

File No. 110594

Committee Item No. 1

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee

Date: July 20, 2011

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Resolution                                   |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget & Legislative Analyst Report          |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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#### OTHER

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Completed by: Victor Young

Date: July 15, 2011

Completed by: Victor Young

Date: \_\_\_\_\_

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

1 [Administrative Code - Enforcement of Minimum Wage Laws by the Office of Labor  
2 Standards]

3 **Ordinance amending the San Francisco Administrative Code Sections 12R.5, 12R.7,**  
4 **12R.16, 12R.17, 12R.18, and 12R.25 to: 1) enhance Office of Labor Standards**  
5 **enforcement of the City's minimum wage laws by clarifying agency access to places of**  
6 **employment; 2) require enforcement actions to be completed within one year, raising**  
7 **the penalty for employer retaliation; 3) impose a penalty for failure to post minimum**  
8 **wage rates; 4) provide for posting notice to employees upon commencement of an**  
9 **investigation and public posting of employer non-compliance with penalties; 5) provide**  
10 **authority to immediately issue an administrative citation upon sufficient evidence of**  
11 **certain violations; and 6) require industry-focused outreach materials for employees.**

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

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

16 Section 1. The San Francisco Administrative Code is hereby amended by amending  
17 Section 12R.5 to read as follows:

18 **SEC. 12R.5. NOTICE, POSTING AND PAYROLL RECORDS.**

19 (a) By December 1 of each year, the Agency shall publish and make available to  
20 Employers a bulletin announcing the adjusted Minimum Wage rate for the upcoming year,  
21 which shall take effect on January 1. In conjunction with this bulletin, the Agency shall by  
22 December 1 of each year publish and make available to Employers, in all languages spoken  
23 by more than five percent of the San Francisco work force, a notice suitable for posting by  
24 Employers in the workplace informing Employees of the current Minimum Wage rate and of  
25 their rights under this Chapter.

1 (b) Every Employer shall post in a conspicuous place at any workplace or job site  
2 where any Employee works the notice published each year by the Agency informing  
3 Employees of the current Minimum Wage rate and of their rights under this Chapter. Every  
4 Employer shall post such notices in English, Spanish, Chinese and any other language  
5 spoken by at least five percent of the Employees at the workplace or job site. Every Employer  
6 shall also provide each Employee at the time of hire the Employer's name, address and  
7 telephone number in writing.

8 (c) Employers shall retain payroll records pertaining to Employees for a period of four  
9 years, and shall allow the Agency access to such records, with appropriate notice and ~~at a~~  
10 ~~mutually agreeable time~~ during business hours, to monitor compliance with the requirements of  
11 this Chapter. Where an Employer does not maintain or retain adequate records documenting  
12 wages paid or does not allow the Agency reasonable access to such records, it shall be  
13 presumed that the Employer paid no more than the applicable federal or state minimum wage,  
14 absent clear and convincing evidence otherwise.

15 (d) The Director of the Agency or his or her designee shall have access to all places of labor  
16 subject to this ordinance upon appropriate notice and during business hours to inspect books and  
17 records, interview employees and investigate such matters necessary or appropriate to determine  
18 whether an Employer has violated any provisions of this ordinance. In the event an Employer refuses  
19 to permit Agency access, the Agency may exercise subpoena power under Administrative Code Section  
20 2A.23 to obtain access to books and records and may take any other investigative action permitted by  
21 law.

22  
23 Section 2. The San Francisco Administrative Code is hereby amended by amending  
24 Section 12R.7 to read as follows:

25 **SEC 12R.7. IMPLEMENTATION AND ENFORCEMENT.**

1           **(a) Implementation.** The Agency shall be authorized to coordinate implementation  
2 and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such  
3 purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect  
4 of law and may be relied on by Employers, Employees and other parties to determine their  
5 rights and responsibilities under this Chapter. Any guidelines or rules may establish  
6 procedures for ensuring fair, efficient and cost-effective implementation of this Chapter,  
7 including supplementary procedures for helping to inform Employees of their rights under this  
8 Chapter, for monitoring Employer compliance with this Chapter, and for providing  
9 administrative hearings to determine whether an Employer or other person has violated the  
10 requirements of this Chapter. The Agency shall make every effort to resolve complaints in a timely  
11 manner and shall have a policy that the Agency shall take no more than one year to settle, complete an  
12 administrative hearing under Section 12R.7(b), or initiate a civil action under Section 12R.7(c). The  
13 failure of the Agency to resolve a complaint within one year shall not be grounds for closure or  
14 dismissal of the complaint.

15           **(b) Administrative Enforcement.** The Agency is authorized to take appropriate steps  
16 to enforce this Chapter. The Agency may investigate any possible violations of this Chapter by  
17 an Employer or other person. Where the Agency has reason to believe that a violation has  
18 occurred, it may order any appropriate temporary or interim relief to mitigate the violation or  
19 maintain the status quo pending completion of a full investigation or hearing. Where the  
20 Agency, after a hearing that affords a suspected violator due process, determines that a  
21 violation has occurred, it may order any appropriate relief including, but not limited to,  
22 reinstatement, the payment of any back wages unlawfully withheld, and the payment of an  
23 additional sum as an administrative penalty in the amount of \$50 to each Employee or person  
24 whose rights under this Chapter were violated for each day ~~or portion thereof~~ that the violation  
25 occurred or continued. A violation for unlawfully withholding wages shall be deemed to

1 continue from the date immediately following the date that the wages were due and payable  
2 as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor  
3 Code, to the date immediately preceding the date the wages are paid in full. Where prompt  
4 compliance is not forthcoming, the Agency may take any appropriate enforcement action to  
5 secure compliance, including initiating a civil action pursuant to Section 7(c) of this Chapter  
6 and/or, except where prohibited by state or federal law, requesting that City agencies or  
7 departments revoke or suspend any registration certificates, permits or licenses held or  
8 requested by the Employer or person until such time as the violation is remedied. In order to  
9 compensate the City for the costs of investigating and remedying the violation, the Agency  
10 may also order the violating Employer or person to pay to the City a sum of not more than \$50  
11 for each day ~~or portion thereof~~ and for each Employee or person as to whom the violation  
12 occurred or continued. Such funds shall be allocated to the Agency and shall be used to  
13 offset the costs of implementing and enforcing this Chapter. The amounts of all sums and  
14 payments authorized or required under this Chapter shall be updated annually for inflation,  
15 beginning January 1, 2005, using the inflation rate and procedures set forth in Section 4(b) of  
16 this Chapter. An Employee or other person may report to the Agency in writing any suspected  
17 violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection  
18 by keeping confidential, to the maximum extent permitted by applicable laws, the name and  
19 other identifying information of the Employee or person reporting the violation. Provided,  
20 however, that with the authorization of such person, the Agency may disclose his or her name  
21 and identifying information as necessary to enforce this Chapter or for other appropriate  
22 purposes. In order to further encourage reporting by Employees, if the Agency notifies an Employer  
23 that the Agency is investigating a complaint, the Agency shall require the Employer to post or  
24 otherwise notify its Employees that the Agency is conducting an investigation, using a form provided by  
25 the Agency.

1           **(c) Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a  
2 violation of this Chapter, any entity a member of which is aggrieved by a violation of this  
3 Chapter, or any other person or entity acting on behalf of the public as provided for under  
4 applicable state law, may bring a civil action in a court of competent jurisdiction against the  
5 Employer or other person violating this Chapter and, upon prevailing, shall be entitled to such  
6 legal or equitable relief as may be appropriate to remedy the violation including, without  
7 limitation, the payment of any back wages unlawfully withheld, the payment of an additional  
8 sum as liquidated damages in the amount of \$50 to each Employee or person whose rights  
9 under this Chapter were violated for each day ~~or portion thereof~~ that the violation occurred or  
10 continued, reinstatement in employment and/or injunctive relief, and shall be awarded  
11 reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing  
12 this Chapter on behalf of the public as provided for under applicable state law shall, upon  
13 prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable  
14 attorneys' fees and costs.

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

21           **(e) Posting Notice of Violation.** *If an Employer fails to comply with a settlement agreement*  
22 *with the Agency, a final determination by an administrative hearing officer issued after hearing under*  
23 *Section 12R.7(b), an administrative citation issued under Section 12R.19, a decision made in an*  
24 *administrative appeal brought under Section 12R.21, or judgment issued by the Superior Court, and the*  
25 *Employer has not filed an appeal from the administrative hearing decision, administrative citation,*

administrative appeal decision, or judgment, or the appeal is final, the Agency may require the Employer to post public notice of the Employer's failure to comply in a form determined by the Agency.

Section 3. The San Francisco Administrative Code is hereby amended by amending Sections 12R.16, 12R.17 and 12R.18 to read as follows:

**SEC 12R.16. ADMINISTRATIVE PENALTIES AND CITATIONS.**

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

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

<b>VIOLATION</b>	<b>PENALTY AMOUNT</b>
<b>Failure to maintain payroll records or to retain payroll records for four years — Administrative Code Section 12R.5(c)</b>	<b>\$500.00</b>
<b>Failure to allow the Office of Labor Standards Enforcement to inspect payroll records — Administrative Code Section 12R.5(c)</b>	<b>\$500.00</b>
<b>Retaliation for exercising rights under Minimum Wage Ordinance — Administrative Code [Section] 12R.6 <i>The penalty for retaliation is \$1000.00 per employee.</i></b>	<b><del>\$500.00</del> <u>1,000.00</u></b>
<b><u>Failure to post notice of Minimum Wage rate – Administrative Code Section 12R.5(b)</u></b>	<b><u>\$500.00</u></b>

1       The penalty amounts shall be increased cumulatively by fifty percent (50%) for each  
2 subsequent violation of the same provision by the same employer or person within a three (3)  
3 year period. The maximum penalty amount that may be imposed by administrative citation in  
4 a calendar year for each type of violation listed above shall be \$5,000 or \$10,000 if a citation for  
5 retaliation is issued. In addition to the penalty amounts listed above, the Office of Labor  
6 Standards Enforcement may assess enforcement costs to cover the reasonable costs  
7 incurred in enforcing the administrative penalty, including reasonable attorneys' fees.  
8 Enforcement costs shall not count toward the \$5,000 annual maximum.

## 9 10 **SEC 12.17. VIOLATIONS**

### 11 **(a) Separate and Continuing Violations; Penalties Paid Do Not Cure Violations.**

12 Each and every day that a violation exists constitutes a separate and distinct offense. Each  
13 section violated constitutes a separate violation for any day at issue. If the person or persons  
14 responsible for a violation fail to correct the violation within the time period specified on the  
15 citation and required under Section 12R.18, the Director of the Office of Labor Standards  
16 Enforcement may issue subsequent administrative citations for the uncorrected violation(s)  
17 without issuing a new notice as otherwise required by Section 12R.18(a). Payment of the  
18 penalty shall not excuse the failure to correct the violation nor shall it bar any further  
19 enforcement action by the City. If penalties and costs are the subject of administrative appeal  
20 or judicial review, then the accrual of such penalties and costs shall be stayed until the  
21 determination of such appeal or review is final.

22 **(b) Payments to City; Due Date; Late Payment Penalty.** All penalties assessed  
23 under Section 12R.16 shall be payable to the City and County of San Francisco.  
24 Administrative penalties and costs assessed by means of an administrative citation shall be  
25 due within thirty (30) days from the date of the citation. The failure of any person to pay an

1 administrative penalty and costs within that time shall result in the assessment of an additional  
2 late fee. The amount of the late fee shall be ten (10) percent of the total amount of the  
3 administrative penalty assessed for each month the penalty and any already accrued late  
4 payment penalty remains unpaid.

5 **(c) Collection of Penalties; Special Assessments.** The failure of any person to pay  
6 a penalty assessed by administrative citation under Section 12R.16 within the time specified  
7 on the citation constitutes a debt to the City. The City may file a civil action, create and  
8 impose liens as set forth below, or pursue any other legal remedy to collect such money.

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

13 (e) Payment to City. The Labor Standards Enforcement Officer has the authority to require  
14 that payment of back wages found to be due and owing to employees be paid directly to the City and  
15 County of San Francisco for disbursement to the employees. The Controller shall hold the back wages  
16 in escrow for workers whom the Labor Standards Enforcement Officer, despite his/her best efforts,  
17 including any required public notice, cannot locate; funds so held for three years or more shall be  
18 dedicated to the enforcement of the Minimum Wage Ordinance.

## 20 **SEC 12R.18. ADMINISTRATIVE CITATION; NOTICE OF VIOLATION.**

21 (a) Issuance of Citation. The Director or his or her designee has the authority to issue an  
22 administrative citation for any violation of Section 12R.6. The administrative citation shall be issued  
23 on a form prescribed by the Office of Labor Standards Enforcement.

24 (b) Notice and Opportunity to Cure. In order to facilitate compliance, the Director of  
25 the Office of Labor Standards Enforcement ("Director") or his or her designee may shall notify

1 any person in violation of the Code provisions identified in Section 12R.16(b) of such violation  
2 prior to the issuance of an administrative citation. Regardless of the manner of service of the  
3 notice under Section 12R.19, the Director or his or her designee may post the notice of  
4 violation by affixing the notice to a surface in a conspicuous place on property that is (1) the  
5 person's principal place of business in the City, or (2) if the person's principal place of  
6 business is outside the City, the fixed location within the City from or at which the person  
7 conducts business in the City, or (3) if the person does not regularly conduct business from a  
8 fixed location in the City, one of the following: (i) the location where the person maintains  
9 payroll records if the notice of violation is for violation of Section 12R.5(c), or (ii) the jobsite or  
10 other primary location where the person's employees perform services in the City at the time  
11 the notice is posted. The notice of violation shall specify the action required to correct or  
12 otherwise remedy the violation(s). The person or persons responsible for the violation shall  
13 be allowed not less than ten (10) days from the date of the notice of violation to establish that  
14 no violation occurred or such person or persons are not responsible for the violation, or  
15 correct or otherwise remedy the violation; provided, however, that the Director may, in his or  
16 her discretion, assign a longer period, not to exceed twenty-one (21) days, within which to  
17 correct or otherwise remedy each violation, or establish that no violation occurred or such  
18 person or persons are not responsible for the violation. The Director may consider the cost of  
19 correction and the time needed to obtain information, documents, data and records for  
20 correction in assigning a specific period of time within which to correct or otherwise remedy  
21 each violation, or obtain and submit evidence that no violation occurred or such person or  
22 persons are not responsible for the violation.

23 ~~(b) Issuance of Citation. If the person or persons responsible for the violation fail to comply~~  
24 ~~with any portion of a notice of violation within the time provided, the Director may issue an~~  
25

1 ~~administrative citation to the violator. The administrative citation shall be issued on a form prescribed~~  
2 ~~by the Office of Labor Standards Enforcement.~~

3  
4 Section 4. The San Francisco Administrative Code is hereby amended by amending  
5 Section 12R.25 to read as follows:

6 **SEC 12R.25. OUTREACH.**

7 The Office of Labor Standards Enforcement shall establish a community-based  
8 outreach program to conduct education and outreach to employees. In partnership with  
9 organizations involved in the community-based outreach program, the Office of Labor Standards shall  
10 create outreach materials that are designed for workers in particular industries.

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

13 By:

14   
LINDA M. ROSS  
Deputy City Attorney

FILE NO.

## **LEGISLATIVE DIGEST**

[Administrative Code – Enforcement of Minimum Wage Laws by Office of Labor Standards]

**Ordinance amending San Francisco Administrative Code Sections 12R.5, 12R.7, 12R.16, 12R.17, 12R.18 and 12R.25 to (1) enhance Office of Labor Standards enforcement of the City's minimum wage laws by clarifying agency access to places of employment; (2) require enforcement actions to be completed within one year, raising the penalty for employer retaliation; (3) impose a penalty for failure to post minimum wage rates; (4) provide for posting notice to employees upon commencement of an investigation and public posting of employer noncompliance with penalties; (5) provide authority to immediately issue an administrative citation upon sufficient evidence of certain violations; and (6) require industry-focused outreach materials for employees.**

### **Existing Law**

Administrative Code Section 12R provides for enforcement of the City's minimum wage laws by the City's Office of Labor Standards.

### **Amendments to Current Law**

The proposed amendments would add additional penalties for violation of the minimum wage laws and would grant the the Office of Labor Standards ("Agency") additional enforcement powers as follows:

Under current Section 12R.5(c), the Agency has the authority to inspect payroll records with appropriate notice and at a mutually agreeable time. Proposed new Section 12R.5(d) adds investigative authority by providing that the Agency shall have access to all places of labor upon appropriate notice and during business hours to inspect books and records, interview employees and investigate such matters as necessary or appropriate to determine if a violation has occurred. The new section also clarifies that the Agency has subpoena power under Administrative Code Section 2A.23 and may take any other investigative action permitted by law.

The proposed amendment to Section 12R.7(a) requires the Agency to make every effort to resolve complaints in a timely manner and take no more than one year to settle, complete an administrative hearing or initiate a civil action, but failure to resolve a complaint within one year is not grounds for closure or dismissal.

The proposed amendment to Section 12R.7(b) eliminates language concerning penalties that has caused some confusion. The proposed amendment provides that a violator would pay the City a sum of not more than \$50 for each day there is a violation, and eliminates the language "or portion thereof." No substantive change is anticipated.

FILE NO.

The proposed amendment to Section 12R.7(b), provides that if the Agency notifies an Employer that the Agency is investigating a complaint, the Agency shall require the Employer to post or otherwise notify its employees using a form provided by the Agency.

The proposed amendment to Section 12R.7 adds a new subsection (e) which permits the Agency to require an Employer to post public notice, using a form provided by the Agency, if the Employer has failed to comply with a settlement agreement or adjudication of violation.

The proposed amendment to Section 12R.16 increases the penalty from \$500 to \$1000 for retaliation for exercising rights under the minimum wage ordinance, and adds a \$500 penalty for failure to post notice of the minimum wage rate.

The proposed amendment to Section 12R.17 adds a new subsection (e) which provides that the Agency has the authority to require payment of back wages to the City for disbursement to employees, that the Controller holds the back wages in escrow, and that if the employee cannot be found, after three years and any required public notice, the back wages may be used by the City for the purpose of enforcing the minimum wage laws.

The proposed amendment to Section 12R.18 gives the Agency the authority to issue an administrative citation for any violation of Section 12R.6 without going through the notice and opportunity to cure procedure. The Agency, however, may use the notice and opportunity to cure procedure if it decides that procedure will facilitate compliance.

The proposed amendment to Section 12R.25 provides that the Agency shall create outreach materials that are designed for workers in particular industries in partnership with organizations involved in the community-based outreach program.

#### Background Information

The Office of Labor Standards has the authority to enforce the City's minimum wage laws. The proposed amendments add additional penalties for violation of those laws and provide enhanced enforcement powers to the OLSE.



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

June 27, 2011

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

**Re: File No. 110594 [Administrative Code - Enforcement of Minimum Wage Laws by the Office of Labor Standards]**

Small Business Commission Recommendation: **Approval**

Dear Ms. Calvillo:

On June 13, 2011, the Small Business Commission (SBC) voted unanimously to recommend that the Board of Supervisors approve BOS File No. 110594.

The SBC finds that this ordinance will provide improved tools that will help facilitate enforcement of wage theft violations. The SBC also supports provisions in the ordinance that will increase worker protections against retaliation.

The Commission thanks Legislative Aide Hillary Ronen and Donna Levitt of the Office of Labor Standards for their informative presentations to the Commission.

Sincerely,

Regina Dick-Endrizzi  
Director, Office of Small Business

Cc: Supervisors Campos, Avalos, Chiu, Kim, Mar, Mirkarimi  
Jason Elliott, Mayor's Office  
Donna Levitt, Office of Labor Standards Enforcement