File No. 110503

Committee Item No. 8
Board Item No. 20

# COMMITTEE/BOARD OF SUPERVISORS

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**Committee:** Budget and Finance Sub-Committee **Date:** July 20, 2011

**Board of Supervisors Meeting** **Date** July 26, 2011

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**Completed by:** Victor Young **Date:** July 15, 2011
**Completed by:** Victor Young **Date:** 7-21-11

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

Amendment of the whole
in Committee. 7/20/11

FILE NO. 110503 ORDINANCE NO.

[Administrative Code - Regulating Overtime Available for City Employees]

**Ordinance amending the San Francisco Administrative Code, Section 18.13.1 to limit the overtime worked in any fiscal year by any employee to 20% of regularly scheduled hours ~~and requiring monthly written reports regarding critical staffing shortages~~ and to specify and modify written reports to be submitted regarding overtime information.**

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Administrative Code is hereby amended by amending Section 18.13.1, to read as follows:

Sec. **18.13-1. - MAXIMUM PERMISSIBLE OVERTIME**

(a) Employees may only work overtime if authorized by an appointing officer or designee, and employees may not assign themselves to work overtime. Appointing officers or designees shall only assign overtime when work cannot be completed within normal work schedules. Except as provided for below, absent prior approval of the Director of Human Resources (or, if appropriate, the Director of the Municipal Transportation Agency), no appointing officer shall suffer or permit any employee to: (i) work overtime hours that exceed, in any fiscal year, ~~*thirty*~~ *twenty* percent (~~*30*~~ *20*%) of the number of hours that the employee is regularly scheduled to work on a straight-time basis in that fiscal year (i.e., ~~*624*~~ *416* hours for a full-time 2080 hour per year employee); or, (ii) work more than eighty (80) hours in a regular work week, except that this subsection (a)(ii) does not apply to uniformed Fire Department employees who do not work a standard 40 hour work week. For the purpose of calculating the maximum number of overtime hours an employee is permitted to work under this Section,

hours attributed to vacation and other paid leaves shall be deemed included in the hours the employee is regularly scheduled to work on a straight-time basis in a fiscal year.

(b) An appointing officer may request an exemption from subsection (a) from the Director of Human Resources (or, if appropriate, the Director of the Municipal Transportation Agency) based upon a critical staffing shortage. *If an exemption is granted, the Director of Human Resources (or, if appropriate, the Director of the Municipal Transportation Agency), shall provide to the Controller a written explanation of the details justifying the exemption.*

(c) The provisions of Subsection (a) shall not apply to overtime worked by any employee where the City and County of San Francisco incurs no direct or indirect additional costs and where the employee acquires no right to compensatory time off. For the purposes of this Section, "direct or indirect additional costs" includes any additional salary, wages, compensatory time or any other benefit provided at that time or deferred until a later date.

(d) An appointing officer may assign overtime hours exempt from subsection (a) above in the event of disasters, and like emergency situations where such overtime assignments are necessary to protect public safety.

(e) At such time as the Controller submits to the Board of Supervisors six and nine month standard financial reports and, if performed, three month reports, the Controller shall include budgeted overtime versus actual overtime projections in such reports. These reports shall also describe the extent to which each department has complied with the requirements of this section. The Controller, in consultation with the ~~and~~ Director of Human Resources, ~~with the assistance of department heads,~~ shall also submit an annual overtime ~~submit a biannual~~ report to the Board of Supervisors ~~by February 15th and May 15th of each year. The report shall include:~~ The annual overtime report shall include budgeted and actual overtime by department, the number of exemptions granted by the Directors of the Human Resources Department and the Municipal Transportation Agency and an aggregate analysis of the

justifications for these exemptions, the identification of critical staffing shortages, improved management practices, and other recommendations to reduce overtime spending.

~~(1) Budgeted salaries for the immediately preceding fiscal year, budgeted overtime for the immediately preceding fiscal year, and budgeted overtime as a percentage of budgeted salaries for the immediately preceding fiscal year.~~

~~(2) Actual salary expenditures for the immediately preceding fiscal year, actual overtime expenditures for the immediately preceding fiscal year, and actual overtime as a percentage of actual salary expenditures for the immediately preceding fiscal year;~~

~~(3) Actual year to date salary, expenditures for the current fiscal year, actual year-to-date overtime expenditures for the current fiscal year, and actual year to date overtime expenditures as a percentage of actual year to date salary expenditures for the current fiscal year;~~

~~(4) Projected salary expenditures for the current fiscal year, projected overtime expenditures for the current fiscal year, and projected overtime expenditures as a percentage of projected salary expenditures for the current fiscal year; and~~

~~(5) The extent to which each department has complied with the requirements of this section.~~

~~(f) The Controller shall submit a monthly report the Board of Supervisors and the Mayor's Budget Director listing the five City departments using the most overtime in the preceding month, listing exemptions granted based upon a critical staffing shortage, and including the written explanations described in subsection (b).~~ A hearing on the ~~this~~ reports described in subsection (e) shall be calendared as a standing agenda item of the Budget and Finance Committee or another fiscal committee of the Board of Supervisors as determined by the President of the Board of Supervisors.

(g) If the ~~biannual~~ report<u>s</u> described in subsection (e) ~~identifies~~ <u>identify</u> any departments out of compliance with this section, then a hearing on each such department's noncompliance will be calendared as an agenda item of the Budget and Finance Committee or another fiscal committed of the Board of Supervisors as determined by the President of the Board of Supervisors, at which hearing each Appointing Officer or designee for such department will report his or her department's plan for coming into compliance with this section.

(h) This ordinance is not intended to supersede overtime distribution rules contained in approved memoranda of understanding with the City's exclusive representatives except as necessary to ensure compliance with subsection (a) above to the extent allowable by State or local law.

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

By: _____
ELIZABETH SALVESON
Deputy City Attorney

FILE NO.

# LEGISLATIVE DIGEST

[Regulating Overtime Available for City Employees]

Ordinance amending Section 18.13.1 of the Administrative Code to limit the overtime worked in any fiscal year by any employee to 20% of regularly scheduled hours and requiring monthly written reports regarding critical staffing shortages.

## Existing Law

Section 18.13.1 of the San Francisco Administrative Code limits overtime worked in any fiscal year by any employee to 30% of regularly scheduled hours, subject to certain exceptions. One of those exceptions, in subsection (b), permits the Director of Human Resources (or the Director of Transportation of the Municipal Transportation Agency, as appropriate) to grant an exemption from this limit in the case of critical staffing shortages.

Section 18.13.1 also requires monthly reporting by the Controller to the Board of Supervisors identifying the five City departments using the most overtime in the preceding month. It requires biannual reporting by the Controller and the Director of Human Resources regarding budgeted salaries, budgeted overtime, actual salary expenditures, projected salary expenditures, and information regarding compliance with the ordinance.

## Amendments to Current Law

The proposed amendment to Section 18.13.1 reduces the limit on overtime worked in any fiscal year by any employee from 30% to 20% of regularly scheduled hours. The same exemptions to this limit still apply.

The proposed amendment requires that if the Director of Human Resources (or the Director of Transportation of the Municipal Transportation Agency) grants an exemption under subsection (b) for a critical staffing shortage, that director must provide to the Controller a written explanation of the details justifying the exemption. In connection with the Controller's monthly reports to the Board of Supervisors, the Controller must list the exemptions granted based upon a critical staffing shortage, and include the written explanations for those exemptions.

| Item 8<br>File 11-0503<br>*(Continued from July 13, 2011)* | **Department:**<br>Department of Human Resources (DHR)<br>Metropolitan Transportation Agency (MTA)<br>Controller's Office |
|---|---|

## EXECUTIVE SUMMARY

### Legislative Objective

- Ordinance amending Section 18.13-1 of Administrative Code to (1) limit overtime worked in any fiscal year, by any City employee, to 20 percent of regularly scheduled hours and (2) require monthly written reports, to be submitted by the Controller to the Board of Supervisors and the Mayor's Budget Director regarding critical staffing shortages.

### Key Points

- Currently, the City's Administrative Code limits employee overtime to 30 percent of the number of hours that the employee is regularly scheduled to work on a straight-time basis in a fiscal year without prior approval of the Director of Human Resources (or, if appropriate, the Director for the Municipal Transportation Agency).

- The Controller is currently required to submit monthly reports to the Board of Supervisors and the Mayor's Budget Director listing the five City departments that incur the most overtime in the preceding month.

- The proposed ordinance would not require changes to existing labor agreements, as was necessary in implementing the 30 percent cap in 2008.

- According to Deputy Controller Monique Zmuda, the proposed ordinance would likely spread overtime use to a larger number of employees, but would not necessarily result in an overall overtime reduction.

### Fiscal Impact

- According to Mr. Steve Ponder, Department of Human Resources (DHR), the proposed ordinance is expected to increase the number of requests for waivers to exceed the limit, but at this time additional associated costs cannot be quantified.

### Recommendation

- Approval of the proposed resolution is a policy matter for the Board of Supervisors.

# MANDATE STATEMENT

## Mandate Statement

Section 18.13-1 of the City's Administrative Code limits employee overtime to 30 percent of the number of hours that the employee is regularly scheduled to work on a straight-time basis in a fiscal year without prior approval of the Director of Human Resources (or, if appropriate, the Director for the Municipal Transportation Agency). Currently, in accordance with Administrative Code Section 18.13, the Controller is required to submit monthly reports to the Board of Supervisors and the Mayor's Budget Director listing the five City departments that incur the most overtime in the preceding month.

## Background

In 2008, the Board of Supervisors approved Ordinance 197-08 to limit the number of overtime hours worked in any fiscal year to 30 percent of the number of hours that the employee is regularly scheduled to work on a straight-time basis in that fiscal year, or 624 hours for a full-time 2,080 hours per year employee without prior approval of the Director of Human Resources (or, if appropriate, the Director for the Municipal Transportation Agency).[1] Prior to 2008, the City limited overtime hours to 16 percent or 332.8 hours for a full-time 2,080 hours per year. However, according to Mr. Steve Ponder, Department of Human Resources (DHR) Classification and Compensation Manager, very few City departments were aware of the City's previous 16 percent overtime limit, such that the limit had been essentially ignored by City employees for years.

Mr. Ponder advises that for the City to implement the existing 30 percent cap on overtime, it was necessary for DHR to consult with the various City employee unions to amend exiting labor agreements to change the allocation of overtime up to the 30 percent limit. According to Mr. Ponder, the labor agreements still require that overtime be assigned by seniority up to the 30 percent cap, but once the 30 percent threshold is met, employees are not eligible for additional overtime.

Deputy Controller Monique Zmuda states that implementation of this 30 percent cap on overtime has generally discouraged excessive overtime use by departments and individual employees.

Table 1 below compares Citywide overtime spending in FY 2006-07, FY 2007-08, FY 2008-09, and FY 2009-10. In FY 2009-10, there was a decrease in overtime spending of $12.1 million ($142.1 million less $130.0 million) in the first full year from FY 2008-09 and a decease $37.7 million ($167.7 million less $130.0 million) over two years from FY 2007-08 when the cap was first implemented. Overtime spending, as a percent of total gross salaries, deceased to 5.0 percent in FY 2009-10 as compared to 6.6 percent in FY 2007-08 and 5.4 percent in FY 2008-09.

[1] Uniformed Fire Department employees who do not work a standard 40 hour work week are exempted.

**Table 1: Actual Overtime Spending in FYs 2006-07 through FY 2009-10 (in millions)**

| Departments | FY 2006-07 | FY 2007-08 | FY 2008-09 | FY 2009-10 |
|---|---|---|---|---|
| Municipal Transportation Agency | $42.2 | $48.0 | $44.2 | $47.9 |
| Fire Department | 19.9 | 23.1 | 27.9 | 23.5 |
| Department of Public Health | 16.7 | 17.0 | 9.7 | 8.9 |
| Police Department | 36.9 | 41.7 | 32.7 | 26.9 |
| Sheriff's Department | 13.5 | 15.3 | 12.1 | 7.1 |
| Other Departments | 22.3 | 22.6 | 15.5 | 15.7 |
| **Total** | **$151.5** | **$167.7** | **$142.1** | **$130.0** |
| Overtime as a Percent of Total Gross Salaries | 6.4% | 6.6% | 5.4% | 5.0% |

Administrative Code Sections 18.13-1 and 18.13-5 require the Controller to submit monthly and biannual overtime reports to the Board of Supervisors and the Mayor's Budget Director. These Controller reports provide the status of current and projected budgetary overtime costs for the largest City departments and the largest users of overtime hours. The *FY 2010-11 Biannual and Monthly Overtime Report* released on March 3, 2011, based on a straight-line projection, estimated that budgeted overtime would be over-expended by $39.7 million ($141.9 million projected FY 2010-11 less $102.2 million budgeted FY 2010-11). The projected FY 2010-11 overtime spending amount of $141.9 is $11.9 million or 9.2 percent more than actual overtime expenditures of $130.0 million in FY 2009-10, as shown in Table 2 below.

**Table 2: Comparison of Actual Overtime Spending in FY 2009-10 and Projected Overtime Spending in FY 2010-11 (in millions)**

| Departments | FY 2009-10 | Budgeted FY 2010-11* | Projected FY 2010-11** | Change from FY 2009-10 Actuals to FY 2010-11 Projected |
|---|---|---|---|---|
| Municipal Transportation Agency | $47.9 | $33.3 | $53.3 | $5.4 |
| Fire Department | 23.5 | 22.1 | 29.5 | 6.0 |
| Department of Public Health | 8.9 | 7.0 | 10.4 | 1.6 |
| Police Department | 26.9 | 24.1 | 25.4 | (1.5) |
| Sheriff's Department | 7.1 | 4.3 | 5.7 | (1.4) |
| Other Departments | 15.7 | 11.4 | 17.6 | 1.8 |
| **Total** | **$130.0** | **$102.2** | **$141.9** | **$11.9** |
| Overtime as a Percent of Total Gross Salaries | 5.0% | 4.1% | 5.6% | |

* This is the Adjusted Revised Budget amounts for FY 2010-11, reflects budgetary accounting of transfers for project and grant appropriations.

** The FY 2010-11 is a straight line projection representing 13.7 out of 23.1 pay periods in the fiscal year.

The five City departments identified in Tables 1 and 2 above incur the most overtime and collectively account for 87.6 percent of total Citywide overtime hours. Although total overtime spending has decreased since the 30 percent cap was approved in 2008, for the pay period ending January 7, 2011, the Controller's report states that 74 employees exceeded the existing 30 percent overtime cap in FY 2010-11, which is an increase of 25 employees over the 49 employees that exceeded the 30 percent cap during the same time period in FY 2009-10. Of the 74 employees exceeding the cap in FY 2010-11, 70 obtained exemptions from the Director of Human Resources (or, if appropriate, the Director for the Municipal Transportation Agency.[2] In accordance with Section 18.13-1 of the City's Administrative Code, appointing officers may request exemptions from the 30 percent overtime cap from the Director of Human Resources (or, if appropriate, the Director of the Municipal Transportation Agency) based upon a critical staffing shortages, in the event of disasters, or when such overtime assignments are necessary to protect public safety.

[2] Of the four remaining employees that exceeded the 30 percent threshold, exemption of three Sheriff's Department employees is pending and one MTA employee was due to staffing shortages that have since been adjusted.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would amend Section 18.13-1 of the Administrative Code to limit employee overtime to 20 percent of the number of hours that the employee is regularly scheduled to work on a straight-time basis in a fiscal year, or 416 hours for a full-time 2,080 hours per year employee without prior approval of the Director of Human Resources (or, if appropriate, the Director for the Municipal Transportation Agency). In addition, the proposed resolution would direct the Controller to submit a monthly written report regarding critical staffing shortages to the Board of Supervisors and the Mayor's Budget Director in addition to listing the five City departments using the most overtime in the preceding month.

## FISCAL IMPACTS

Ms. Zmuda does not anticipate any significant new costs associated with implementing the proposed ordinance. She advises that although one-time resources would be needed to program the necessary Controller system administrative changes to provide the required reports. Ms. Zmuda stated such costs would be absorbed in the Controller's existing budget.

Mr. Ponder reports that the proposed ordinance would not require changes to existing labor agreements but that DHR would expect a significant increase in requests from individual City departments for waivers to exceed the 20 percent limit. Mr. Ponder advises that he cannot currently estimate the amount of additional DHR staff time or costs associated with responding to such City department requests.

Ms. Sonali Bose, MTA Chief Financial Officer, reports that the proposed ordinance to reduce the overtime cap from 30 percent to 20 percent would create a significant administrative burden for the MTA with the expected increase in the number of waiver requests, for the Chief Executive Officer, who is required to approve any such waiver requests. Ms. Bose advises that the overall dollars spent on overtime is determined mostly by Transit Operations and Enforcement management and if MTA believes overtime is required to provide the required services, MTA will continue to use overtime to ensure levels of service. As a result, Ms. Bose is not confident that a reduction in overtime will result.

Mr. Brent Lewis, DHR Budget & Finance Director, and Mr. Ponder anticipate that the proposed ordinance would likely spread overtime use over a larger number of employees, but would not necessarily result in an overall overtime reduction. According to Ms. Zmuda, the impact of decreasing the overtime limit to 20 percent from 30 percent is difficult to predict. However, Ms. Zmuda concurs that if overtime were capped at 20 percent rather than the current cap of 30 percent of base salary, overtime would likely be incurred by a larger number of City employees.

## POLICY CONSIDERATIONS

Given that the number of exemptions pertaining to the existing 30 percent cap on overtime has been increasing and that there is currently not a limit to the number allowable exemptions, there is no assurance that decreasing the overtime cap to 20 percent from 30 percent will result in reducing overtime use. As noted above, according to Deputy Controller Zmuda, Mr. Lewis, and Mr. Ponder, if overtime is capped at 20 percent rather than the current cap of 30 percent of base salary, overtime would likely be spread over a larger number of employees. Additionally, according to Deputy Controller Zmuda (a) the current restrictions, (b) the required monthly reporting, and (c) the waiver process that is required when employees approach the 30 percent cap all discourage the use of overtime and necessitate that managers pay attention to the use and assignment of overtime.

## COMMENT

The Budget and Finance Committee requested that Mr. Ben Rosenfield, Controller, report on suggested improvements to current overtime reporting requirements that exist in various City codes. Mr. Rosenfield advised the Budget and Legislative Analyst that he will provide such information directly to the Budget and Finance Committee for the Committee's meeting of July 20, 2011.

## RECOMMENDATION

Approval of the proposed resolution is a policy matter for the Board of Supervisors.