

1 [Minimum Compensation and Health Care Accountability Ordinances.]

2

3 **Ordinance amending the San Francisco Administrative Code by amending Sections**
4 **12P.5, 12Q.4, and 12Q.5 to give contracting departments the authority to conduct**
5 **audits of contractors with respect to the Minimum Compensation Ordinance and the**
6 **Health Care Accountability Ordinance.**

7 Note: Additions are *single-underline italics Times New Roman*;
8 deletions are *strikethrough italics Times New Roman*.
9 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

11 Section 1. The San Francisco Administrative Code is hereby amended by amending
12 Section 12P.5, 12Q.4 and 12Q.5, to read as follows:

13 Sec. SEC. 12P.5. CONTRACT REQUIREMENTS.

14 Every Contract or Contract Amendment entered into on or after the Effective
15 Date shall provide as follows:

16 (a) For each hour worked by a Covered Employee during each Pay Period
17 during the term of the Contract (as such term may be extended from time to time), Contractor
18 shall provide to such Covered Employee no less than the Minimum Compensation as required
19 in this Chapter.

20 (b) Failure to comply with the foregoing requirement shall constitute a
21 material breach by Contractor of the terms of the Contract. Such failure shall be determined
22 by the City in its sole discretion.

23 (c) If, within thirty (30) days after the Contractor receives written notice of
24 such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be
25 cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within

1 such period, or thereafter fails diligently to pursue such cure to completion, the City shall have
2 the right to pursue any rights or remedies available under the terms of the Contract or under
3 applicable law.

4 (d) The Contractor shall not discharge, reduce in compensation, or otherwise
5 discriminate against any Employee for complaining to the City with regard to the employer's
6 compliance or anticipated compliance with this Chapter, for opposing any practice proscribed
7 by this Chapter, for participating in proceedings related to this Chapter, or for seeking to
8 assert or enforce any rights under this Chapter by any lawful means.

9 (e) The Contractor represents and warrants that it is not an entity that was
10 set up, or is being used, for the purpose of evading the intent of this Chapter.

11 (f) The Contractor shall keep itself informed of the current Minimum
12 Compensation, and shall provide prompt written notice to all Covered Employees of annual
13 adjustments to the Minimum Compensation, as well as any written communications received
14 by the Contractor from the City, which communications are marked to indicate that they are to
15 be distributed to Covered Employees.

16 (g) The Contractor shall provide reports to the City in accordance with any
17 reporting standards promulgated by the Agency.

18 (h) The Contractor shall provide the City with access to pertinent records
19 after receiving a written request to do so and being provided at least five (5) business days to
20 respond.

21 (i) The Agency and the Contracting Department may conduct random audits of
22 Contractors. Random audits shall be (i) noticed in advance in writing; (ii) limited to
23 ascertaining whether Covered Employees are paid at least the minimum compensation
24 required by this Article; (iii) accomplished through an examination of pertinent records at a
25 mutually agreed upon time and location within ten (10) days of the written notice; and (iv)

1 limited to one audit per Contractor every two years for the duration of the Contract. Nothing in
2 this Section shall be deemed to interfere with the authority of the Agency to investigate any
3 report of an alleged breach of contract as provided in Section 12P.6.

4 (j) Any Contractor subject to the provisions of this Chapter shall promptly
5 notify the Agency of any subcontractors performing services covered by this Chapter and shall
6 certify to the Agency that it has notified the subcontractors of their obligations under this
7 Chapter.

8 SEC. 12Q.4. CONTRACTUAL OBLIGATIONS.

9 (a) Each Contracting Party that enters into a Contract, Subcontract, Lease,
10 or Sublease shall agree:

11 (1) To comply with the requirements of this Chapter, including the
12 requirement to choose and perform one of the Health Care Accountability Components set
13 forth in Section 120.3;

14 (2) To comply with regulations adopted by the Agency pursuant to this
15 Chapter;

16 (3) To provide information and reports to the City in accordance with any
17 reporting standards promulgated by the Agency in consultation with the Director of Health;

18 (4) To provide the City with access to pertinent records relating to the
19 number of employees employed and terms of medical coverage as allowed by law after
20 receiving a written request to do so and being provided at least five (5) business days to
21 respond;

22 (5) To cooperate with the Agency and any Contracting Department that conducts
23 an audit ~~it conducts audits~~;

1 (6) To include in every Contract, Subcontract, Lease, or Sublease subject to
2 this Chapter provisions requiring compliance with this Chapter, consistent with any directives
3 or standards adopted by the Agency;

4 (7) To notify the Agency promptly of any Subcontractors performing services
5 covered by this Chapter and certify to the Agency that it has notified the Subcontractors of
6 their obligations under this Chapter; and

7 (8) To represent and warrant that it is not an entity that was set up, or is
8 being used, for the purpose of evading the intent of this Chapter.

9 (b) A Contracting Party shall not discharge, reduce in compensation, or
10 otherwise discriminate against any Employee for notifying the City regarding the Contracting
11 Party's noncompliance or anticipated noncompliance with this Chapter, for opposing any
12 practice proscribed by this Chapter, for participating in proceedings related to this Chapter, or
13 for seeking to assert or enforce any rights under this Chapter by any lawful means.

14 SEC. 12Q.5. ADMINISTRATION AND ENFORCEMENT.

15 (a) The Agency, in consultation with the Department of Public Health, shall
16 promulgate regulations for the interpretation and administration of this Chapter, which
17 regulations shall be adopted only after public hearing.

18 (b) The Agency, in consultation with the City Attorney, shall develop
19 contractual provisions for use by Contracting Departments designed to enable the City to
20 pursue the remedies set forth in this Section against every person or entity required to comply
21 with this Chapter.

22 (c) The Agency and the Contracting Department, in consultation with the
23 Department of Public Health, may conduct audits of Contracting Parties, although such audits
24 shall be conducted only with at least 10 days' advance written notice to the Contracting Party
25 and after making good faith efforts for a mutually agreed upon time and location.

1 (d) The Agency and the Department of Public Health shall provide an annual
2 joint report to the Board of Supervisors on compliance with this Chapter. Such report shall
3 include cumulative information regarding the number of waivers granted pursuant to this
4 Chapter.

5 (e) A Covered Employee may report to the Agency in writing any alleged
6 violation of this Chapter by a Contracting Party or other person or entity subject to this
7 Chapter. The Agency shall investigate any such report. If the Agency determines that any
8 person or entity has violated this Chapter, the Agency shall notify the Contracting Department
9 of its findings. In order to ensure compliance with this Chapter and to enhance the
10 monitoring activities of the Agency, the City encourages reporting by Covered Employees
11 pursuant to this Subsection. The Agency shall keep confidential the Covered Employee's
12 name and other identifying information, to the maximum extent permitted by applicable law.

13 (f) In addition to any other rights or remedies available to the City under the
14 terms of any agreement of a Contracting Party or under applicable law, the City shall have the
15 following rights:

16 (1) The right to charge the Contracting Party for any amounts that the
17 Contracting Party should have paid to the City for hours worked by Covered Employees
18 pursuant to Section 12Q.3(a)(2) and (b), together with interest on such amount from the date
19 payment was due at the maximum rate then permitted by law;

20 (2) The right to assess liquidated damages of \$50 a day for each Covered
21 Employee each day that the Contracting Party fails to pay to the City the amounts required by
22 Subsection 12Q.3(a)(2) and (b);

23 (3) The right to set off all or any portion of the amount that a Contracting
24 Party is required to pay to the City pursuant to preceding Subsections (g)(1) and (2) against
25 amounts due to a Contracting Party;

1 (4) The right to terminate the Contract or Lease in whole or in part;

2 (5) The right to bar a Contracting Party from entering into future Contracts or
3 Leases with the City for three (3) years.

4 (g) Each Contractor shall be responsible for its Subcontractors with respect
5 to compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the
6 remedies set forth in this Section against the Contractor based on the Subcontractor's failure
7 to comply, provided that the Contracting Department has first provided the Contractor with
8 notice and an opportunity to obtain a cure of the violation.

9 (h) Each Tenant shall be responsible for each Subtenant, Contractor and
10 Subcontractor performing services on property covered by the Tenant's Lease, with respect to
11 compliance with this Chapter. If any Subtenant, Contractor or Subcontractor fails to comply,
12 the City may pursue the remedies set forth in this Section against the Tenant based on the
13 Subtenant's, Contractor's or Subcontractor's failure to comply, provided that the Contracting
14 Department has first provided the Tenant with notice and an opportunity to obtain a cure of
15 the violation.

16 (i) Each of the rights set forth in this Section 12Q.5 shall be exercisable
17 individually or in combination with any other rights or remedies available to the City. Any
18 amounts realized by the City pursuant to this Section shall be used first to cover the costs of
19 enforcing this Chapter and thereafter appropriated for the use of the Department of Public
20 Health.

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

23 By: _____
24 PAULA JESSON
25 Deputy City Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25