

1 [Personal Services Minimum Contractual Rate Ordinance.]

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3 **Ordinance amending the San Francisco Administrative Code by adding Chapter 12V,**
4 **Sections 12V.1 through 12V.5, to: require entities that contract for personal services to**
5 **compensate the providers of those services at a rate per hour of no less than the City's**
6 **Minimum Wage rate and maintain records, designate the City's Office of Labor**
7 **Standards Enforcement as the enforcement agency, and establish investigation,**
8 **enforcement and administrative appeals procedures.**

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10 Note: Additions are *single-underline italics Times New Roman*;
11 deletions are *strikethrough italics Times New Roman*.
12 Board amendment additions are double underlined.
13 Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. The San Francisco Administrative Code is hereby amended by adding
15 Chapter 12V, Sections 12V.1 through 12V.5, to read as follows:

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17 **SEC. 12V.1 TITLE.**

18 *This Chapter shall be known as the "Personal Services Minimum Contractual Rate Ordinance."*

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20 **SEC. 12V.2. DEFINITIONS.**

21 *As used in this Chapter the following capitalized terms shall have the following meanings:*

22 *(a) "Agency" shall mean the Office of Labor Standards Enforcement.*

23 *(b) "City" shall mean the City and County of San Francisco.*

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1 (c) "Contract" shall mean any oral or written agreement for Personal Services, regardless of
2 whether a term is stated, in which the cost of such services is determined on an hourly, daily,
3 weekly, or piece rate basis.

4 (d) "Covered Contractor" shall mean a person that in a particular month provides at least
5 twenty hours of Personal Services for one or more Covered Entities within the geographic boundaries
6 of the City.

7 (e) "Covered Entity" shall mean a person, firm, proprietorship, partnership, or corporation
8 that in a particular month obtains, in the aggregate, twenty or more hours of Personal Services from
9 one or more Covered Contractors within the geographic boundaries of the City pursuant to a Contract
10 or Contracts.

11 (f) "Minimum Contractual Rate" shall mean the minimum hourly rate of pay for Personal
12 Services mandated by this Ordinance.

13 (g) "Personal Services" shall mean services provided personally by the individual or principal
14 of an entity based on the intellectual or manual efforts of the individual rather than a salable product of
15 his or her skills.

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17 **SEC. 12V.3. MINIMUM CONTRACTUAL RATE REQUIREMENT.**

18 (a) A Covered Entity shall pay a Covered Contractor no less than the Minimum Contractual
19 Rate for each hour worked within the geographic boundaries of the City.

20 (b) The Minimum Contractual Rate shall be equal to the Minimum Wage hourly rate set forth
21 in Section 12R.4(b) of the Administrative Code, and shall increase automatically when the Minimum
22 Wage increases.

1 **SEC. 12V.4. RECORDKEEPING REQUIREMENT.**

2 A Covered Entity shall retain records reflecting the number of hours worked by and payments to
3 a Covered Contractor for a period of six months after the term of the Contract. If the Contract does not
4 specify a term, the records shall be maintained for a period of one year after each payment.

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6 **SEC. 12V.5. IMPLEMENTATION AND ENFORCEMENT.**

7 (a) Implementation. The Agency shall be authorized to implement and enforce this Chapter
8 and may promulgate appropriate guidelines or rules for such purposes. The regulations shall establish
9 procedures for monitoring Covered Entities, receiving and investigating complaints, and providing
10 administrative hearings to determine whether a Covered Entity has violated this Chapter. The Agency
11 shall not adopt finally such guideline or rules until the Agency has held a public hearing. Any
12 guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied
13 on by parties to Contracts for Personal Services and other parties to determine their rights and
14 responsibilities under this Chapter.

15 (b) Investigations and Audits. The Agency shall monitor Covered Entities for compliance and
16 investigate complaints of violations. A Covered Entity shall allow the Agency access to its records
17 regarding Covered Contractor, with appropriate notice and at a mutually agreeable time, to monitor
18 compliance with the requirements of this Chapter. A Covered Contractor or other person may report
19 to the Agency in writing any suspected violation of this Chapter. 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 Covered Contractor or person reporting the
22 violation. Provided, however, that with the authorization of such person, the Agency may disclose his
23 or her name and identifying information as necessary to enforce this Chapter or for other appropriate
24 purposes.

1 (c) Determination of Violation. Upon determining that a Covered Entity may have violated the
2 terms of a Contract required under this Chapter, the Agency shall send written notice to the Covered
3 Entity of the possible violation and of the Covered Entity's right to respond to the Agency's initial
4 determination by submitting pertinent documents and other information. If after providing the Covered
5 Entity with a reasonable opportunity to respond to the allegations the Agency makes a final
6 determination that a violation has occurred, the Agency shall provide a written notice of violation to
7 the Covered Entity.

8 (d) Administrative Penalties and Other Relief. Where the Agency has found a violation has
9 occurred, it may order any appropriate relief, including, but not limited to, restitution at the
10 appropriate contractual rate. In order to compensate the City for the costs of investigating and
11 remedying the violation, the Agency may also order the violating Covered Entity or person to pay to the
12 City a sum of not more than \$50 for each day or portion thereof and for each Covered Contractor or
13 person as to whom the violation occurred or continued. Such funds shall be allocated to the Agency
14 and shall be used to offset the costs of implementing and enforcing this Chapter. The amounts of all
15 sums and payments authorized or required under this Chapter shall be updated annually for inflation,
16 beginning January 1, 2006, using the inflation rate and procedures set forth in Section 4(b) of Chapter
17 12.R of this Code

18 (e) Right to Appeal. The Covered Entity may appeal the Agency's final determination. The
19 Covered Entity must file an appeal with the Agency in writing, specifying the basis for contesting the
20 determination, no later than 15 days after the date of the notice of determination. Failure to file an
21 appeal in writing with the Agency within 15 days shall cause the Agency's determination to be deemed
22 a final administrative decision by the City.

1 (f) Administrative Hearing.

2 (1) Within 15 days after the Agency receives an appeal, the Controller shall appoint a
3 hearing officer and shall notify the Agency and the Covered Entity.

4 (2) The hearing officer shall promptly set a date for a hearing. The hearing shall
5 commence within 45 days of the notification of the appointment of the hearing officer and conclude
6 within 75 days of such notification, unless all parties agree to an extended period.

7 (3) The Agency shall have the burden of producing evidence that the Covered Entity has
8 violated the requirements of this Chapter and the burden of proving the violation.

9 (g) Hearing Officer's Decision.

10 (1) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written
11 decision consisting of findings and a decision affirming, modifying, or vacating the Agency's
12 determination. If the hearing officer affirms the Agency's determination, the hearing officer shall issue
13 a decision upholding the Agency's determination.

14 (2) The decision of the hearing officer shall be final. The Covered Entity may seek review of
15 the hearing officer's decision only by filing in the San Francisco Superior Court a petition for a writ of
16 mandate under California Code of Civil Procedure, section 1094.5, as may be amended from time to
17 time.

18 (3) The failure of the Agency or hearing officer to comply with the time requirements of this
19 Section shall not cause the hearing officer to lose jurisdiction over an appeal from the Agency's
20 determination filed under this Section.

21 (4) Upon receiving the hearing officer's decision affirming the Agency's determination, the
22 Covered Entity shall take the corrective action, including the payment of liquidated damages ,if any,
23 within 14 days of receiving the hearing officer's decision. If a Covered Entity fails to take corrective
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1 action within the time required by the provisions of this Section, the City may immediately pursue all
2 available remedies against the Contractor.

3 (h) Civil Enforcement. The Agency, the City Attorney, any person aggrieved by a violation of
4 this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other
5 person or entity acting on behalf of the public as provided for under applicable state law, may bring a
6 civil action in a court of competent jurisdiction against the Covered Entity or other person violating
7 this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be
8 appropriate to remedy the violation including, without limitation, restitution at the appropriate
9 contractual rate, and shall be awarded reasonable attorneys' fees and costs. Provided, however, that
10 any person or entity enforcing this Chapter on behalf of the public as provided for under applicable
11 state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and
12 reasonable attorneys' fees and costs.

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

15 By: _____
16 Amy S. Ackerman
17 Deputy City Attorney