to single mothers.

18 5. Americans are living longer than they ever did, and many families have direct caregiving
19 responsibilities for elderly parents or other older relatives. Family members serving this caregiving
20 role face the same work/family pressures as parents with minor children, and when they also have
21 caregiving responsibilities for minor children, their family burdens in effect are compounded.
22 Nationally, more than half of persons who provide unpaid care to an adult or to a child with special
23 needs are employed outside the home, with the large majority of those employees working full time.
24 Approximately 32,000 San Franciscans who work outside the home live with family members 65 years
25 and older.

1 6. Many employees who live outside city centers have lengthy commutes to their jobs. Traffic
2 patterns during rush hour elongate those commutes. At the same time, some employees, especially
3 those in low-wage jobs, have difficulty reaching their workplaces through public transportation during
4 off-peak shifts that start in the evening or early morning. Commutes of long duration leave less time
5 for employees to balance work and caregiving responsibilities. Further, to the extent rigid employment
6 schedules and the absence of telecommute options for employees contribute to delays attendant to rush-
7 hour traffic, they heighten the tension between work and family responsibilities that so many workers
8 face. Moreover, to the extent flexible working hours and telecommuting options will reduce demands
9 on streets and highways and mass transportation systems during rush hour, San Francisco and the Bay
10 area will likely benefit from both an environmental and economic standpoint.

11 7. An employee's actual or perceived status as a caregiver can create workplace and pay
12 inequities, which often operate to the detriment of women and their families because of the continuing
13 primary role of women as caregivers in the United States. These problems are most obvious when an
14 employer refuses to hire an employee because of that person's family or other caregiving
15 responsibilities. Legal protection of caregivers against such arbitrary acts does not currently exist. But
16 pay inequity may arise even if an employer does not consciously intend to place workers at a
17 disadvantage because of their actual or perceived status as caregivers. For example, employees with
18 caregiving responsibilities may be channeled into or may themselves gravitate toward lower-paying
19 assignments or career paths that they or their employer view as more compatible with family needs.
20 Employees may temporarily drop out of the workforce because there is insufficient workplace
21 flexibility, and when they return to the workforce they may be unable to catch up to the pay rates of
22 employees performing the same or similar work who did not leave.

23 8. The current cultural climate within many businesses idealizes the employee who works full-
24 time and long hours, is available for extra work hours on short notice, and has few if any commitments
25 outside of work that would take precedence over work responsibilities. These values are based in large

1 part on a traditional, gendered division of labor. Historically, men could comply with these idealized
2 worker norms because women performed full-time childcare and domestic duties. Yet, while women's
3 participation in the paid labor market is now widespread, women continue to take on childcare and
4 household duties, do the lion's share of housework, provide the majority of physical and emotional care
5 for children, and take time off to care for sick family members and to attend to other family needs.

6 9. Many employers expect that employees will outsource childcare and other caregiving
7 responsibilities, without considering that such costs may constitute an unsustainable proportion of
8 family income relative to other expenses. Other employers expect family members of the employee to
9 assume childcare and other caregiving responsibilities, without considering that such family members
10 may not exist, or may themselves have work responsibilities that foreclose their assuming these
11 functions.

12 10. In response to the needs of the modern workforce, some employers have instituted flexible
13 work arrangements that alter the time or place at which work is conducted, or the amount of work that
14 is conducted, to allow employees to more easily meet the needs of both work and family life. But even
15 when employers offer flexible workplace arrangements, employees may not avail themselves of such
16 arrangements for reasons such as stigma and lack of consistent consideration of such requests.
17 Employees who seek flexible work arrangements may endure a "flexibility bias" or "flexibility stigma"
18 in which they are discredited and devalued in the workplace. Aware of this problem, some employees
19 forego flexible work opportunities. And many employees do not have such opportunities, because many
20 employers do not systematically offer or consider requests for flexible working arrangements but
21 instead, leave requests from employees to the discretion of an individual manager, or do not even allow
22 consideration of such requests. This voluntary patchwork system of accommodating employees' needs
23 for flexible working arrangements falls far short of meeting those needs.

24 11. While a broad range of employees are adversely affected by rigid work and schedule
25 arrangements, some categories of workers are hit harder than others. Workers who lack access to

1 flexible work schedules are disproportionately low-wage workers, female workers, and workers of
2 color. Employees with a college degree are nearly twice as likely to be able to change their schedules
3 than those with less than a high school degree.

4 12. Experience with laws in other countries to increase workplace flexibility has been
5 overwhelmingly positive. Workplace flexibility has been shown to benefit employers and employees, as
6 well as the environment. In recent years, the United Kingdom, Australia, Northern Ireland, and New
7 Zealand have pioneered model workplace laws that grant parent and caregiver workers the right to
8 request flexible working arrangements. In Great Britain, in the first year after implementing the right to
9 request, a million parents came forward, and nearly all requests were granted with little opposition on
10 the part of employers. The experiences of these countries have been so successful that some countries
11 are expanding their laws from parents and caregivers to all employees. Already in Belgium, France
12 and the Netherlands, flexible workplace arrangements are open to all employees and are not targeted
13 to employees with childcare or caregiving responsibilities.

14 13. Perhaps in part because of these progressive laws in other countries, and in part due to a
15 shortage or lack of family-friendly employment policies in the United States, the percentage of working-
16 age American women in the workforce has been on the decline relative to other developed countries.
17 For American women, the tension between workplace demands and caregiving responsibilities cuts in
18 both directions. Many women who work are stretched thin on both fronts. And some women forego
19 work, or work only intermittently, to make it possible for them to serve as family caregivers, but they
20 and their families suffer economic harm as a result.

21 14. Similar "right to request" legislation at the Federal level was introduced in 2007 by then-
22 U.S. Senators Edward M. Kennedy, Hillary Clinton and Barack Obama; the same bill has been
23 introduced three times since 2007, most recently in June 2013. Despite a 2010 White House summit on
24 this topic, these Congressional attempts have not been successful. Recently, the State of Vermont was
25 the first jurisdiction in the United States to pass a "right to request" law modeled after the

1 Congressional bill. A growing number of state and local governments have also passed laws explicitly
2 prohibiting discrimination based on caregiver status.

3 15. Studies indicate that providing employees with access to flexible work arrangements
4 reduces the conflicts many face between their work responsibilities and their family obligations, with
5 the effect of enhancing employee satisfaction and morale and overall well-being, possibly even to the
6 point of reducing mental health problems among employees.

7 16. Flexible work arrangements also benefit businesses at minimal cost. Implementing
8 workplace flexibility helps businesses attract and retain key talent, increase employee retention and
9 reduce turnover, reduce overtime needs, reduce absenteeism, and enhance employee productivity,
10 effectiveness, and engagement. Further, according to the President's Council of Economic Advisors, as
11 more businesses adopt flexibility practices, the benefits to society, in the form of reduced traffic,
12 improved employment outcomes, and more efficient allocation of employees to employers, may even be
13 greater than the gains to individual businesses and employees.

14
15 **SEC.12Z.3. DEFINITIONS.**

16 For purposes of this Chapter, the following definitions apply.

17 "Agency" means the Office of Labor Standards Enforcement or any successor department or
18 office.

19 "Caregiver" means an Employee who is a primary contributor to the ongoing care of any of
20 the following:

21 (1) A Child or children for whom the Employee has assumed parental responsibility.

22 (2) A person or persons with a serious medical condition in a Family Relationship with
23 the Caregiver.

24 (3) A parent age 65 or over of the Caregiver.
25

1 "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a
2 person standing in loco parentis to that child, who is under 18 years of age.

3 "City" means the City and County of San Francisco.

4 "Director" means the Director of the Office of Labor Standards Enforcement or his or her
5 designee.

6 "Employee" means any person who is employed within the geographic boundaries of the City
7 by an Employer, including part-time employees. "Employee" includes a participant in a Welfare-to-
8 Work Program when the participant is engaged in work activity that would be considered
9 "employment" under the federal Fair Labor Standards Act, 29 U.S.C. §201 et seq., and any applicable
10 U.S. Department of Labor Guidelines. "Welfare-to-Work Program" shall include any public assistance
11 program administered by the Human Services Agency, including but not limited to CalWORKS, and
12 any successor programs that are substantially similar, that require a public assistance applicant or
13 recipient to work in exchange for their grant.

14 "Employer" means the City, or any person as defined in Section 18 of the California Labor
15 Code who regularly employs 20 or more Employees, including an agent of that Employer and
16 corporate officers or executives who directly or indirectly or through an agent or any other person,
17 including through the services of a temporary services or staffing agency or similar entity, employ or
18 exercise control over the wages, hours, or working conditions of an Employee. The term "Employer"
19 shall also include any successor in interest of an Employer. The term "Employer" shall not include the
20 state or federal government or any local government entity other than the City.

21 "Family Relationship" means a relationship in which a Caregiver is related by blood, legal
22 custody, marriage, or domestic partnerships, as defined in San Francisco Administrative Code Chapter
23 62 or California Family Code Section 297, to another person as a spouse, domestic partner, Child,
24 parent, sibling, grandchild or grandparent.

1 "Flexible Working Arrangement" means a change in an Employee's terms and conditions of
2 employment that provides flexibility to assist an Employee with caregiving responsibilities. A Flexible
3 Working Arrangement may include but is not limited to a modified work schedule, changes in start
4 and/or end times for work, part-time employment, job sharing arrangements, working from home,
5 telecommuting, reduction or change in work duties, or part-year employment.

6 "Major Life Event" means the birth of an Employee's child, the placement with an Employee of
7 a child through adoption or foster care, or an increase in an Employee's caregiving duties for a person
8 with a Serious Health Condition who is in a Family Relationship with the Employee.

9 "Predictable Working Arrangement" means a change in an Employee's terms and conditions of
10 employment that provides scheduling predictability to assist that Employee with caregiving
11 responsibilities.

12 "Serious Health Condition" means an illness, injury, impairment, or physical or mental
13 condition that involves either of the following:

14 (1) Inpatient care in a hospital, hospice, or residential health care facility.

15 (2) Continuing treatment or continuing supervision by a health care provider.

16 "Work Schedule" means those days and times within a work period that an Employee is
17 required by an Employer to perform the duties of his or her employment for which he or she will
18 receive compensation.

19
20 **SEC. 12Z.4. RIGHT TO REQUEST FLEXIBLE OR PREDICTABLE WORKING**
21 **ARRANGEMENT.**

22 (a) An Employee who has been employed with an Employer for six months or more and
23 works at least eight hours per week on a regular basis may request a Flexible or Predictable Working
24 Arrangement to assist with caregiving responsibilities for 1) a Child or children for whom the
25 Employee has assumed parental responsibility, 2) a person or persons with a Serious Health Condition

1 in a Family Relationship with the Employee, or 3) a parent age 65 or older of the Employee. That
2 request may include, but is not limited to, a change in the Employee's terms and conditions of
3 employment as they relate to:

4 _____ (1) The number of hours the Employee is required to work;

5 _____ (2) The times when the Employee is required to work;

6 _____ (3) Where the Employee is required to work;

7 _____ (4) Work assignments or other factors; or

8 _____ (5) Predictability in a Work Schedule.

9 (b) Any request submitted to the Employer under this section shall be in writing and
10 specify the arrangement applied for, the date on which the Employee requests that the arrangement
11 becomes effective, and the duration of the arrangement, and explain how the request is related to
12 caregiving.

13 (c) An Employer may require verification of caregiving responsibilities as part of the
14 request.

15 (d) An Employee may make the initial request verbally, after which the Employer shall,
16 either in writing or verbally, refer the Employee to the posting required by Section 12Z.8 and instruct
17 the Employee to prepare a written request under subsection (b).

18 (e) A request made under this Section may be made twice every 12 months, unless the
19 Employee experiences a Major Life Event, in which case the Employee may make, and the Employer
20 must consider, an additional request.

21
22 **SEC. 12Z.5. RESPONSE TO REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING**
23 **ARRANGEMENT.**

1 (a) An Employer to whom an Employee submits a request under Section 12Z.4 must meet
2 with an Employee requesting a Flexible or Predictable Working Arrangement within 21 days of the
3 request.

4 (b) An Employer must consider and respond to an Employee's request for a Flexible or
5 Predictable Working Arrangement in writing within 21 days of the meeting required in subsection (a).
6 The deadline in this Section may be extended by agreement with the Employee confirmed in writing.

7 (c) An Employer may grant or deny a request for Flexible or Predictable Working
8 Arrangement. An Employer who grants the request shall confirm the arrangement in writing to the
9 Employee. An Employer who denies a request must explain the denial in a written response that sets
10 out a bona fide business reason for the denial, notifies the Employee of the right to request
11 reconsideration by the Employer under Section 12Z.6, and includes a copy of the text of that Section.
12 Bona fide business reasons may include but are not limited to, the following:

13 (1) The identifiable cost of the change in a term or condition of employment requested
14 in the application, including but not limited to the cost of productivity loss, retraining or hiring
15 Employees, or transferring Employees from one facility to another facility.

16 (2) Detrimental effect on ability to meet customer or client demands.

17 (3) Inability to organize work among other Employees.

18 (4) Insufficiency of work to be performed during the time the Employee proposes to
19 work.

20 (d) Either an Employer or an Employee may revoke an applicable Flexible or Predictable
21 Working Arrangement with 14 days written notice to the other party; if either party so revokes, the
22 Employee may submit a request for a different Flexible or Predictable Working Arrangement and the
23 Employer must respond to that request as set forth in Sections 12Z.5 and 12Z.6. Each time an
24 Employer revokes a Flexible or Predictable Working Arrangement, an Employee may make an
25 additional request than the allowable number per year under Section 12Z.4(e).

1 (e) For an Employer who grants a Predictable Working Arrangement, if the Employer has
2 insufficient work for the Employee during the period of the Predictable Working Arrangement, nothing
3 in this Ordinance requires the Employer to compensate the Employee during such period of insufficient
4 work.

5
6 **SEC. 12Z.6. REQUEST FOR RECONSIDERATION BY EMPLOYEE FROM THE**
7 **DENIAL OF REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.**

8 (a) An Employee whose request for Flexible or Predictable Working Arrangement has been
9 denied may submit a request for reconsideration to the Employer in writing within 30 days of the
10 decision.

11 (b) If an Employee submits a request for reconsideration under this Section, the Employer
12 must arrange a meeting to discuss this request to take place within 21 days after receiving the notice of
13 the request.

14 (c) The Employer must inform the Employee of the Employer's final decision in writing
15 within 21 days after the meeting to discuss the request for reconsideration. If the request for
16 reconsideration is denied, this notice must explain the Employer's bona fide business reasons for the
17 denial.

18
19 **SEC. 12Z.7. EXERCISE OF RIGHTS AND CAREGIVER STATUS PROTECTED;**
20 **RETALIATION PROHIBITED.**

21 (a) It shall be unlawful for an Employer or any other person to interfere with, restrain, or
22 deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

23 (b) It shall be unlawful for an Employer to discharge, threaten to discharge, demote,
24 suspend, or otherwise take adverse employment action against any person on the basis of Caregiver
25

1 status or in retaliation for exercising rights protected under this Chapter. Such rights include but are
2 not limited to:

3 (1) the right to request a Flexible or Predictable Working Arrangement under this
4 Chapter;

5 (2) the right to request reconsideration of the denial of a request for a Flexible or
6 Predictable Working Arrangement under this Chapter;

7 (3) the right to file a complaint with the Agency alleging a violation of any provision of
8 this Chapter;

9 (4) the right to inform any person about an Employer's alleged violation of this
10 Chapter;

11 (5) the right to cooperate with the Agency or other persons in the investigation or
12 prosecution of any alleged violation of this Chapter;

13 (6) the right to oppose any policy, practice, or act that is unlawful under this Chapter;
14 or

15 (7) the right to inform any person of his or her rights under this Chapter.

16
17 **SEC. 12Z.8. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.**

18 (a) The Agency shall, by the operative date of this Chapter, publish and make available to
19 Employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice suitable
20 for posting by Employers in the workplace informing Employees of their rights under this Chapter. The
21 Agency shall update this notice on December 1 of any year in which there is a change in the languages
22 spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency may combine the
23 notice required herein with the notice required by Section 12R.5(a) and/or 12W.5(a) of the
24 Administrative Code or any other Agency notice that Employers are required to post in the workplace.
25

1 **(b) Every Employer shall post in a conspicuous place at any workplace or job site where any**
2 **Employee works the notice required by subsection (a). Every Employer shall post this notice in English,**
3 **Spanish, Chinese, and any language spoken by at least 5% of the Employees at the workplace or job**
4 **site.**

5
6 **SEC. 12Z.9. EMPLOYER RECORDS.**

7 **Employers shall retain documentation required under this Chapter for a period of three years**
8 **from the date of the request for a Flexible or Predictable Working Arrangement, and shall allow the**
9 **Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor**
10 **compliance with the requirements of this Chapter. When an issue arises as to an alleged violation of an**
11 **Employee's rights under this Chapter, if the Employer has failed to maintain or retain documentation**
12 **required under this Chapter, or does not allow the Agency reasonable access to such records, it shall**
13 **be presumed that the Employer has violated this Chapter, absent clear and convincing evidence**
14 **otherwise.**

15
16 **SEC. 12Z.10. IMPLEMENTATION AND ENFORCEMENT.**

17 **(a) Administrative Enforcement.**

18 **(1) The Agency is authorized to take appropriate steps to enforce this Chapter and**
19 **coordinate enforcement of this Chapter. The Agency may investigate possible violations of this**
20 **Chapter. Where the Agency has reason to believe that a violation has occurred, it may order any**
21 **appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending**
22 **completion of a full investigation or hearing. The Agency's finding of a violation may not be based on**
23 **the validity of the Employer's bona fide business reason for denying an Employee's request for a**
24 **Flexible or Predictable Working Arrangement. Instead, the Agency's review shall be limited to an**
25

1 Employer's adherence to procedural, posting and documentation requirements, set forth in this
2 Chapter, as well as the validity of any claims under Section 12Z.7.

3 (2) Where the Agency determines that a violation has occurred, it may issue a
4 determination and order any appropriate relief, provided, however, that during the first twelve months
5 following the operative date of this Chapter, the Agency must issue warnings and notices to correct.
6 Thereafter, the Agency may impose an administrative penalty up to \$50.00 requiring the Employer to
7 pay to each Employee or person whose rights under this Chapter were violated for each day or portion
8 thereof that the violation occurred or continued.

9 (3) Where prompt compliance is not forthcoming, the Agency may take any
10 appropriate enforcement action to secure compliance, including initiating a civil action pursuant to
11 Section 12Z.10(b). In order to compensate the City for the costs of investigating and remedying the
12 violation, the Agency may also order the violating Employer or person to pay to the City a sum of not
13 more than \$50.00 for each day or portion thereof and for each Employee or person as to whom the
14 violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the
15 costs of implementing and enforcing this Chapter.

16 (4) An Employee or other person may report to the Agency any suspected violation
17 of this Chapter, but if an Employee is reporting a violation pertaining to that Employee's own request
18 for Flexible or Predictable Working Arrangement, that Employee must first have submitted a request
19 for reconsideration to the Employer under Section 12Z.6. The Agency shall encourage reporting
20 pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable
21 laws, the name and other identifying information of the Employee or person reporting the violation;
22 provided, however, that with the authorization of such person, the Agency may disclose his or her name
23 and identifying information as necessary to enforce this Chapter or for other appropriate purposes.
24 The filing of a report of a suspected violation by an Employee does not create any right of appeal to the
25

1 Agency by the Employee; based on its sole discretion, the Agency may decide whether to investigate or
2 pursue a violation of this Chapter.

3 (5) In accordance with the procedures described in Section 12Z.14, the Director
4 shall establish rules governing the administrative process for determining and appealing violations of
5 this Chapter. The rules shall include procedures for:

6 (A) providing the Employer with notice that it may have violated this Chapter;

7 (B) providing the Employer with a right to respond to the notice;

8 (C) providing the Employer with notice of the Agency's determination of a
9 violation;

10 (D) providing the Employer with an opportunity to appeal the Agency's
11 determination to a hearing officer, not employed by the Agency, who is appointed by the City
12 Controller or his or her designee.

13 (6) If there is no appeal of the Agency's determination of a violation, that determination
14 shall constitute the City's final decision. An Employer's failure to appeal the Agency's determination
15 of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a
16 complete defense to any petition or claim brought by the Employer against the City regarding the
17 Agency's determination of a violation.

18 (7) If there is an appeal of the Agency's determination of a violation, the hearing before
19 the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any
20 such hearing, the Agency's determination of a violation shall be considered prima facie evidence of a
21 violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that
22 the Agency's determination of a violation is incorrect. The hearing officer's decision of the appeal
23 shall constitute the City's final decision. The sole means of review of the City's final decision, rendered
24 by the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of
25

1 mandate under Section 1094.5 of the California Code of Civil Procedure. The Agency shall notify the
2 Employer of this right of review after issuance of the City's final decision by the hearing officer.

3 (b) Civil Enforcement. The City may bring a civil action in a court of competent jurisdiction
4 against the Employer or other person violating this Chapter and, upon prevailing, shall be entitled to
5 such legal or equitable relief as may be appropriate to remedy the violation including, but not limited
6 to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an
7 additional sum as liquidated damages in the amount of \$50.00 to each Employee or person whose
8 rights under this Chapter were violated for each day such violation continued or was permitted to
9 continue; appropriate injunctive relief; and, further, shall be awarded reasonable attorneys' fees and
10 costs.

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

14 (d) Remedies Cumulative. The remedies, penalties, and procedures provided under this
15 Chapter are cumulative.

16
17 **SEC. 12Z.11. EXEMPTION OF CERTAIN JOB CLASSIFICATIONS PERTAINING TO**
18 **PUBLIC HEALTH AND PUBLIC SAFETY.**

19 (a) An appointing officer may request an exemption from this Chapter from the Director of
20 Human Resources for certain classifications of City employees working in public health or public
21 safety functions, based upon operational requirements according to criteria developed by the Director
22 of Human Resources. Such criteria shall promote efficiency and advance public safety or public
23 health.

24 (b) The Agency, in consultation with the Director of Human Resources, may exempt non-
25 City Employees working in public safety or public health functions, upon request of those non-City

1 Employers, based upon operational requirements according to criteria developed by the Agency and
2 the Director of Human Resources. Such criteria shall promote efficiency and advance public safety or
3 public health.

4
5 **SEC. 12Z.12. WAIVER THROUGH COLLECTIVE BARGAINING.**

6 All and any portions of the applicable requirements of this Chapter shall not apply to
7 Employees covered by a bona fide collective bargaining agreement to the extent that such requirements
8 are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

9
10 **SEC. 12Z.13. OTHER LEGAL REQUIREMENTS.**

11 This Chapter provides minimum employment requirements pertaining to Caregivers and
12 Employees and shall not be construed to preempt, limit, or otherwise affect the applicability of any
13 other law, regulation, requirement, policy, or standard, or provision of a collective bargaining
14 agreement, that provides for greater or other rights of or protections for Caregivers or Employees, or
15 that extends other rights or protections to Employees.

16
17 **SEC. 12Z.14. RULEMAKING AUTHORITY.**

18 The Director shall have authority to issue regulations or develop guidelines that implement
19 provisions of this Chapter. Notwithstanding the definition of "Director" in this Chapter, a designee of
20 the Director shall not have authority under the foregoing sentence of this Section; but a designee of the
21 Director shall have authority to conduct hearings leading to the adoption of regulations or guidelines.

22
23 **SEC. 12Z.15. OPERATIVE DATE.**

24 This Chapter shall become operative on July 1, 2014 and shall have prospective effect only.
25

1 **SEC. 12Z.16. PREEMPTION.**

2 *Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power,*
3 *or duty in conflict with federal or state law.*

4
5 **SEC. 12Z.17. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
6 **WELFARE.**

7 *In enacting and implementing this Chapter, the City is assuming an undertaking only to*
8 *promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,*
9 *an obligation for breach of which it is liable in money damages to any person who claims that such*
10 *breach proximately caused injury. This Chapter does not create a legally enforceable right against the*
11 *City.*

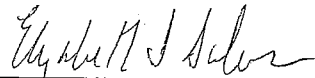
12
13 **SEC. 12Z.18. AMENDMENT BY THE BOARD OF SUPERVISORS.**

14 *The Board of Supervisors may amend this Chapter in accordance with the Charter-prescribed*
15 *process for the enactment or amendment of ordinances. The Board of Supervisors may not repeal this*
16 *Chapter.*

17
18 **SEC. 12Z.19. SEVERABILITY.**

19 *If any of the parts or provisions of this Chapter (including sections, subsections, sentences,*
20 *clauses, phrases, words, numbers) or the application thereof to any person or circumstance is held*
21 *invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this*
22 *Chapter, including the application of such part or provisions to persons or circumstances other than*
23 *those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect.*
24 *To this end, the provisions of this Chapter are severable.*

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

3 By: 
4 Elizabeth S. Salveson
5 Chief Labor Attorney

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LEGISLATIVE DIGEST

[San Francisco Family Friendly Workplace Ordinance]

Ordinance amending the Administrative Code to: allow San Francisco-based employees to request flexible or predictable working arrangements to assist with caregiving responsibilities, subject to the employer's right to deny a request based on business reasons; prohibit adverse employment actions based on caregiver status; prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; require employers to post a notice informing employees of their rights under the Ordinance; require employers to maintain records regarding compliance with the Ordinance; authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation and an appeal process for an employer to an independent hearing officer; authorize waiver of the provisions of the Ordinance in a collective bargaining agreement; and making environmental findings.

Existing Law

Existing ordinances address certain employee rights and protections; for example, the Minimum Wage Ordinance (Administrative Code Chapter 12R), Paid Sick Leave Ordinance (Administrative Code Chapter 12W), and Health Care Security Ordinance (Administrative Code Chapter 14). But no ordinance addresses flexible or predictable working arrangements. California and federal laws require some employers to grant leave to an employee to care for children, or for parents, spouses, or children with serious health conditions, but are limited to employers with 50 or more employees, require employment of at least a year before leave may be taken, provide a 12 week annual maximum for the leave, and do not include requirements for other flexible working arrangements. See Cal. Gov't Code Section 12945.2 (California Family Rights Act) and 29 U.S.C. Sections 2601-2619 (Family and Medical Leave Act).

Amendments to Current Law

The Family Friendly Workplace Ordinance ("Ordinance") applies to Employees—persons who are employed in San Francisco—by an Employer that employs 20 or more Employees. An Employee may request a Flexible Working Arrangement that will assist the Employee in carrying out caregiving responsibilities pertaining to a person in a Family relationship with the Employee. An Employee must be employed for at least 6 months before requesting a Flexible Working Arrangement. A person in a Family relationship with an Employee is defined as someone who is related to the Employee by blood, legal custody, marriage, or domestic partnerships, as defined in San Francisco Administrative Code Chapter 62 or California

FILE NO.

Family Code Section 297, to another person as a spouse, domestic partner, Child, parent, sibling, grandchild or grandparent. Employees may seek from Employers changes in the terms and conditions of their employment that include, but are not limited to, "a modified work schedule, changes in start and/or end times for work, part-time employment, job sharing arrangements, working from home, telecommuting, reduction or change in work duties, or part-year employment." An Employee may also request a Predictable Working Arrangement that provides scheduling predictability to assist the Employee with caregiving responsibilities.

An Employer who receives a request for a Flexible or Predictable Working Arrangement may deny the request based on a bona fide business reason. A bona fide business reason may include, but is not limited to, identifiable cost of the arrangement, detrimental effect on the Employer's ability to meet customer or client demands, inability to organize work among other Employees, or insufficiency of work to be performed during the time the Employee proposes to work.

The Ordinance establishes a process through which the Employee receives the Employer's response and may submit a request for reconsideration to the Employer. During the process the Employer must supply written reasons for denial of the request.

The Ordinance protects Employees from interference with their rights under the Ordinance, and makes it unlawful for an Employer to take adverse employment action against a person because he or she is a Caregiver, or in retaliation for an Employee exercising his or her rights under the Ordinance.

Employers must post a notice at the workplace informing Employees of their rights under the Ordinance. Employers must also create and maintain certain records required by the Ordinance to document requests by Employees for a Flexible or Predictable Working Arrangement, and the response to those requests.

The City's Office of Labor Standards Enforcement is designated as the Agency to implement and enforce the Ordinance. The Agency may investigate certain aspects of compliance with the Ordinance, make a determination that the Ordinance has been violated, and award appropriate relief. The Agency's finding of a violation may not be based on the validity of the Employer's bona fide business reason for denying an Employee's request for a Flexible or Predictable Working Arrangement. Instead, the Agency's review is limited to consideration of an Employer's adherence to procedural, posting and documentation requirements, as well as the validity of any claims regarding Caregiver status discrimination or retaliation for exercising rights provided by the Ordinance. During the first twelve months after the effective date of the Chapter, the Agency may issue warnings and notices to correct. Thereafter, the Agency may assess penalties for certain types of violation. The Employer or other violator may appeal the Agency's determination to a neutral hearing officer. The Agency may also bring a civil action to enforce the Ordinance. There is no private right of action under the Ordinance.

The Director of the Agency has authority to issue regulations or develop guidelines to implement the Ordinance. The Director also must establish rules governing the administrative process for determining and appealing violations of the Ordinance.

FILE NO.

All or any portion of the Ordinance may be expressly waived in a collective bargaining agreement.

The Director of Human Resources may exempt from the Ordinance certain classifications of City employees working in public health or public safety functions. The Agency, in consultation with the Director of Human Resources, may exempt non-City Employees in public health or public safety functions.

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CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

orig: Rules Clerk

*BOS-11
opage*

Ben Rosenfield
Controller
Monique Zmuda
Deputy Controller

July 10, 2013

The Honorable Board of Supervisors
City and County of San Francisco
Room 244, City Hall

Angela Calvillo
Clerk of the Board of Supervisors
Room 244, City Hall

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 JUL 10 PM 3:51
PM

Re: Office of Economic Analysis Impact Report for File Number 130622

Dear Madam Clerk and Members of the Board:

The Office of Economic Analysis is pleased to present you with its economic impact report on file number 130622, "Family Friendly Workplace Ordinance: Economic Impact Report." If you have any questions about this report, please contact me at (415) 554-5268.

Best Regards,

Ted Egan
Chief Economist

cc Linda Wong, Committee Clerk, Rules Committee

City and County of San Francisco

Office of the Controller — Office of Economic Analysis

Family-Friendly Workplace Ordinance: Economic Impact Report

Office of Economic Analysis

July 10th, 2013

Item #130662

*Received on 7/11/13
A.M.*

File # 130662



City and County of San Francisco

Office of the Controller – Office of Economic Analysts

Background

- The legislation was introduced on June 11, 2013.
- On July 2, the OEA was provided with an amended version of the legislation, which formed the basis of an OEA presentation at the Small Business Commission on July 8th.
- On July 10th, the OEA was provided with a second amended version of the legislation. This report is based on our analysis of the second amended version.



City and County of San Francisco

Office of the Controller – Office of Economic Analysis

Overview of the Legislation

- The legislation allows a qualified employee to request a flexible or predictable working arrangement from a covered employer.
- A qualified employee is anyone responsible for the care of a child, someone with a serious medical condition, or a parent over 65, who has worked for their employer for over six months and works 8 or more hours per week. Temporary workers are included, but may only make requests to employers for whom they have worked for more than six months.
- An employer must consider at least two requests that are made within a 12-month period, or three if the employee experience a major life event.
- A covered employer is any private employer in San Francisco with 20 or more employees, and the City and County of San Francisco.
- The City's Human Resources Director has the ability to exclude certain public safety and public health occupations from qualification.
- Approximately 8% of private employers in San Francisco are covered by this legislation. They employ 76% of private sector employees in the city.
- Under both a predictable and flexible work arrangement, a qualified employee may request any change to his or her hours, timing, location, work assignment, or any other term or condition of their employment that assists with their care.



City and County of San Francisco

Office of the Controller – Office of Economic Analysts

Request and Reconsideration Process

- The initial request must be made in writing by the employee. It must provide details of the desired arrangement, how the employee believes the change will affect the employer, and how any such effect may be dealt with.
- If the request is made orally, the employer must notify the employee of the requirement for a written request.
- The employer may deny the request for a *good-faith business reason*, such as cost, a detrimental impact on customers, or insufficient work.
- If the request is denied, the employer must explain in writing the reason for the denial.
- A denied employee has the right to request a reconsideration from the employer. If this request is made, a meeting must be held and the employer must again state its basis for denial in writing.



City and County of San Francisco

Office of the Controller – Office of Economic Analysis

Enforcement Process

- The City's Office of Labor Standards Enforcement (OLSE) is directed to establish rules, investigate potential violations, and impose penalties pursuant to the proposed legislation.
- OLSE may not find a violation on the basis of the good-faith business reason for which an employer denies a request. OLSE may find a violation if an employer fails to comply with noticing requirements, or violates an employee's rights.
- As is the case with other City policies, appeals against OLSE's determinations are made by a Controller-appointed hearing officer, and the burden of proof is on the employer.

6376



City and County of San Francisco

Office of the Controller – Office of Economic Analysis

Economic Impacts of Flexible Working Arrangements

- Voluntary working arrangements to maintain work-life balances are increasingly common, and are credited with increasing employee loyalty and productivity, reducing turnover and re-training costs, and reducing family expenditures on outside care providers.
- Legislation broadly similar to this proposal has been adopted in other jurisdictions, including recently in the U.S. state of Vermont.
- In the United Kingdom, the right-to-request originally applied to parents, but the Conservative-led coalition has recently introduce plans to extend it to all employees.
- By permitting employers to deny the request for a valid business reason, the legislation effectively insulates employers, and the broader city economy, from any negative impacts beyond minimal administrative costs.
- Indeed, the "nudge effect" of offering a right-to-request to all qualified employees will likely lead to greater realization of the benefits of flexible working arrangements, across the San Francisco workforce, at little if any additional cost.
- It is therefore highly likely that the economic benefits of this legislation will exceed its costs, under a reasonable valuation of costs and benefits.



City and County of San Francisco

Office of the Controller – Office of Economic Analysis

Staff Contacts

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(415) 554-5268

ted.egan@sfgov.org

Asim Khan, Ph.D., Principal Economist
(415) 554-5369

asim.khan@sfgov.org



Wong, Linda (BOS)

File # 130622

CS Rules Members

From: Mihal, Natasha
Sent: Thursday, July 11, 2013 9:40 AM
To: Wong, Linda (BOS)
Subject: Rules Committee - Controller's VIP letter for Family Friendly Ordinance
Attachments: CON VIP Letter draft 7-11-13 Family Friendly Ordinance.pdf

Hi Linda,

Please find attached the draft Controller's Office Voter Information Packet for the Family Friendly ordinance that's on today's Rules Committee agenda. I'll have copies to give you at the meeting to hand out to the supervisors.

Let me know if you have any questions.

Natasha Mihal

Office of the Controller, City Services Auditor

City & County of San Francisco

(415) 554-7429

natasha.mihal@sfgov.org



CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Monique Zmuda
Deputy Controller

July 11, 2013

**DRAFT – SUBJECT
TO REVISION**

Mr. John Arntz
Department of Elections City Hall, Room 48
Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: Ordinance allowing employees who are caregivers to request flexible or predictable working arrangements from a covered employer.

Dear Mr. Arntz,

Should the proposed “San Francisco Family Friendly” ordinance be approved by the voters, in my opinion, there would be an increase in the cost of government in administrative costs ranging from \$75,000 to \$150,000 depending on how the ordinance is implemented.

Under the proposed ordinance, the Office of Labor Standards Enforcement (OLSE) will establish rules, investigate potential violations, and impose penalties pursuant to the proposed ordinance. The estimated costs of \$75,000 to \$150,000 could increase or decrease depending on the number of investigations and violations of the proposed ordinance.

This estimate does not address the potential impacts on employers or the local economy.

Sincerely,


Ben Rosenfield
Controller

Note: This analysis reflects our understanding of the proposal as of the date shown. At times further information is provided to us which may result in revisions being made to this analysis before the final Controller's statement appears in the Voter Information Pamphlet.

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

June 18, 2013

File No. 130622

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On June 11, 2013, the Supervisor David Chiu introduced the following proposed legislation to the Board of Supervisors:

File No. 130622

Motion ordering submitted to the voters an Ordinance amending the Administrative Code to allow San Francisco based employees who are caregivers to request flexible working arrangements, subject to the employer's right to deny a request based on specified undue hardship; require that employers give advance notice of changes in an employee's work schedule; prohibit adverse employment actions based on caregiver status; prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; require employers to post a notice informing employees of their rights under the Ordinance; require employers to maintain records regarding compliance with the Ordinance; authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation, and an appeal process to an independent hearing officer; authorize waiver of the provisions of the Ordinance in a collective bargaining agreement; and making environmental findings, to the voters of the San Francisco at an election to be held on November 5, 2013.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Linda Wong".

By: Linda Wong, Committee Clerk
Rules Committee

NON-PHYSICAL EXEMPTION
CERA SECTION 15060(C)(2)

A handwritten signature in cursive script, appearing to read "Joy Navarrete".
June 21, 2013
JOY NAVARRETE

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

File # 130622
C. Rules Committee
Members

Wong, Linda (BOS)

From: Schulman, Chris
Sent: Wednesday, July 10, 2013 1:48 PM
To: Wong, Linda (BOS)
Cc: Rauschuber, Catherine; Allbee, Nate; Bruss, Andrea; Lim, Victor; Pagoulatos, Nickolas; Elliott, Jason; Pretzer, Kelly; Egan, Ted; Calvillo, Angela; Dick-Endrizzi, Regina
Subject: SBC Response: BOS File No 130622 [San Francisco Family Friendly Workplace Ordinance]
Attachments: 130622_SBC_legislative response.pdf

Linda,

Attached is the SBC response to File No. 130622 [San Francisco Family Friendly Workplace Ordinance]

The Commission does not recommend approval as presently drafted, detailed recommendation included. The Commission also recommends that this ordinance be forwarded through the legislative process versus a ballot measure.

Thank you for adding this response to the legislative file.

Chris Schulman | Senior Policy Analyst/Commission Secretary | Office of Small Business
chris.schulman@sfgov.org | D: 415.554.6408 | O: 415.554.6134 | F: 415.558.7844
City Hall, Suite 110 | San Francisco, CA 94102



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



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

July 10, 2013

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

File No. 130622 [San Francisco Family Friendly Workplace Ordinance]

Small Business Commission Recommendation: *Dual Recommendation*: **1. Do not approve as presently drafted, amendments are required. 2. Recommend forwarding through the legislative process versus ballot measure process.**

Dear Ms. Calvillo:

On July 8, 2013 the Small Business Commission (SBC) voted 7-0 to make a dual recommendation on BOS File No. 130622. Firstly, the Commission cannot approve this proposed ballot measure as currently drafted. The Commission finds that this ordinance vastly exceeds the scope of model ordinances that were used as comparable examples of similar legislation in national and state jurisdictions. While touted as merely a right to request ordinance for "Flexible Working Arrangements," this ballot measure goes beyond this right, which is supported in concept by the small-business community, but adds a "Predictable Scheduling" component. Predictable Scheduling is a discussion which requires extensive consideration, more than the mere weeks that the ballot measure timeframe allows and is a distinct topic from Flexible Working Arrangements. Predictable Scheduling is unprecedented and is not part of the laws in other jurisdictions. Furthermore, the Predictable Scheduling component does not acknowledge the nuances, and complexity of scheduling in various business sectors which are difficult to legislate at the ballot box.

The Commission further recommended by a unanimous motion that President Chiu consider moving this proposal from the ballot process and forwarding it through the standard legislative process. The Commission finds that putting this ordinance on the ballot indicates that the elected officials were unable to enact this law through the legislative process. Additionally, this indicates that the business community was not in support of this proposal, when in fact they were not consulted prior to the measure being put forth.

The small business community is united behind the concept that right to request Flexible Working Arrangements is an employee friendly policy that many small businesses already provide to their employees. Voluntarily providing this policy often makes business sense and the benefits are tangible and lead to a happier and more productive workforce. The Commission does question the need to mandate such a right however, and while the SBC agrees with business leaders that the right to request a Flexible Working Arrangement is not in itself an overly burdensome employer mandate; it is never less yet another mandate that the City is considering imposing on businesses.

The Commission recognizes that the costs associated with implementing this mandate are not at the level of implementing Minimum Wage, Mandatory Sick Time, and Health Care Security Ordinance and is willing to consider supporting the main portion of the proposed ballot measure which addresses the right to request Flexible Working Arrangements. However, the Commission has directed staff to compile amendments that the small business community feels are necessary in order to make the ballot measure less burdensome on our small



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



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

businesses. These amendments keep the right to request intact and bring the proposed ballot measure largely in line with other jurisdictions that have implemented these policies.

In short, the Commission recommends that all references to guaranteed Predictable Working Arrangement be removed from the ordinance. As referenced above, this topic is distinct and different from Flexible Working Arrangements. It requires a level of discussion and collaboration that must go above and beyond the few weeks that are allotted for a ballot measure. A solution that does not place problematic and burdensome mandates on employers, especially laws drafted in such a way that may lead to litigation and other consequences which may not be the intention of the drafting Supervisors should be the goal of policy makers.

Should Supervisor Chiu and his co-sponsors not remove all references to guaranteed Predictable Working Arrangement then the SBC and small business community require the following amendments and/or deletions:

Section 12Z.5 Response to Request for Flexible or Predictable Working Arrangement.

Strike “and provides reasonable notice to Employee”

(g) For an employer who grants a Predictable Working Arrangement, if the Employer has insufficient work for the Employee during the period of the Predictable Working Assignment, ~~and provides reasonable notice to the Employee, nothing in this Ordinance requires the Employer to compensate the Employee during such period of insufficient work.~~

It may not always be possible for an employer to provide “reasonable notice” to an employee of schedule changes/cancellations, especially in certain business sectors. For instance, in the restaurant industry a banquet may be cancelled at the last minute, or in the construction industry there may be rain which cancels construction for the day. The “provides reasonable notice” portion needs to be struck from this section.

Section 12Z.7. Exercise of Rights and Caregiver Status Protected Retaliation Prohibited.

Strike Subsections 8 and 9

(8) the right of an Employee who has been granted a Predictable Working Assignment to refuse work requested by the Employer that does not conform to the Predictable Working Arrangement, for so long as that arrangement is in place.

(9) for an Employee whose request for a Predictable Working Arrangement and request for reconsideration have been denied, the right to refuse an Employer's request for a additional or different hours in a Work Schedule if given with less than a week's notice. This subsection 12Z.7(b)(9) does not apply to an Employee who is exempt from the overtime requirements of state and federal law and does not preclude an Employer from reducing an Employee's work hours if there is insufficient work.

The above subsections should be deleted from the ordinance. The Commission is in agreement with the small business community that references to the protected status related to Predictable Working Arrangements exceed the scope of the intent of the ordinance and open up the employer for litigation.



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



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

Of particular concern is subsection 9. This creates a new protected class, individuals who have been denied a Predictable Working Arrangement. Analysis of the ordinance has indicated that any employee, even those who are not caregivers or parents may request a Predictable Work Arrangement. Should the agreement be denied, these workers will receive this right, even if they are not a caregiver or parent. It is necessary for this language to be struck. While the Commission is confident that this is not the intent of the sponsor, this can be the unintended consequence of legislation that has not been thoroughly vetted.

Additionally, the following amendments are required by the Commission and Small Business Community:

Section 12Z.3 Definitions

Strike or clarify the definition of familial relationship

"Dependent relationship" means the relationship of a Caregiver to a person who is related by blood, legal custody, marriage, or to his or her domestic partner, as defined in San Francisco Administrative Code Chapter 62 or California Family Code Section 297, or to a person with whom the Caregiver lives in a familial relationship.

This section provides a definition of dependent relationship. It lists familial relationship as a part of the definition. Varying definitions from online searches indicate that it may mean anything ranging from first cousins, to any cousin relationship- third, fourth, etc. Clarity is necessary. The Commission and small business community recommend striking this term from the ordinance. If this is not possible, then the Commission recommends that the Supervisor work with the small business community to draft clarifying language that clearly identifies what a dependent relationship is.

Section 12Z.17 Amendment by the Board of Supervisors.

Consistent threshold for modification of ordinance by Board of Supervisors

The Board of Supervisors may amend this Chapter by a two-thirds vote. Enactment of this Chapter by the voters shall not preclude the Board of Supervisors by simple majority vote from adopting one or more ordinances that establish greater substantive rights for Employees, and greater obligations of Employers, regarding Flexible or Predictable Working Arrangements.

This section provides for a majority vote at the Board of Supervisors to add rights for employees and greater obligations on employers. It provides for a two thirds vote for all other amendments. The small business community and SBC require that the threshold be the same for all amendments to the ordinance. The Commission leaves the threshold level as a policy matter to the Board of Supervisors and does not have a recommendation as to whether two thirds or a simple majority is preferred.

The above three amendments are required in order for the Commission to re-consider this proposed ordinance.

Further amendments that the Small Business Commission and Small Business Community request:



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



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

Section 12Z.3 Definitions

Modify number of employees to line up with HCSO

Employer" means the City, or any person as defined in Section 18 of the California Labor who regularly employs 10 or more Employees.

The Commission recommends amending this section to twenty employees. This is consistent with the Health Care Security Ordinance.

Section 12Z.4. (a)

Amend the length of time an employee must be employed by an employer to qualify for benefit

An Employee who is a Caregiver and has been employed with an Employer for six months or more and works at least eight hours per week may request a Flexible or Predictable Working Arrangement, including but not limited to a change in the Employee's terms and conditions of employment as they relate to:

The Federal Medical Leave Act threshold requires 12 months of employment in order to take effect. The Commission recommends increasing the threshold to 12 months in order to keep consistency.

Section 12Z.10 (a) 1

Remove interim relief provision for OLSE

Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.

The Commission and small business community request that the clause above providing for temporary or interim relief by OLSE be removed. The consensus is that enforcement should only take place after an investigation and ruling takes place following the completion of a full investigation by qualified officers.

Additional amendments were presented to the Commission by the Controller's Office. The Commission was generally supportive of all recommendations, although the recommendations had not yet been vetted by the small business community. The Commission recommends that Supervisor Chiu and co-sponsors strongly consider these recommendations and incorporate them into the ordinance. The Commission does want to note that the Controller did concur with the Commission on removing the employee right to refuse to work a changed schedule with less than one week's notice, if his or her request for a predicable schedule was denied.



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



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The Small Business Commission thoughtfully considered the input of the small business community, broader business community and community supporters of this proposal when considering this matter. The first draft of the ordinance was met with extreme resistance by the business community and the Small Business Commission, but it must be clearly understood that it is not that the small business community and the SBC are opposed to employees having the right to ask. The small business community and the SBC were 1) taken by surprise with the ordinance being introduced without prior consultation, 2) the items of the greatest concern in the legislation could have been easily dealt with prior to introduction had the small business community and Office of Small Business staff been consulted with prior to introduction, and 3) once again the small business community and SBC are put in position of having to defensively respond.

The Small Business Commission appreciates the efforts and due diligence that Supervisor Chiu undertook to address the concerns of the business community when presenting the second draft of the ordinance at the SBC meeting. The Commission wants to stress that the right to request a Flexible Working Arrangement is, in itself not a serious point of contention in the small business community. The Commission indicated a serious willingness to consider an ordinance that solely dealt with this issue. Guaranteed Predictable Working Arrangement however, if it continues to be part of the ordinance, particularly if not amended as referenced above, will leave the Commission duty-bound to oppose the legislation.

The Commission appreciates the Supervisors continued willingness to engage with the small business community and I extend my capacity as Director of the Office of Small Business to help participate in productive discussions.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

Cc: Supervisor David Chiu
Supervisor's Campos, Cohen, Mar
Jason Elliot, Mayor's Office
Ted Egan, Controllers Office
Small Business Network
Small Business Advocates
SF Chamber of Commerce
Golden Gate Restaurant Association
Scott Hauge

Wong, Linda (BOS)

From: Nevin, Peggy
Sent: Monday, July 15, 2013 10:24 AM
To: Wong, Linda (BOS)
Subject: File 130662: Amended remarks for the legislative record of July 11 Rules Committee
Attachments: Amended Testimony on Flexibility Request Legislation--07-12-13.docx; ATT00001.htm

From: Scanlon, Olivia
Sent: Monday, July 15, 2013 10:01 AM
To: Calvillo, Angela; Nevin, Peggy
Subject: FW: Amended remarks for the legislative record of July 11 Rules Committee

FYI: for the file re: Family Friendly Leg.

Olivia Scanlon
Legislative Aide to Supervisor Norman Yee
District 7
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102
415 554 6519

From: Yee, Norman (BOS)
Sent: Monday, July 15, 2013 9:32 AM
To: Scanlon, Olivia
Subject: Fwd: Amended remarks for the legislative record of July 11 Rules Committee

Please forward to Clerk

Sent from my iPad

Begin forwarded message:

From: <paulrupertdc@cs.com>
Date: July 13, 2013, 6:16:03 PM PDT
To: <London.Breed@sfgov.org>, <Malia.Cohen@sfgov.org>, <Norman.Yee@sfgov.org>
Subject: Amended remarks for the legislative record of July 11 Rules Committee

Honorable Supervisors Breed, Cohen and Yee --

I appreciated the opportunity to speak during the Public Comment period of the July 11 Rules Committee hearing on the Family-Friendly Workplace Ordinance. I have attached an amended version of my remarks which I hope can be included in the record of the hearing.

I trust my decades of experience in developing such formal flexibility request processes in large and small companies will shed some light on the challenges and opportunities.

Regards,
Paul Rupert
Rupert & Company

www.rupertandcompany.com

www.flexwisetools.com

"Collaborative Scheduling: the future of flexibility"



Rupert & COMPANY

Guides to a changing workplace

Amended Testimony on Flexibility Request Legislation – July 11, 2013

By Paul Rupert, President, Rupert & Company – National Flexibility Consultants

Wide experience with flexible request processes. I have been managing professional service firms using flexible schedules since 1972. I and my clients pioneered the use of the flexible schedule request form and process in the mid-1990s. I have consulted to over 100 large and small employers and their global subsidiaries who wanted to make access to flexible schedules fair, common and consistent across complex enterprises. We are known and well-regarded for our focus on implementing business-beneficial flexibility request processes.

The proposed SF process has business precedent. The essential process we have installed widely is straightforward: an employee uses a standard, simple form to make a request for a flexible schedule. A manager reviews the request and may discuss it and ask for modification. Then that manager makes a final decision. This process is essentially the one being proposed by President Chiu and the co-sponsors of the FFWO.

There is proven business value. The many business benefits of more flexible workplaces have been established and documented for decades: family supports, employee retention and recruitment, enhanced productivity, reduced commuting and more. Indeed, in discussion of this issue, the great majority of business owners say they offer flexibility and extol its virtues. Questions seem to center on the *requirement of formality* and the burden and conflict it might bring to workplaces that are already doing this. Our experience is quite the opposite.

Only formal request processes create equity Most of our clients say, accurately, when we walk in the door that “We are already flexible.” But they have typically turned to us because their internal climate lets “good managers” be somewhat flexible and the majority of their managers be quite rigid and unresponsive to reasonable requests. They are not acting out of fear of lawsuits (which have been virtually non-existent in this field) but out of an overarching concern for attracting and inspiring the best and the brightest. And such people do not thrive in the midst of discriminatory and unequal practices. They watch how employers act and make judgments.

Asking is not as simple as it seems We regularly hear from senior leaders in our client firms the query “Why do we need an elaborate process for someone to have such a simple conversation?” It is hard for people who have secure positions and feel entitled to challenge their employer on many fronts to imagine how hard it can be for many, many staff to raise a seemingly simple request to modify schedules. When the leadership of a company “de-

criminalizes" this process and actively encourages those with family or other needs to use a mutually beneficial process, the opportunities and gains of greater flexibility can flourish. When the leaders of a city make a similar statement, the same phenomenon can occur.

These processes need not be burdensome Introducing a new process is like all change: the negatives occur to people first, and the range of possible breakdowns floods to the fore. The good news to those considering this ordinance for San Francisco is that the proposed process has been implemented in hundreds and hundreds of small to huge companies. Common fears of a flood of unmanageable requests, anger at denials, intense co-worker resentment and negative impacts on coverage and service have simply not occurred in a broad range of firms. We have implemented the request approach in small accounting and law firms, mid-sized hospitals and very large companies such as Bristol-Myers Squibb, Sodexo, Colgate and Amgen.

There is no need to reinvent the wheel We have worked with our pioneering clients to make the overall process as productive and efficient as possible. No doubt companies in your community have already developed functional versions of the request form and supportive best practice guides to help get proposing and implementing flexibility right the first time. Many of our clients have turned to simple automation of the request decision-making and record-keeping process to virtually eliminate the "paper problem." Individual businesses or the city on their behalf can access and make available such tools.

The gains endure for companies and people Initiatives inside organizations can come and go. In our experience, once firms start down the road to a more flexible workplace, they may expand, refine and re-launch their approach, but it is startling national news when a company suspends telecommuting. That is because this trend in changing how we work is a part of the dramatic evolution of the economy, technology and family structure. We are not going back to the old economy nor to a time when people could not work with their employers to create schedules that serve individuals, the employer and the community.

Wong, Linda (BOS)

From: Scanlon, Olivia
Sent: Friday, July 19, 2013 2:55 PM
To: Wong, Linda (BOS)
Cc: Mormino, Matthias
Subject: FW: File 130622, Family Friendly Workplace Ordinance

Linda,
Supervisor Yee is Happy to co-sponsor Supervisor Chiu Family Friendly Legislation.

Thanks,
Olivia Scanlon
Legislative Aide to Supervisor Norman Yee
District 7
1 Dr. Carlton B. Goodlett Place
Room 244
San Francisco, CA 94102
415 554 6519

From: Mormino, Matthias
Sent: Friday, July 19, 2013 10:49 AM
To: Wong, Linda (BOS)
Cc: Scanlon, Olivia
Subject: Re: File 130622, Family Friendly Workplace Ordinance

I'm not sure, he is out of town today so I have no way to confirm it. Let's not include him and I'll double check on Monday when he is back,

Unless Olivia knows differently,

Matthias

On Jul 19, 2013, at 10:30 AM, "Wong, Linda (BOS)" <linda.wong@sfgov.org> wrote:

Hi Matthias,

Does Supervisor Yee want to be a co-sponsor of the legislation? The amended version has his name listed as a co-sponsor but we have not received any requests that he would like to be one. Please advise.

Linda

From: Mormino, Matthias
Sent: Friday, July 19, 2013 10:11 AM
To: Wong, Linda (BOS)
Cc: Yee, Norman (BOS); Calvillo, Angela; Givner, Jon; Caldeira, Rick; Nevin, Peggy
Subject: Re: Agenda, Rules Committee - Special Meeting of 7/23/13 (Draft 2)

Perfect, thank you,

Wong, Linda (BOS)

From: Caldeira, Rick
Sent: Tuesday, June 25, 2013 8:57 AM
To: Wong, Linda (BOS)
Subject: FW: Supervisor Campos Co-sponsorship

Please process and for file.

Rick Caldeira, MMC
Legislative Deputy Director
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102
Phone: (415) 554-7711 | Fax: (415) 554-5163
rick.caldeira@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
<http://www.sfbos.org/index.aspx?page=104>

From: Ronen, Hillary
Sent: Monday, June 24, 2013 1:00 PM
To: Caldeira, Rick
Cc: Allbee, Nate; Ashley, Stephany
Subject: Re: Supervisor Campos Co-sponsorship

Yes. Thanks.

Sent from my iPad

On Jun 19, 2013, at 3:25 PM, "Caldeira, Rick" <rick.caldeira@sfgov.org> wrote:

Please confirm.

Rick Caldeira, MMC
Legislative Deputy Director
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102
Phone: (415) 554-7711 | Fax: (415) 554-5163
rick.caldeira@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.
<http://www.sfbos.org/index.aspx?page=104>

From: Rauschuber, Catherine
Sent: Wednesday, June 19, 2013 2:30 PM
To: Caldeira, Rick
Cc: Campos, David; Ronen, Hillary
Subject: Supervisor Campos Co-sponsorship

Rick,

David told me that Supervisor Campos would like to be added as a co-sponsor of Motion ordering the Family Friendly Workplace Ordinance submission to the ballot. Could you please add him?

(Thanks, Supervisor Campos!)

Cat

Catherine Rauscher
Office of Supervisor David Chiu
President, San Francisco Board of Supervisors

Introduction Form

By a Member of the Board of Supervisors or the Mayor

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. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. 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

Sponsor(s):

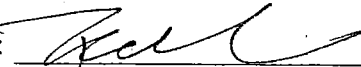
Supervisors Chiu, Cohen and Mar

Subject:

Motion ordering submitted to the voters an ordinance authorizing the San Francisco Family Friendly Workplace Ordinance at an election to be held on November 5, 2013

The text is listed below or attached:

[Empty box for text listing]

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

130622

