

BOARD of SUPERVISORS



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M E M O R A N D U M

TO: Donna Levitt, Division Manager, Office of Labor Standards Enforcement
Micki Callahan, Director, Department of Human Resources
Trent Roher, Executive Director, Human Services Agency
Regina Dick-Endrizzi, Director, Small Business Commission
Greg Suhr, Chief, Police Department
Delene Wolf, Executive Director, Rent Board
Barbara Smith, Acting Executive Director, Housing Authority
Jaci Fong, Director, Office of the Contract Administration
Mohammed Nuru, Director, Public Works
John Rahaim, Director, Planning Department
Barbara A. Garcia, Director, Department of Public Health
John Updike, Director, Real Estate Division
Ed Reiskin, Executive Director, Municipal Transportation Agency
Deborah Raphael, Director, Department of the Environment
John L. Martin, Airport Director, Airport Department
Monique Moyer, Executive Director, Port Department
Harlan Kelly, Jr., Public Utilities Commission
Phil Ginsburg, General Manager, Recreation and Parks Department
Naomi Kelly, City Administrator, Office of the City Administrator
Ben Rosenfield, City Controller, Office of the Controller
Veronica Ng, Director, Contract Monitoring Division

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: October 6, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Farrell on September 29, 2015:

File No. 150974

Ordinance amending the Administrative Code to prescribe an operative date of 180 days after enactment for new ordinances that the Office of Labor Standards Enforcement (OLSE) implements or enforces, establish notice procedures for OLSE's issuance of rules and administrative guidance, and establish timelines delaying OLSE's enforcement of such rules and guidance.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

C:

Susan Gard, Department of Human Resources
Christine Fountain, Police Department
Andrea Agho, Housing Authority
Velma Navarro, Housing Authority
Linda Martin-Mason, Housing Authority
Cameron Langer, Office of the Contract Administration
Kofo Domingo, Office of the Contract Administration
Frank Lee, Public Works
Fuad Sweiss, Public Works
Greg Wagner, Department of Public Health
Janet Martinsen, Municipal Transportation Agency
Kate Breen, Municipal Transportation Agency
Dillon Auyoung, Municipal Transportation Agency
Guillermo Rodriguez, Department of the Environment
Monica Fish, Department of the Environment
Mei Ling Hui, Department of the Environment
Cathy Widener, Airport Department
Jean Caramatti, Airport Department
Elaine Forbes, Port Department
Amy Quesada, Port Department
Juliet Ellis, Public Utilities Commission
Donna Hood, Public Utilities Commission
Sarah Ballard, Recreation and Parks Department
Margaret McArthur, Recreation and Parks Department
Toddy Rydstrom, Office of the Controller
Rochelle Fretty, Contract Monitoring Division

[Administrative Code - Office of Labor Standards Enforcement Rules and Guidance]

Ordinance amending the Administrative Code to prescribe an operative date of 180 days after enactment for new ordinances that the Office of Labor Standards Enforcement (OLSE) implements or enforces, establish notice procedures for OLSE's issuance of rules and administrative guidance, and establish timelines delaying OLSE's enforcement of such rules and guidance.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The Administrative Code is hereby amended by revising Section 2A.23, to read as follows:

SEC. 2A.23. OFFICE OF LABOR STANDARDS ENFORCEMENT.

(a) General Powers and Duties. There is hereby created within the Department of Administrative Services an Office of Labor Standards Enforcement ("OLSE"). The ~~Office of Labor Standards Enforcement~~OLSE shall enforce the City's Minimum Wage Ordinance (Chapter 12R of the Administrative Code), Minimum Compensation Ordinance (Chapter 12P of the Administrative Code), Health Care Accountability Ordinance (Chapter 12Q of the Administrative Code), Fair Chance Ordinance (Chapter 12T of the Administrative Code and Article 49 of the Police Code), Sweatfree Contracting Ordinance (Chapter 12U of the Administrative Code), Personal Services Minimum Contractual Rate Ordinance (Chapter 12V of the Administrative Code).

1 Paid Sick Leave Ordinance (Chapter 12W of the Administrative Code), Family Friendly Workplace
2 Ordinance (Chapter 12Z of the Administrative Code), Health Care Security Ordinance (Chapter 14 of
3 the Administrative Code), formula retail employee rights ordinances (Articles 33F and 33G of the
4 Police Code), and Prevailing Wage Ordinances (Section 6.22(e) and Chapter 21C of the
5 Administrative Code), and shall carry out any additional duties and functions as assigned by
6 Charter or ordinance. The ~~Office of Labor Standards Enforcement~~ OLSE may enforce the
7 provisions of the California Labor Code to the extent permitted by State law. The ~~Office of~~
8 ~~Labor Standards Enforcement~~ OLSE may impose penalties and take any and all appropriate
9 action to enforce the requirements of such provisions, including but not limited to those set
10 forth in ~~San Francisco~~ Administrative Code Chapter 12R, to the extent permitted by State law.

11 (b) Labor Standards Enforcement Officer. The ~~Office~~ OLSE shall be administered by the
12 Labor Standards Enforcement Officer ("Officer"), who shall be appointed by, and shall serve
13 at the pleasure of, the Mayor. In appointing the ~~Labor Standards Enforcement~~ Officer, the Mayor
14 shall consider, among other relevant factors, the individual's experience enforcing labor
15 standards, including prevailing wage requirements, and the diversity of San Francisco in the
16 construction industry. The ~~Labor Standards Enforcement~~ Officer shall coordinate his or her
17 activities with federal and ~~S~~state labor standards agencies.

18 (c) Interagency Cooperation. All City departments shall cooperate with the ~~Labor~~
19 ~~Standards Enforcement~~ Officer and his or her designees.

20 (d) Subpoena Authority. The ~~Labor Standards Enforcement~~ Officer shall have the authority
21 to subpoena the production of books, papers, records, or other items relevant to investigations
22 under the jurisdiction of the ~~Office of Labor Standards Enforcement~~ OLSE.

23 (e) Operative Date for Initial Adoption of Ordinance. All new ordinances that the OLSE is
24 empowered to implement or enforce shall not become operative until 180 days after enactment, unless
25

1 the new ordinance specifies a different operative date. This subsection (e) shall not apply to
2 amendments to existing ordinances addressed in subsection (f)(1)(B) of this Section 2A.23.

3 (f) Procedures for OLSE Rules and/or Guidance Documents.

4 (1) Issuance of Rules and/or Guidance Documents.

5 (A) Initial Adoption of Ordinance.

6 (i) Except as stated in subsection (f)(1)(B), for all ordinances that the
7 OLSE is empowered to implement or enforce, the Officer shall, no later than 30 days after enactment,
8 issue a written notice stating whether the OLSE will issue implementing documents, in the form of rules
9 and/or administrative guidance, which guidance may include but is not limited to "Frequently Asked
10 Questions," setting forth the OLSE's interpretation of and/or guidance on the ordinance. The written
11 notice shall be posted on the OLSE's website. If the Officer determines that implementing documents
12 will be issued, the Officer shall have discretion to issue rules only, guidance only, or both types of
13 implementing documents.

14 (ii) If the Officer determines that implementing documents will be issued
15 for a new ordinance, the OLSE may not issue a Determination of Violation or impose penalties for a
16 violation of any provision of the ordinance whose meaning is interpreted through such implementing
17 document(s) until 60 days after the Officer issues the first type of such implementing document(s).
18 Prior to that time, the OLSE may issue only warnings and notices to correct for such provisions in the
19 ordinance. This 60-day delayed enforcement period shall apply only to the extent the interpretation in
20 the implementing document bears on the particular violation at issue.

21 (iii) If the Officer issues only one type of implementing document
22 pursuant to subsection (f)(1)(A)(ii) (i.e., rules only or guidance only), the Officer may at any time
23 thereafter issue the other type of implementing document, which shall be subject to the 30-day delayed
24 enforcement period described in subsection (f)(1)(B).

25 (B) Amendment of Existing Ordinance.

1 (i) For ordinances amending an existing ordinance that the OLSE is
2 empowered to implement or enforce, the Officer shall, no later than 30 days after enactment of the
3 amending ordinance, issue a written notice stating whether the amending ordinance requires the
4 issuance of new implementing documents and/or revisions to existing implementing documents (i.e.,
5 rules and/or guidance) applicable to the ordinance being amended. The written notice shall be posted
6 on the OLSE's website.

7 (ii) If the Officer determines that new implementing documents or
8 revisions to existing implementing documents will be issued because of the amending ordinance, the
9 OLSE may not issue a Determination of Violation or impose penalties for a violation of any provision
10 of the amending ordinance whose meaning is interpreted through such implementing document(s) or
11 revisions for 30 days after the Officer issues such document(s) or revisions. Prior to that time, the
12 OLSE may issue only warnings and notices to correct for such provisions in the amending ordinance.
13 This 30-day delayed enforcement period shall apply only to the extent the interpretation in the
14 implementing document bears on the particular violation at issue.

15 (iii) The 30-day delayed enforcement period in subsection (ii) shall not
16 apply to (1) new implementing documents or revisions to existing implementing documents that simply
17 restate a requirement or requirements contained in the text of the amending ordinance and do not
18 provide substantive or interpretive guidance thereon, and (2) revisions that correct typographical or
19 clerical errors only.

20 (C) Other Revisions of Rules or Guidance. The requirements of this subsection
21 (f) shall not apply when the Officer determines that the issuance of new implementing documents or
22 revisions to existing implementing documents are necessary for reasons other than those specified in
23 subsections (f)(1)(A) or (B).

24 (2) Notification and Presentation to Small Business Commission.
25

1 (A) The Officer shall provide the Small Business Commission with written notice
2 before issuing any implementing documents (i.e., rules or guidance) or revisions thereto pursuant to
3 subsection (f)(1).

4 (B) Upon request from the Small Business Commission, or its President or
5 Executive Director, the Officer shall provide an informational presentation at the next meeting of the
6 Small Business Commission following the notice sent pursuant to subsection (f)(2)(A) and consistent
7 with applicable open meetings laws, regarding any proposed implementing documents or revisions
8 thereto prior to expiration, respectively, of the 60-day period described in subsection (f)(1)(A)(ii), and
9 the 30-day period described in subsection (f)(1)(B)(ii). This subsection (f)(2)(B) shall not apply if the
10 Small Business Commission holds no meeting for more than 28 days following the sending of the notice
11 required pursuant to subsection (f)(2)(A).

12 (3) This subsection (f) shall not alter the power of the Board of Supervisors by
13 ordinance to prescribe different or additional requirements for ordinances that the OLSE is empowered
14 to implement or enforce, or to state that any or all provisions of subsection (f) shall not apply to an
15 ordinance.

16 (g) Subsection (f) shall apply only to ordinances enacted after the effective date of Ordinance
17 No. _____, the ordinance creating those subsections.

18 (h) For purposes of subsections (e) through (g), "enactment" of an ordinance occurs when the
19 Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance
20 within 10 days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

21 (i) Exceptions. Subsections (e) through (g) shall not apply to (1) voter approved ordinances,
22 (2) prevailing wage ordinances, and (3) ordinances amending the City's Minimum Wage Ordinance.

23
24 Section 2. Effective Date. This ordinance shall become effective 30 days after
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3
4 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
8 additions, and Board amendment deletions in accordance with the "Note" that appears under
9 the official title of the ordinance.

10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By:


14 FRANCESCA GESSNER
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Office of Labor Standards Enforcement Rules and Guidance]

Ordinance amending the Administrative Code to prescribe an operative date of 180 days after enactment for new ordinances that the Office of Labor Standards Enforcement (OLSE) implements or enforces, establish notice procedures for OLSE's issuance of rules and administrative guidance, and establish timelines delaying OLSE's enforcement of such rules and guidance.

Existing Law

Section 2A.23 of the Administrative Code sets forth the general powers and duties of the Office of Labor Standards Enforcement ("OLSE"). City law currently does not impose any requirements on the operative date for ordinances that the OLSE enforces or the OLSE's issuance of rules and regulations for such ordinances.

Amendments to Current Law

- **Operative Date:** The proposed legislation would provide that all new ordinances that the OLSE is empowered to implement or enforce shall not become operative until 180 days after enactment, unless the new ordinance specifies a different operative date. This 180-day rule would not apply to ordinances that amend existing ordinances that the OLSE is empowered to implement or enforce.
- **30-Day Notice for Rulemaking:**
 - 1) Within 30 days of enactment of a new ordinance that the OLSE is empowered to enforce (a "new ordinance"), the Labor Standards Enforcement Officer ("Officer") shall issue a written notice on OLSE's website stating whether the OLSE will issue rules or administrative guidance (*i.e.*, "implementing documents") interpreting the ordinance.
 - 2) Within 30 days of enactment of an ordinance amending an existing ordinance that the OLSE is empowered to enforce (an "amending ordinance"), the Officer shall issue a written notice on OLSE's website stating whether the amending ordinance requires the issuance of new implementing documents and/or revisions to existing implementing documents.
- **Delayed Enforcement Period:**
 - 1) With regard to new ordinances, for 60 days following the issuance of implementing documents the OLSE may not issue a determination of violation or

penalties for those provisions in the ordinance whose meaning is interpreted through such implementing documents.

- 2) With regard to amending ordinances, for 30 days following the issuance of implementing documents or revisions to existing implementing documents the OLSE may not issue a determination of violation or penalties for those provisions in the ordinance whose meaning is interpreted through such implementing documents.
 - 3) The 60-day and 30-day delayed enforcement periods shall apply only to the extent the interpretation in the implementing document bears on the particular violation at issue. For example, if an implementing document interprets how wages are to be calculated for an employee who receives commission pay, but the case at hand involves a salaried employee without commission and therefore is not the subject of the interpretation, the delayed enforcement period would not apply in that particular case.
- **Small Business Commission Notice and Hearing:** The proposed legislation would require the Officer to give the Small Business Commission written notice before issuing implementing documents or revisions thereto. Upon request from the Small Business Commission, the Officer shall provide an informational presentation to the Commission regarding proposed implementing documents or revisions thereto.
 - **Exceptions:** The proposed legislation would not apply to (1) voter-approved ordinances, (2) prevailing wage ordinances, and (3) ordinances amending the City's Minimum Wage Ordinance.

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