

File No. 110594

Committee Item No. 1

Board Item No. 15

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee

Date: July 27, 2011

Board of Supervisors Meeting

Date 8/2/11

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Completed by: Victor Young

Date: July 22, 2011

Completed by: Victor Young

Date: 7-28-11

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FILE NO. 110594

ORDINANCE NO.

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

Ordinance amending San Francisco Administrative Code Sections 12R.5, 12R.7,
12R.16, 12R.17, 12R.18 and 12R.25 to (1) enhance the Office of Labor Standards
Enforcement's enforcement of the City's ~~m~~Minimum wWage laws Ordinance by
clarifying agency access to places of employment; (2) require a policy to resolve
complaints or initiate enforcement actions ~~to be completed~~ within one year.; (3)
~~raising~~ the penalty for employer retaliation; (3)(4) impose a penalty for failure to post
minimum wage rates; (4)(5) provide for posting notice to employees upon
commencement of an investigation and public posting of employer noncompliance,
and impose with penalties for violation of these posting requirements; (5)(6) impose a
penalty for failure to provide employer's name, address, and telephone number to
employees; (7) allow for back wages held in escrow for an employee for three years or
more to be used to enforce the Minimum Wage Ordinance or other laws enforced by
the Office of Labor Standards Enforcement if the Office of Labor Standards
Enforcement cannot locate the employee; (8) provide authority to immediately issue an
administrative citation upon sufficient evidence of certain violations; and (6)(9) require
industry-focused outreach materials for employees.

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

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

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

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

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

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

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

23 (d) The Director of the Agency or his or her designee shall have access to all places of labor
24 subject to this ordinance upon appropriate notice and during business hours to inspect books and
5 records, interview employees and investigate such matters necessary or appropriate to determine

1 ~~whether an Employer has violated any provisions of this ordinance.~~ In the event an Employer
2 refuses to permit Agency access, the Agency may exercise subpoena power under
3 Administrative Code Section 2A.23 to obtain access to books and records and may take any
4 other investigative action permitted by law.

5 (e) The Agency shall be authorized under Section 12R.7 to develop guidelines or rules
6 to govern Agency investigative activities, including but not limited to legal action to be taken in
7 the event of employer noncompliance or interference with Agency investigative actions.

8
9 Section 2. The San Francisco Administrative Code is hereby amended by amending
10 Section 12R.7 to read as follows:

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

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

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

1 beginning January 1, 2005, using the inflation rate and procedures set forth in Section 4(b) of
2 this Chapter. An Employee or other person may report to the Agency in writing any suspected
3 violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection
4 by keeping confidential, to the maximum extent permitted by applicable laws, the name and
5 other identifying information of the Employee or person reporting the violation. Provided,
6 however, that with the authorization of such person, the Agency may disclose his or her name
7 and identifying information as necessary to enforce this Chapter or for other appropriate
8 purposes. In order to further encourage reporting by Employees, if the Agency notifies an Employer
9 that the Agency is investigating a complaint, the Agency shall require the Employer to post or
10 otherwise notify its Employees that the Agency is conducting an investigation, using a form provided by
11 the Agency.

12 **(c) Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a
13 violation of this Chapter, any entity a member of which is aggrieved by a violation of this
14 Chapter, or any other person or entity acting on behalf of the public as provided for under
15 applicable state law, may bring a civil action in a court of competent jurisdiction against the
16 Employer or other person violating this Chapter and, upon prevailing, shall be entitled to such
17 legal or equitable relief as may be appropriate to remedy the violation including, without
18 limitation, the payment of any back wages unlawfully withheld, the payment of an additional
19 sum as liquidated damages in the amount of \$50 to each Employee or person whose rights
20 under this Chapter were violated for each day ~~or portion thereof~~ that the violation occurred or
21 continued, reinstatement in employment and/or injunctive relief, and shall be awarded
22 reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing
23 this Chapter on behalf of the public as provided for under applicable state law shall, upon
24 prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable
25 attorneys' fees and costs. Nothing in this Chapter shall be interpreted as restricting.

1 precluding, or otherwise limiting a separate or concurrent criminal prosecution under the
2 Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or
3 civil enforcement action taken pursuant to this Chapter.

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

10 **(e) Posting Notice of Violation.** If an Employer fails to comply with a settlement agreement
11 with the Agency, a final determination by the Agency after an administrative hearing officer issues a
12 decision after a hearing under Section 12R.7(b), an administrative citation issued under Section
13 12R.19, a decision made in an administrative appeal brought under Section 12R.21, or judgment issued
14 by the Superior Court, and the Employer has not filed an appeal from the administrative hearing
15 decision, administrative citation, administrative appeal decision, or judgment, or the appeal is final,
16 the Agency may require the Employer to post public notice of the Employer's failure to comply in a
17 form determined by the Agency.

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

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

22 **(a) Administrative Penalties; Citations.** An administrative penalty may be assessed
23 for a violation of the provisions of this Chapter as specified below. The penalty may be
24 assessed by means of an administrative citation issued by the Director of the Office of Labor
5 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:

VIOLATION	PENALTY AMOUNT
Failure to maintain payroll records or to retain payroll records for four years — Administrative Code Section 12R.5(c)	\$500.00
Failure to allow the Office of Labor Standards Enforcement to inspect payroll records — Administrative Code Section 12R.5(c)	\$500.00
Retaliation for exercising rights under Minimum Wage Ordinance — Administrative Code [Section] 12R.6 <i>The penalty for retaliation is \$1000.00 per employee.</i>	\$500.00 <u>\$1,000.00</u>
<u>Failure to post notice of Minimum Wage rate — Administrative Code Section 12R.5(b)</u> <u>Failure to provide notice of investigation to employees — Administrative Code Section 12R.7(b)</u> <u>Failure to post notice of violation to public — Administrative Code Section 12R.7(e)</u> <u>Failure to provide employer's name, address, and telephone number in writing — Administrative Code Section 12R.5(b)</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

1 a calendar year for each type of violation listed above shall be \$5,000 or \$10,000 if a citation for
2 retaliation is issued. In addition to the penalty amounts listed above, the Office of Labor
3 Standards Enforcement may assess enforcement costs to cover the reasonable costs
4 incurred in enforcing the administrative penalty, including reasonable attorneys' fees.
5 Enforcement costs shall not count toward the \$5,000 annual maximum.

7 **SEC 12R.17. VIOLATIONS**

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

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

19 **(b) Payments to City; Due Date; Late Payment Penalty.** All penalties assessed
20 under Section 12R.16 shall be payable to the City and County of San Francisco.
21 Administrative penalties and costs assessed by means of an administrative citation shall be
22 due within thirty (30) days from the date of the citation. The failure of any person to pay an
23 administrative penalty and costs within that time shall result in the assessment of an additional
24 late fee. The amount of the late fee shall be ten (10) percent of the total amount of the

1 administrative penalty assessed for each month the penalty and any already accrued late
2 payment penalty remains unpaid.

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

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

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

18 19 **SEC 12R.18. ADMINISTRATIVE CITATION; NOTICE OF VIOLATION.**

20 (a) Issuance of Citation. The Director or his or her designee has the authority to issue an
21 administrative citation for any violation of this Chapter that is identified in Section 12R.16(b). The
22 administrative citation shall be issued on a form prescribed by the Office of Labor Standards
23 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). At the discretion of the Director or his or her designee,
13 ~~t~~The person or persons responsible for the violation shall may be allowed not less than ten
14 (10) days from the date of the notice of violation to establish that no violation occurred or such
15 person or persons are not responsible for the violation, or correct or otherwise remedy the
16 violation; provided, however, that the Director may, in his or her discretion, assign a longer
17 period, not to exceed twenty-one (21) days, within which to correct or otherwise remedy each
18 violation, or establish that no violation occurred or such person or persons are not responsible
19 for the violation. The Director may consider the cost of correction and the time needed to
20 obtain information, documents, data and records for correction in assigning a specific period
21 of time within which to correct or otherwise remedy each violation, or obtain and submit
22 evidence that no violation occurred or such person or persons are not responsible for the
23 violation.

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

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

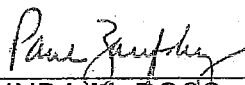
3
4 Section 4. The San Francisco Administrative Code is hereby amended by amending
5 Section 12R.25 to read as follows:

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
12 Section 5. Effective Date. This ordinance shall become effective 30 days from the
13 date of passage.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: 
18 for LINDA M. ROSS
19 Deputy City Attorney
20
21
22
23
24
25

LEGISLATIVE DIGEST

(including amendments made at the July 20, 2011 meeting
of the Budget & Finance Subcommittee)

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

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's enforcement of the City's Minimum Wage Ordinance by clarifying agency access to places of employment; (2) require a policy to resolve complaints or initiate enforcement actions within one year; (3) raise the penalty for employer retaliation; (4) impose a penalty for failure to post minimum wage rates; (5) provide for posting notice to employees upon commencement of an investigation and public posting of employer noncompliance, and impose penalties for violation of these posting requirements; (6) impose a penalty for failure to provide employer's name, address, and telephone number to employees; (7) allow for back wages held in escrow for an employee for three years or more to be used to enforce the Minimum Wage Ordinance or other laws enforced by the Office of Labor Standards Enforcement if the Office of Labor Standards Enforcement cannot locate the employee; (8) provide authority to immediately issue an administrative citation upon sufficient evidence of certain violations; and (9) require industry-focused outreach materials for employees.

Existing Law

Administrative Code Chapter 12R, the City's Minimum Wage Ordinance (the "Ordinance"), includes provisions for enforcement by the City's Office of Labor Standards Enforcement (the "Agency").

Amendments to Current Law

The proposed amendments would add additional penalties for violation of the Ordinance and would grant the Agency additional enforcement powers, as follows:

Provisions Concerning Violations and Penalties

- The proposed amendment to Section 12R.16(b) increases the penalty from \$500 to \$1000 for retaliation for exercising rights under the Ordinance.
- The proposed amendment to Section 12R.16(b) adds a \$500 penalty for failure to post notice of the minimum wage rate.

- The proposed amendment to Section 12R.16(b) adds a \$500 penalty for failure to provide employer's name, address, and telephone number in writing to employees.
- The proposed amendment to Section 12R.7(b) requires employers to post or otherwise notify employees in writing, using a form provided by the Agency, that the Agency is investigating a complaint. The proposed amendment to Section 12R.16(b) provides a \$500 penalty for violating this requirement.
- Proposed new Section 12R.7(e) 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(b) provides a \$500 penalty for violating such a requirement.
- 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.

Other Provisions

- 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 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. Proposed new Section 12R.5(e) authorizes the Agency to develop guidelines or rules to govern its investigative activities, including legal action to be taken if there is noncompliance or interference with an Agency investigation.
- 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, request an administrative hearing, or initiate a civil action. But failure to meet these timelines is not grounds for closure or dismissal of the complaint.
- Proposed new Section 12R.17(e) 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 Ordinance or other laws enforced by the Agency.

- The proposed amendments to Section 12R.18 give the Agency the authority to issue an administrative citation for any violation of provisions referenced in Section 12R.16(b) without going through the notice-and-opportunity-to-cure procedure. But the Agency may use the notice-and-opportunity-to-cure procedure if it decides that that procedure will facilitate compliance.
- The proposed amendment to Section 12R.25 provides that the Agency, in partnership with organizations involved in the community-based outreach program, shall create outreach materials that are designed for workers in particular industries.



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