

FILE NO. 060247

ORDINANCE NO.

1 [Minimum Wage Implementation and Enforcement.]

2

3 **Ordinance (1) amending Chapter 12R of the San Francisco Administrative Code**
4 **(Minimum Wage Ordinance) to impose an annual fee upon employers to defray the**
5 **City's costs of implementing and enforcing the Minimum Wage Ordinance, (2)**
6 **expanding the powers and duties of the Office of Labor Standard Enforcement to**
7 **implement and enforce the Minimum Wage Ordinance, and (3) making findings**
8 **pursuant to the California Environmental Quality Act, Public Resources Code Section**
9 **21080(b)(8)(A), that the regulatory fees imposed by this ordinance are not a "project"**
10 **and that such fees are imposed for the purpose of meeting operating expenses of the**
11 **Office of Labor Standards Enforcement or successor department of the City and**
12 **County of San Francisco, including employee wage rates, fringe benefits and other**
13 **direct and indirect overhead charges, attributable to the implementation and**
14 **enforcement of the Minimum Wage Ordinance.**

15

16 Note: Additions are *single-underline italics Times New Roman*;
17 deletions are *strikethrough italics Times New Roman*.
18 Board amendment additions are double underlined.
19 Board amendment deletions are ~~strikethrough normal~~.

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

20

21 Section 1. Findings and Declarations.

22 The Board of Supervisors finds and declares the following:

23 (a) To protect the public health, safety and welfare of the residents and of the
24 employees who work in the City and County of San Francisco ("City"), it is essential that all
25 persons working in the City earn wages sufficient to pay for nutritious food, habitable living

1 accommodations, medications and basic medical care, clothing, public transportation and
2 other basic goods and services to ensure a healthy life for employees and their dependents.

3 (b) Jobs that pay the City's minimum wage promote a more stable workforce in San
4 Francisco, increasing consumer income, decreasing poverty, and invigorating neighborhood
5 businesses, compared to jobs that pay lower wages. When businesses do not pay the City's
6 minimum wage, the surrounding community and San Francisco taxpayers bear many of the
7 associated costs in the form of increased demand for taxpayer-funded services, including
8 homeless shelters, soup kitchens, and healthcare for the uninsured. In addition, law abiding
9 businesses suffer from unfair competition when other businesses do not pay the City's
10 minimum wage to their employees.

11 (c) A 2003 study by U.C. Berkeley economists commissioned by the San Francisco
12 Board of Supervisors, *Raising Pay in a High Income Economy: The Economics of a San*
13 *Francisco Minimum Wage*, Reich & Laitinen (2003), found that minority workers are
14 disproportionately represented among San Francisco low-wage workers. Among full-time
15 workers, Hispanics and African-Americans are twice as numerous among workers earning
16 less than \$9 per hour than they are in the workforce, while Asian-Americans are over-
17 represented by one-fifth. Among part-time workers, while Asian-American workers account for
18 36 percent of the workforce in San Francisco, they make up nearly half of the low-paid part-
19 timers.

20 (d) Low-wage worker advocacy groups including Chinese Progressive Association
21 (CPA), The Legal Aid Society -- Employment Law Center, La Raza Centro Legal, Young
22 Workers United and People Organized to Win Employment Rights report that violations of the
23 City's minimum wage and other labor laws are still widespread in San Francisco. For example,
24 based on worker surveys and labor market research, CPA estimates that approximately 9,000
25

1 Chinese American restaurant and garment workers in San Francisco are currently being paid
2 wages below the City's established minimum wage.

3 (e) According to a 1999 study, *Minimum Wage Enforcement and the Low-Wage*
4 *Labor Market*, Wial (1999), a major flaw in the current system of federal and state minimum-
5 wage enforcement is that the basic enforcement scheme puts almost exclusive responsibility
6 for enforcement in the hands of governmental enforcement agencies and individual workers
7 (who must complain to the public agency). By themselves, the public agencies and individual
8 workers lack the knowledge, incentives, and/or resources to enforce the minimum wage
9 against employers who are determined to violate minimum wage laws. The public agencies
10 are familiar with the law but lack resources and detailed, up-to-date, "on-the-ground"
11 knowledge of what is happening at the worksite. Individual workers have the worksite
12 knowledge that the public agency lacks but do not know the law, are afraid to complain or sue,
13 and lack the resources and economic incentives to sue. The result is a systematic bias
14 toward under-enforcement.

15 (f) In November 2003 the San Francisco voters enacted Proposition L, the
16 Minimum Wage Ordinance, codified in Chapter 12R of the San Francisco Administrative
17 Code. The Minimum Wage Ordinance became effective February 23, 2004 and requires
18 employers to pay employees (including temporary and part-time employees) who work two (2)
19 or more hours per week a minimum hourly wage for work performed in San Francisco, unless
20 the individual is exempt from the state minimum wage.

21 The minimum wage was initially set at \$8.50 per hour. There was a two-year transition
22 period for small businesses with fewer than ten (10) employees and for nonprofit corporations.
23 The minimum wage for small businesses and nonprofit corporations took effect January 1,
24 2005 and is currently \$8.82 per hour. To prevent inflation from eroding the real wages of
25 employees, the minimum wage is increased annually by the prior year's increase, if any, in the

1 Consumer Price Index for urban wage earners and clerical workers for the San Francisco-
2 Oakland-San Jose metropolitan statistical area ("CPI"). Effective January 1, 2006, the
3 minimum wage for employers, including small businesses and nonprofits, is \$8.82 as a result
4 of the CPI adjustment that took effect January 1, 2006. Employees who are not paid the
5 required minimum wage may file a wage claim with the Living Wage/Living Health Division of
6 the Office of Labor Standards Enforcement, or may file a lawsuit in court against his or her
7 employer.

8 (g) The Department of Administrative Services' Office of Labor Standards Enforcement
9 ("OLSE") is responsible for the implementation and enforcement of the Minimum Wage
10 Ordinance. It is required to publish and make available to Employers by December 1 a
11 bulletin announcing the adjusted Minimum Wage rate for each upcoming year. In addition,
12 OLSE is required publish and make available to Employers, in all languages spoken by more
13 than five percent of the San Francisco work force, a notice suitable for posting by employers
14 in the workplace that informs employees of the current minimum wage rate and of their rights
15 under the ordinance. The Minimum Wage Ordinance requires that employers post the notice
16 published each year by OLSE in a conspicuous place at any workplace or job site. Employers
17 are also required to provide the employer's name, address and telephone number in writing to
18 each employee at the time of his or her hire. Employers are also required to retain payroll
19 records for a period of four years and allow access to such records by OLSE to monitor
20 compliance with the Minimum Wage Ordinance.

21 (h) During the first two years of enforcement, OLSE received 137 worker claims
22 against businesses that include hotels, restaurants, retail stores, retirement and group homes,
23 a gas station, car wash, warehouse, auto body shop, medical lab, and businesses for
24 janitorial, limo / shuttle, educational tutoring services, and security services. OLSE recovered
25 approximately \$400,000 in back wages for 962 workers. OLSE has found that some small

1 employers have benefited from early enforcement intervention by OLSE and have avoided
2 larger financial liability that would have accumulated over a more extended period of time.

3 (i) OLSE has found that it is common that individuals and businesses deal in cash
4 and/or use other schemes to conceal the actual hours worked and the true wage liability,
5 robbing employees not only of wages, but also other benefits including disability and
6 unemployment insurance. By doing this they gain an unfair competitive advantage over
7 businesses that comply with the law and force law-abiding businesses and people to pay
8 higher taxes.

9 (j) Minimum wage enforcement at OLSE is currently staffed by three 2992 Contract
10 Compliance Officer I's (one Spanish bilingual and one Cantonese / Mandarin bilingual), one
11 1446 Secretary II (Cantonese bilingual), and one 2978 Contract Compliance Officer II who
12 supervises enforcement of the MWO as well as the Minimum Compensation Ordinance
13 ("MCO") and Health Care Accountability Ordinance ("HCAO"). OLSE has shifted resources
14 from enforcement of the MCO / HCAO to enforcement of the MWO. Before OLSE began to
15 implement the MWO, four 2992 Contract Compliance Officers worked on MCO / HCAO
16 enforcement; currently OLSE has only one Contract Compliance Officer dedicated to MCO /
17 HCAO.

18 (k) OLSE has found the most common violations to be: underpayment of minimum
19 wage, often at the State of California rate of \$6.75 per hour; failure to pay overtime to
20 minimum wage workers; payment of a set salary regardless of hours worked, resulting in
21 hourly pay that is less than the minimum wage; and cash pay and failure to maintain accurate
22 records of hours worked and wages paid. The City Attorney has filed the first lawsuit to
23 recover back wages owed under the MWO.

24 (l) OLSE has collaborated with the U.S. Department of Labor and the California
25 Division of Labor Standards Enforcement to implement best practices regarding investigative

1 strategies and enforcement procedures. OLSE has however, implemented several practices
2 that lead to successful enforcement that may be less efficient but more effective than
3 procedures at other agencies. OLSE works to maintain claimants' confidentiality to the
4 greatest extent possible. OLSE reviews the entire payroll of a business when receiving a
5 claim from an individual worker. Rather than assess penalties and shut down businesses,
6 OLSE works with business owners to educate them about wage and hour laws and to monitor
7 changes in their business practices.

8 (m) The MWO requires OLSE to publish and make available a bulletin announcing
9 the annually adjusted minimum wage rate and multilingual notice for posting at every
10 business. OLSE has mailed the bulletin and poster annually (2004, 2005, and 2006) to over
11 90,000 businesses registered in San Francisco. OLSE maintains a multilingual MWO
12 telephone hotline and website. Other educational outreach efforts have included posters on
13 MUNI buses, articles and notices in the major and community based newspapers, notices on
14 SFGTV, presentations to business organizations, community groups, and community radio.
15 Every mailing and outreach event results in increased requests for information and additional
16 claims for back wages.

17 (n) OLSE recognizes the need to further expand outreach to inform employers of
18 their obligations and employees of their rights under the ordinance.

19 (o) OLSE has increased education and community outreach to disseminate the
20 message that, effective January 1, 2006, all San Francisco businesses are required to pay the
21 same minimum wage rate of \$8.82 per hour. Since posters were mailed to all San Francisco
22 registered businesses in January, OLSE has responded to hundreds of telephone inquiries
23 and has experienced substantial increased wage claim activity. It will be difficult for OLSE to
24 address the additional workload in a timely manner.

25

1 (p) The fee upon employers subject to the Minimum Wage Ordinance imposed by
2 this ordinance and dedication of the fee revenues to implementation and enforcement of the
3 Minimum Wage Ordinance by OLSE will benefit employees as well as law abiding employers
4 who face unfair business practices from employers who do not pay the minimum wage to their
5 employees.

6 (q) The Section 12R.13 of the Administrative Code authorizes the Board of
7 Supervisors to amend the Minimum Wage Ordinance with respect to the implementation or
8 enforcement thereof, but not as regards its substantive requirements or scope of coverage.
9 This ordinance is adopted pursuant to the Board's authority under Section 12R.13 and
10 imposes an annual fee upon employers subject to the Minimum Wage Ordinance to defray the
11 City's costs for the Office of Labor Standards Enforcement to implement and enforce the
12 requirements of the Minimum Wage Ordinance. For purposes of administrative convenience,
13 the fee will be due and payable, and collected by the Tax Collector, at the same time as the
14 fee imposed for the initial issuance and annual renewals of the Business Registration
15 Certificate required of all persons engaging in business in the City under Articles 6 and 12 of
16 the Business and Tax Regulations Code.

17
18 Section 2. The San Francisco Administrative Code is hereby amended by amending
19 Section 12R.7(b) and adding Sections 12R.14 through 12R.28, to read as follows:

20
21 **SEC. 12R.7. IMPLEMENTATION AND ENFORCEMENT.**

22 (a) Implementation. The Agency shall be authorized to coordinate implementation
23 and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such
24 purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect
25 of law and may be relied on by Employers, Employees and other parties to determine their

1 rights and responsibilities under this Chapter. Any guidelines or rules may establish
2 procedures for ensuring fair, efficient and cost- effective implementation of this Chapter,
3 including supplementary procedures for helping to inform Employees of their rights under this
4 Chapter, for monitoring Employer compliance with this Chapter, and for providing
5 administrative hearings to determine whether an Employer or other person has violated the
6 requirements of this Chapter.

7 (b) Administrative Enforcement. The Agency is authorized to take appropriate steps
8 to enforce this Chapter. The Agency may investigate any possible violations of this Chapter
9 by an Employer or other person. Where the Agency has reason to believe that a violation has
10 occurred, it may order any appropriate temporary or interim relief to mitigate the violation or
11 maintain the status quo pending completion of a full investigation or hearing. Where the
12 Agency, after a hearing that affords a suspected violator due process, determines that a
13 violation has occurred, it may order any appropriate relief including, but not limited to,
14 reinstatement, the payment of any back wages unlawfully withheld, and the payment of an
15 additional sum as an administrative penalty in the amount of \$50 to each Employee or person
16 whose rights under this Chapter were violated for each day or portion thereof that the violation
17 occurred or continued. A violation for unlawfully withholding wages shall be deemed to continue
18 from the date immediately following the date that the wages were due and payable as provided in Part
19 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately
20 preceding the date the wages are paid in full. Where prompt compliance is not forthcoming, the
21 Agency may take any appropriate enforcement action to secure compliance, including
22 initiating a civil action pursuant to Section 7(c) of this Chapter and/or, except where prohibited
23 by state or federal law, requesting that City agencies or departments revoke or suspend any
24 registration certificates, permits or licenses held or requested by the Employer or person until
25 such time as the violation is remedied. In order to compensate the City for the costs of

1 investigating and remedying the violation, the Agency may also order the violating Employer
2 or person to pay to the City a sum of not more than \$50 for each day or portion thereof and for
3 each Employee or person as to whom the violation occurred or continued. Such funds shall
4 be allocated to the Agency and shall be used to offset the costs of implementing and
5 enforcing this Chapter. The amounts of all sums and payments authorized or required under
6 this Chapter shall be updated annually for inflation, beginning January 1, 2005, using the
7 inflation rate and procedures set forth in Section 4(b) of this Chapter. An Employee or other
8 person may report to the Agency in writing any suspected violation of this Chapter. The
9 Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the
10 maximum extent permitted by applicable laws, the name and other identifying information of
11 the Employee or person reporting the violation. Provided, however, that with the authorization
12 of such person, the Agency may disclose his or her name and identifying information as
13 necessary to enforce this Chapter or for other appropriate purposes.

14 (c) Civil Enforcement. The Agency, the City Attorney, any person aggrieved by a
15 violation of this Chapter, any entity a member of which is aggrieved by a violation of this
16 Chapter, or any other person or entity acting on behalf of the public as provided for under
17 applicable state law, may bring a civil action in a court of competent jurisdiction against the
18 Employer or other person violating this Chapter and, upon prevailing, shall be entitled to such
19 legal or equitable relief as may be appropriate to remedy the violation including, without
20 limitation, the payment of any back wages unlawfully withheld, the payment of an additional
21 sum as liquidated damages in the amount of \$50 to each Employee or person whose rights
22 under this Chapter were violated for each day or portion thereof that the violation occurred or
23 continued, reinstatement in employment and/or injunctive relief, and shall be awarded
24 reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing
25 this Chapter on behalf of the public as provided for under applicable state law shall, upon

1 prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable
2 attorneys' fees and costs.

3 (d) Interest. In any administrative or civil action brought for the nonpayment of wages
4 under this section, the Agency or court, as the case may be, shall award interest on all due and unpaid
5 wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code,
6 which shall accrue from the date that the wages were due and payable as provided in Part 1
7 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are
8 paid in full.

9
10 SEC. 12R.14. MINIMUM WAGE IMPLEMENTATION AND ENFORCEMENT FEE.

11 (a) Except as provided in subsection (e) of this Section, there is hereby imposed an annual
12 fee upon every employer required to pay the minimum wage imposed under this Chapter to defray the
13 City's costs of implementing and enforcing the Minimum Wage Ordinance by the Office of Labor
14 Standards Enforcement ("OLSE") and other City agencies responsible therefor, and for the
15 administrative and collection costs incurred by the Tax Collector for collection of the fee. The 2006-
16 2007 fiscal year (commencing July 1, 2006) shall be the first year for which the annual fee shall be due.
17 The revenues from the fee shall be deposited into the San Francisco Minimum Wage Implementation
18 and Enforcement Fund set forth in Section 10.100-370 of the San Francisco Administrative Code.

19 (b) The fee imposed under this Section shall be graduated based on the annual amount
20 charged for the employer's business registration certificate (business license registration fee) under
21 Section 855 of the Business and Tax Regulations Code for the same fiscal year. The fee imposed under
22 this Section for an employer that is a "newly established business"(as defined in Section 852.1 of the
23 Business and Tax Regulations Code) shall not be prorated notwithstanding any prorating of the fee for
24 the initial issuance of a business registration certificate for such employer under Section 856 of the

Business and Tax Regulations Code. For the 2006-2007 fiscal year (commencing July 1, 2006), the fee imposed under this Section shall be as follows:

<u>If Employer's Business License Registration Fee For Fiscal Year 2006-2007 Is:</u>	<u>Employer's Minimum Wage Implementation And Enforcement Fee For 2006-2007 Fiscal Year Is:</u>
<u>\$25</u>	<u>\$0 – No Fee Imposed Pursuant to Subsection (e)</u>
<u>\$150</u>	<u>\$23</u>
<u>\$250</u>	<u>\$38</u>
<u>\$500</u>	<u>\$77 <u>\$75</u></u>

For the 2007-2008 fiscal year (commencing July 1, 2007), the fee imposed under this Section shall be as set forth in the following table. For the 2008-2009 fiscal year (commencing July 1, 2008) and subsequent fiscal years, the annual fee shall be adjusted as provided in Section 12R.15. If no adjustment to the fee is made under Section 12R.15 or other applicable law, the amount of the fee for such fiscal years shall be same as the immediately preceding fiscal year.

<u>If Employer's Business License Registration Fee For Fiscal Year 2007-2008 Is:</u>	<u>Employer's Minimum Wage Implementation And Enforcement Fee For 2007-2008 Fiscal Year Is:</u>
<u>\$25</u>	<u>\$0 – No Fee Imposed Pursuant to Subsection (e)</u>
<u>\$150</u>	<u>\$33 <u>\$32</u></u>
<u>\$250</u>	<u>\$55 <u>\$54</u></u>
<u>\$500</u>	<u>\$111 <u>\$107</u></u>

1 (c) The fee shall be due and payable at the same time and along with the fee imposed under
2 Article 12 of the Business and Tax Regulations Code for the initial issuance and annual renewals of
3 business registration certificates. The Tax Collector shall have all powers and may pursue all
4 remedies for collection of the fee set forth in Articles 6 and 12 of the Business and Tax Regulations
5 Code as apply to the collection of fees for business registration certificates.

6 (d) It is the intent of the Board of Supervisors that funds allocated from fee revenues to
7 OLSE shall not be used as a replacement for existing sources of financial support for OLSE.

8 (e) An organization that is exempt from income taxation by Chapter 4 (commencing with
9 Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F
10 (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as
11 amended, as qualified by Sections 502, 503, 504 and 508 of the Internal Revenue Code of 1986, as
12 amended, shall be exempt from the fee under this Chapter.

13
14 SEC. 12R.15. ANNUAL ADJUSTMENT OF FEE.

15 (a) Beginning with fiscal year 2008-2009, the Controller shall each year adjust the fee set in
16 this Chapter without further action by the Board of Supervisors to reflect changes in the relevant
17 Consumer Price Index.

18 (b) Not later than April 15th of each year, the Department of Administrative Services, in
19 consultation with the Tax Collector, shall submit a report to the Controller on the expenditures of the
20 Office of Labor Standards Enforcement to enforce and implement the Minimum Wage Ordinance, and
21 the estimated percentage of such expenditures attributable to enforcement and implementation
22 activities attributable to employers exempt from the fee under Section 12R.14(e). In no event may the
23 price index adjustment authorized by this Section cause the fee authorized by this Chapter to exceed the
24 City's costs to enforce and implement the Minimum Wage Ordinance, including direct and indirect
25

1 overhead charges allocable thereto, and excluding the portion of such costs attributable to employers
2 exempt from the fee under Section 12R.14(e).

3 (c) No later than May 15th of each year, the Controller shall adjust the fee to ensure that it
4 (1) produces sufficient revenue to support the City's costs to enforce and implement the Minimum Wage
5 Ordinance (excluding the portion of the costs attributable to employers exempt from the fee under
6 Section 12R.14(e)), and (2) does not produce revenue which is projected to exceed such costs. If the
7 Controller determines that the fee and applicable price index adjustment will either (1) not adequately
8 cover, or (2) exceed the projected costs, the Department of Administrative Services shall submit
9 legislation that would adjust the fee to the appropriate level.

10
11 SEC. 12R.16. CIVIL ACTIONS.

12 In addition to the actions provided for in Section 12R.7(c), the City Attorney may bring a civil
13 action to enjoin any violation of this Chapter. The City shall be entitled to its attorney's fees and costs
14 in any action brought pursuant to this Section where the City is the prevailing party.

15
16 SEC. 12R.17. REMEDIES CUMULATIVE.

17 The remedies, penalties and procedures provided under this Chapter are cumulative and are
18 not intended to be exclusive of any other available remedies, penalties and procedures.

19
20 SEC. 12R.18. ADMINISTRATIVE PENALTIES AND CITATIONS.

21 (a) Administrative Penalties; Citations. An administrative penalty may be assessed for a
22 violation of the provisions of this Chapter as specified below. The penalty may be assessed by means of
23 an administrative citation issued by the Director of the Office of Labor Standards Enforcement.

24 (b) Administrative Penalty Amounts. In addition to all other civil penalties provided for by
25 law, the following violations shall be subject to administrative penalties in the amounts set forth below:

<u>VIOLATION</u>	<u>PENALTY AMOUNT</u>
<u>Failure to maintain payroll records or to retain payroll records for four years – Administrative Code Section 12R.5(c)</u>	<u>\$500.00</u>
<u>Failure to allow the Office of Labor Standards Enforcement to inspect payroll records – Administrative Code Section 12R.5(c)</u>	<u>\$500.00</u>
<u>Retaliation for exercising rights under Minimum Wage Ordinance – Administrative Code 12R.6</u>	<u>\$500.00</u>

The penalty amounts shall be increased cumulatively by fifty percent (50%) for each subsequent violation of the same provision by the same employer or person within a three (3) year period. The maximum penalty amount that may be imposed by administrative citation in a calendar year for each type of violation listed above shall be \$5,000. In addition to the penalty amounts listed above, the Office of Labor Standards Enforcement may assess enforcement costs to cover the reasonable costs incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Enforcement costs shall not count toward the \$5,000 annual maximum.

SEC. 12R.19. VIOLATIONS.

(a) Separate and Continuing Violations; Penalties Paid Do Not Cure Violations. Each and every day that a violation exists constitutes a separate and distinct offense. Each section violated constitutes a separate violation for any day at issue. If the person or persons responsible for a violation fail to correct the violation within the time period specified on the citation and required under Section 12R.20, the Director of the Office of Labor Standards Enforcement may issue subsequent administrative citations for the uncorrected violation(s) without issuing a new notice as otherwise

1 required by Section 12R.20(a). Payment of the penalty shall not excuse the failure to correct the
2 violation nor shall it bar any further enforcement action by the City. If penalties and costs are the
3 subject of administrative appeal or judicial review, then the accrual of such penalties and costs shall be
4 stayed until the determination of such appeal or review is final.

5 (b) Payments to City; Due Date; Late Payment Penalty. All penalties assessed under
6 Section 12R.18 shall be payable to the City and County of San Francisco. Administrative penalties and
7 costs assessed by means of an administrative citation shall be due within thirty (30) days from the date
8 of the citation. The failure of any person to pay an administrative penalty and costs within that time
9 shall result in the assessment of an additional late fee. The amount of the late fee shall be ten (10)
10 percent of the total amount of the administrative penalty assessed for each month the penalty and any
11 already accrued late payment penalty remains unpaid.

12 (c) Collection of Penalties; Special Assessments. The failure of any person to pay a penalty
13 assessed by administrative citation under Section 12R.18 within the time specified on the citation
14 constitutes a debt to the City. The City may file a civil action, create and impose liens as set forth
15 below, or pursue any other legal remedy to collect such money.

16 (d) Liens. The City may create and impose liens against any property owned or operated by
17 a person who fails to pay a penalty assessed by administrative citation. The procedures provided for in
18 Chapter XX of Chapter 10 of the San Francisco Administrative Code shall govern the imposition and
19 collection of such liens.

20
21 SEC. 12R.20. ADMINISTRATIVE CITATION; NOTICE OF VIOLATION.

22 (a) Notice and Opportunity to Cure. The Director of the Office of Labor Standards
23 Enforcement ("Director") or his or her designee shall notify any person in violation of the Code
24 provisions identified in Section 12R.18(b) of such violation prior to the issuance of an administrative
25 citation. Regardless of the manner of service of the notice under Section 12R.21, the Director or his or

1 her designee may post the notice of violation by affixing the notice to a surface in a conspicuous place
2 on property that is (1) the person's principal place of business in the City, or (2) if the person's
3 principal place of business is outside the City, the fixed location within the City from or at which the
4 person conducts business in the City, or (3) if the person does not regularly conduct business from a
5 fixed location in the City, one of the following: (i) the location where the person maintains payroll
6 records if the notice of violation is for violation of Section 12R.5(c), or (ii) the jobsite or other primary
7 location where the person's employees perform services in the City at the time the notice is posted. The
8 notice of violation shall specify the action required to correct or otherwise remedy the violation(s). The
9 person or persons responsible for the violation shall be allowed not less than ten (10) days from the
10 date of the notice of violation to establish that no violation occurred or such person or persons are not
11 responsible for the violation, or correct or otherwise remedy the violation; provided, however, that the
12 Director may, in his or her discretion, assign a longer period, not to exceed twenty-one (21) days,
13 within which to correct or otherwise remedy each violation, or establish that no violation occurred or
14 such person or persons are not responsible for the violation. The Director may consider the cost of
15 correction and the time needed to obtain information, documents, data and records for correction in
16 assigning a specific period of time within which to correct or otherwise remedy each violation, or
17 obtain and submit evidence that no violation occurred or such person or persons are not responsible
18 for the violation.

19 (b) Issuance of Citation. If the person or persons responsible for the violation fail to
20 comply with any portion of a notice of violation within the time provided, the Director may issue an
21 administrative citation to the violator. The administrative citation shall be issued on a form prescribed
22 by the Office of Labor Standards Enforcement.

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1 SEC. 12R.21. ADMINISTRATIVE CITATION AND NOTICE OF VIOLATION; SERVICE.

2 Service of a notice of violation and an administrative citation under Section 12R.18 may be
3 accomplished as follows:

4 (a) The Director or his or her designee may obtain the signature of the person responsible
5 for the violation to establish personal service of the citation; or

6 (b) (1) The Director or his or her designee shall post the citation by affixing the citation
7 to a surface in a conspicuous place on the property described in Section 12R.20. Conspicuous posting
8 of the citation is not required when personal service is accomplished or when conspicuous posting
9 poses a hardship, risk to personal health or safety or is excessively expensive; and

10 (2) The Director or his or her designee shall serve the citation by first class mail as follows:

11 (i) The administrative citation shall be mailed to the person responsible for the
12 violation by first class mail, postage prepaid, with a declaration of service under penalty of perjury;
13 and

14 (ii) A declaration of service shall be made by the person mailing the administrative
15 citation showing the date and manner of service by mail and reciting the name and address of the
16 person to whom the citation is issued; and

17 (iii) Service of the administrative citation by mail in the manner described above
18 shall be effective on the date of mailing.

19
20 SEC. 12R.22. ADMINISTRATIVE CITATION; CONTENTS.

21 The administrative citation under Section 12R.18 shall include all the following:

22 (1) A description of the violation;

23 (2) The date and location of the violation(s) observed;

24 (3) A citation to the provisions of law violated;

25 (4) A description of corrective action required;

1 (5) A statement explaining that each day of a continuing violation may constitute a new and
2 separate violation;

3 (6) The amount of administrative penalty imposed for the violation(s);

4 (7) A statement informing the violator that the fine shall be paid to the City and County of
5 San Francisco within thirty (30) days from the date on the administrative citation, the procedure for
6 payment, and the consequences of failure to pay;

7 (8) A description of the process for appealing the citation, including the deadline for filing
8 such an appeal; and

9 (9) The name and signature of the Director.

10
11 SEC. 12R.23. ADMINISTRATIVE APPEAL.

12 (a) Period of Limitation for Appeal. Persons receiving an administrative citation may
13 appeal it within fifteen (15) days from the date the citation is served. The appeal must be in writing and
14 must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for
15 the appeal in detail, and must be filed with both the Office of Labor Standards Enforcement and the
16 Controller's Office as indicated in the administrative citation.

17 (b) Hearing Date. As soon as practicable after receiving the written notice of appeal and
18 the penalty amount, the Controller or his or her designee shall promptly select a hearing officer (who
19 shall not be an employed in the Office of Labor Standards Enforcement) to hear and decide the
20 administrative appeal. The hearing officer shall fix a date, time and place for the hearing on the
21 appeal. Written notice of the time and place for the hearing may be served by first class mail, at the
22 return address indicated on the written appeal. Service of the notice must be made at least ten (10)
23 days prior to the date of the hearing to the person appealing the citation. The hearing shall be held no
24 later than thirty (30) days after service of the notice of hearing, unless that time is extended by mutual
25 agreement of the parties.

1 (c) Notice. Except as otherwise provided by law, the failure of any person with an interest
2 in property affected by the administrative citation, or other person responsible for a violation, to
3 receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under
4 this Chapter. Service by first class mail, postage prepaid, shall be effective on the date of mailing.

5 (d) Failure to Appeal. Failure of any person to file an appeal in accordance with the
6 provisions of this Section or to appear at the hearing shall constitute a failure to exhaust administrative
7 remedies and a forfeiture of the penalty amount previously remitted.

8 (e) Submittals for the Hearing. No later than five (5) days prior to the hearing, the person
9 to whom the citation was issued and the Office of Labor Standards Enforcement shall submit to the
10 hearing officer, with simultaneous service on the opposing party, written information including, but not
11 limited to, the following: the statement of issues to be determined by the hearing officer and a
12 statement of the evidence to be offered and the witnesses to be presented at the hearing.

13 (f) Conduct of Hearing. The hearing officer appointed by the Controller or the Controller's
14 designee shall conduct all appeal hearings under this Chapter. The Office of Labor Standards
15 Enforcement shall have the burden of proof in such hearings. The hearing officer may accept evidence
16 on which persons would commonly rely in the conduct of their serious business affairs, including but
17 not limited to the following:

18 (1) A valid citation shall be prima facie evidence of the violation;

19 (2) The hearing officer may accept testimony by declaration under penalty of perjury
20 relating to the violation and the appropriate means of correcting the violation;

21 (3) The person responsible for the violation, or any other interested person, may present
22 testimony or evidence concerning the violation and the means and time frame for correction.

23 The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing
24 may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court
25

1 reporter. The hearing officer may continue the hearing and request additional information from the
2 Office of Labor Standards Enforcement or the appellant prior to issuing a written decision.

3 (g) Hearing Officer's Decision; Findings. The hearing officer shall make findings based on
4 the record of the hearing and issue a decision based on such findings within fifteen (15) days of
5 conclusion of the hearing. The hearing officer's decision may uphold the issuance of a citation and
6 penalties stated therein, may dismiss a citation, or may uphold the issuance of the citation but reduce,
7 waive or conditionally reduce or waive the penalties stated in a citation or any late fees assessed if
8 mitigating circumstances are shown and the hearing of officer finds specific grounds for reduction or
9 waiver in the evidence presented at the hearing. The hearing officer may impose conditions and
10 deadlines for the correction of violations or the payment of outstanding civil penalties. Copies of the
11 findings and decision shall be served upon the appellant and the Office of Labor Standards
12 Enforcement by certified mail.

13 (h) Hearing Officer's Decision. The decision of the hearing officer is final. If the hearing
14 officer concludes that the violation charged in the citation did not occur or that the person charged in
15 the citation was not the responsible party, the Office of Labor Standards Enforcement shall refund or
16 cause to be refunded the penalty amount to the person who deposited such amount. The hearing
17 officer's decision shall be served on the appellant by certified mail.

18
19 SEC. 12R.24. REGULATIONS.

20 The Office of Labor Standards Enforcement may promulgate and enforce rules and regulations,
21 and issue determinations and interpretations relating to the administrative penalty and citation system
22 pursuant to Sections 12R.18 through 12R.22, inclusive. The Controller may promulgate and enforce
23 rules and regulations, and issue determinations and interpretations relating to the conduct of
24 administrative appeals under Section 12R.23. Any rules and regulations promulgated by the Office of
25 Labor Standards Enforcement or Controller shall be approved as to legal form by the City Attorney,

1 and shall be subject to not less than one noticed public hearing. The rules and regulations shall
2 become effective 30 days after receipt by the Clerk of the Board of Supervisors, unless the Board of
3 Supervisors by resolution disapproves or modifies the regulations. The Board of Supervisors'
4 determination to modify or disapprove a rule or regulation submitted by the Office of Labor Standards
5 Enforcement or Controller shall not impair the ability of the Office of Labor Standards Enforcement or
6 Controller to resubmit the same or similar rule or regulation directly to the Board of Supervisors if the
7 Office of Labor Standards Enforcement or Controller determines it is necessary to effectuate the
8 purposes of this Chapter.

9
10 SEC. 12R.25. JUDICIAL REVIEW.

11 (a) Procedures. After receipt of the decision of the hearing officer under Section 12R.23,
12 the appellant may file an appeal with the superior court pursuant to California Government Code
13 Section 53069.4. The appeal shall be submitted within twenty (20) days of the date of mailing of the
14 hearing officer's decision, with the applicable filing fee. The appeal shall state the reasons the
15 appellant objects to the findings or decision.

16 (b) Review. The superior court shall conduct a de novo hearing, except that the contents of
17 the Office of Labor Standards Enforcement's file (excluding attorney client communications and other
18 privileged or confidential documents and materials that are not discoverable or may be excluded from
19 evidence in judicial proceedings under the Evidence Code, Civil Code, Code of Civil Procedure or
20 other applicable law) shall be received into evidence. A copy of the notice of violation and imposition
21 of penalty shall be entered as prima facie evidence of the facts stated therein.

22 (c) Filing Fee. The superior court filing fee shall be twenty-five (\$25.00). If the court finds
23 in favor of the appellant, the amount of the fee shall be reimbursed to the appellant by the City and
24 County of San Francisco. Any deposit of penalty shall be refunded by the City and County of San
25 Francisco in accordance with the judgment of the court.

1 SEC. 12R.26. OTHER REMEDIES NOT AFFECTED.

2 The administrative citation procedures established in this Chapter shall be in addition to any
3 other criminal, civil, or other remedy established by law which may be pursued to address violations of
4 this Chapter. An administrative citation issued pursuant to this Chapter shall not prejudice or
5 adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek
6 compensation for damages suffered.

7
8 SEC. 12R.27. OUTREACH.

9 The Office of Labor Standards Enforcement shall establish a community-based outreach
10 program to conduct education and outreach to employees.

11
12 SEC. 12R.28. REPORTS.

13 The Office of Labor Standards Enforcement shall provide annual reports to the Board of
14 Supervisors on the implementation of the Minimum Wage Ordinance.

15
16 Section 3. The San Francisco Administrative Code is hereby amended by adding
17 Section 10.100-370, to read as follows:

18
19 SEC. 10.100-315. SAN FRANCISCO MINIMUM WAGE IMPLEMENTATION AND ENFORCEMENT
20 FUND.

21 (a) Establishment of Fund. The San Francisco Minimum Wage Implementation And
22 Enforcement Fund is established as a category four fund to receive all proceeds from the Minimum
23 Wage Implementation And Enforcement Fee, as described in Chapter 12R of the San Francisco
24 Administrative Code, after deduction therefrom to cover the costs incurred by the Office of the
25 Treasurer and Tax Collector to collect, account for and safekeep the revenues from the fee.

1 **(b) Use of Fund.** The fund shall be used solely to fund the implementation and enforcement
2 of Chapter 12R of the San Francisco Administrative Code, the Minimum Wage Ordinance, as amended
3 from time to time pursuant to Section 12R.13 thereof, those regulations, rules and guidelines adopted
4 by the Board of Supervisors, the Office of Labor Standards Enforcement or other City agency or entity
5 responsible to administer the Minimum Wage Ordinance, and the administrative and collection costs
6 incurred by the Office of the Treasurer and Tax Collector to collect the fee.
7

8 Section 4. The San Francisco Administrative Code is hereby amended by amending
9 Section 2A.23, to read as follows:

10
11 **SEC. 2A.23. OFFICE OF LABOR STANDARDS ENFORCEMENT.**

12 (a) There is hereby created within the Department of Administrative Services an
13 Office of Labor Standards Enforcement. The Office of Labor Standards Enforcement shall
14 enforce the City's Minimum Wage Ordinance (Chapter 12R of the Administrative Code),
15 Minimum Compensation Ordinance (Chapter 12P of the Administrative Code), Health Care
16 Accountability Ordinance (Chapter 12Q of the Administrative Code), Prevailing Wage
17 Ordinances, and shall carry out any additional duties and functions as assigned by Charter or
18 ordinance. The Office of Labor Standards Enforcement may enforce the provisions of the California
19 Labor Code to the extent permitted by state law. The Office of Labor Standards Enforcement may
20 impose penalties and take any and all appropriate action to enforce the requirements of such
21 provisions, including but not limited to those set forth in San Francisco Administrative Code Chapter
22 12R, to the extent permitted by state law.

23 (b) The Office shall be administered by the Labor Standards Enforcement Officer,
24 who shall be appointed by, and shall serve at the pleasure of, the Mayor. In appointing the
25 Labor Standards Enforcement Officer, the Mayor shall consider, among other relevant factors,

1 the individual's experience enforcing labor standards, including prevailing wage requirements,
2 and the diversity of San Francisco in the construction industry. The Labor Standards
3 Enforcement Officer shall coordinate his or her activities with federal and state labor
4 standards agencies.

5 (c) All City departments shall cooperate with the Labor Standards Enforcement
6 Officer and his or her designees. The Labor Standards Enforcement Officer shall have the
7 authority to subpoena the production of books, papers, records or other items relevant to
8 investigations under the jurisdiction of the Office of Labor Standards Enforcement.

9

10 Section 5. CEQA Findings.

11 The Board of Supervisors finds that the annual fees imposed under this ordinance
12 upon employers to defray the costs of implementing and enforcing the Minimum Wage
13 Ordinance are not a project as defined by the California Environmental Quality Act pursuant to
14 Public Resources Code Section 21080(b)(8)(A). The Board finds that the fees authorized by
15 San Francisco Administrative Code Sec. 12R.14, as enacted by this ordinance, are for the
16 purpose of meeting the operating expenses, including employee wage rates and fringe
17 benefits, of the Office of Labor Standard Enforcement or any successor office of the City and
18 County of San Francisco responsible for implementing and enforcing the Minimum Wage
19 Ordinance.

20

21

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

24

25 By: See file for signature

Dorji Roberts
Deputy City Attorney