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Completed by: Linda Wong
Date 7/15/13

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.
Amended in Committee  
7/11/13

FILE NO. 130622

[Motion No.]

[San Francisco Family Friendly Workplace Ordinance]

Motion ordering submitted to the voters an ordinance amending the Administrative Code to: allow San Francisco-based employees who are caregivers to request flexible or predictable working arrangements to assist with caregiving responsibilities, subject to the employer's right to deny a request based on business reasons specified undue hardship; require that employers give advance notice of changes in an employee’s work schedule; prohibit adverse employment actions based on caregiver status; prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; require employers to post a notice informing employees of their rights under the Ordinance; require employers to maintain records regarding compliance with the Ordinance; authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation, and an appeal process for an employer to an independent hearing officer; authorize waiver of the provisions of the Ordinance in a collective bargaining agreement; and making environmental findings, to the voters of the City and County of San Francisco at an election to be held on November 5, 2013.

MOVED, That the Board of Supervisors hereby submits the following ordinance to the voters of the City and County of San Francisco, at an election to be held on November 5, 2013.

Ordinance amending the Administrative Code to: allow San Francisco-based employees who are caregivers to request flexible or predictable working arrangements to assist with caregiving responsibilities, subject to the employer's right to deny a

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request based on business reasonsspecified undue hardship; require that employers
give advance notice of changes in an employee’s work schedule; prohibit adverse
employment actions based on caregiver status; prohibit interference with rights or
retaliation against employees for exercising rights under the Ordinance; require
employers to post a notice informing employees of their rights under the Ordinance;
require employers to maintain records regarding compliance with the Ordinance;
authorize enforcement by the Office of Labor Standards Enforcement, including the
imposition of remedies and penalties for a violation and an appeal process for an
employer to an independent hearing officer; authorize waiver of the provisions of the
Ordinance in a collective bargaining agreement; and making environmental findings.

NOTE: Additions are single-underline italics Times New Roman; deletions are strike-through italics Times New Roman.

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

Section 1. Environmental Findings. The Planning Department has determined that the
actions contemplated in this ordinance comply with the California Environmental Quality Act
(California Public Resources Code Sections 21000 et seq.). Said determination is on file with
the Clerk of the Board of Supervisors in File No. ___ and is incorporated herein by reference.

Section 2. The San Francisco Administrative Code is hereby amended by adding
Chapter 12Z to read as follows:

CHAPTER 12Z. SAN FRANCISCO FAMILY FRIENDLY WORKPLACE ORDINANCE

SEC. 12Z.1. TITLE.

This Chapter shall be known as the “San Francisco Family Friendly Workplace Ordinance.”

SEC. 12Z.3. DEFINITIONS.

For purposes of this Chapter, the following definitions apply.
"Agency" shall mean the Office of Labor Standards Enforcement or any successor department or office.

"Caregiver" means an Employee who is a primary contributor to the ongoing care of any of the following:

(1) A child or children for whom the Employee has assumed parental responsibility.

(2) A person or persons with a serious medical condition in a legally dependent Family relationship with the Caregiver.

(3) A parent age 65 or over of the Caregiver.

"Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis to that child, who is under 18 years of age.

"Child care emergency" means a situation in which a parent's usual child care becomes unavailable unexpectedly and on short notice and a Caregiver must miss work to provide care until the child care is restored or the Caregiver finds alternate child care.

"City" means the City and County of San Francisco.

"Dependent relationship" means the relationship of a Caregiver to a person who is related by blood, legal custody, marriage, or to his or her domestic partner, as defined in San Francisco Administrative Code Chapter 62 or California Family Code Section 297, or to a person with whom the caregiver lives in a familial relationship.

"Director" means the Director of the Office of Labor Standards Enforcement or his or her designee.

"Employee" means any person who is employed within the geographic boundaries of the City by an Employer, including part-time and temporary employees. "Employee" includes a participant in a Welfare-to-Work Program when the participant is engaged in work activity that would be considered "employment" under the federal Fair Labor Standards Act, 29 U.S.C. §201 et seq., and
any applicable U.S. Department of Labor Guidelines. "Welfare-to-Work Program" shall include any
public assistance program administered by the Human Services Agency, including but not limited to
CalWORKS, and any successor programs that are substantially similar, that require a public
assistance applicant or recipient to work in exchange for their grant.

"Employer" means the City, or any person as defined in Section 18 of the California Labor
Code who regularly employs 20 or more Employees, including an agent of that Employer, or and
corporate officers or executives who directly or indirectly through an agent or any other person,
including through the services of a temporary services or staffing agency or similar entity, employ or
exercise control over the wages, hours, or working conditions of an Employee. The term
"Employer" shall also include any successor in interest of an Employer. The term "Employer" shall
not include the state or federal government or any local government entity other than the City.

"Family relationship" means a relationship in which a Caregiver is related by blood,
legal custody, marriage, or domestic partnerships, as defined in San Francisco Administrative
Code Chapter 62 or California Family Code Section 297, to another person as a spouse,
domestic partner, Child, parent, sibling, grandchild or grandparent.

"Flexible Working Arrangement" means a change in an Employee's terms and conditions of
employment that provides flexibility to assist an Employee Caregiver with care-giving
responsibilities. A Flexible Working Arrangement may include but is not limited to, part-time
employment, a modified work schedule, flexible changes in start and/or end times for work, part-
time employment, job sharing arrangements, working from home, telecommuting, reduction or
change in work duties, or and part-year employment.

"Major Life Event" means the birth of an Employee's child, the placement with an
Employee of a child through adoption or foster care, or an increase in an Employee's
caretaking duties for a person with a serious health condition who is in a Family relationship
with the Employee.
"Predictable Working Arrangement" means a change in an Employee’s terms and conditions of employment that provides scheduling predictability to assist that Employee with care giving responsibilities.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(1) Inpatient care in a hospital, hospice, or residential health care facility.

(2) Continuing treatment or continuing supervision by a health care provider.

"Work schedule" means those days and times within a work period that an Employee is required by an Employer to perform the duties of his or her employment for which he or she will receive compensation.

SEC. 12Z.4. RIGHT TO REQUEST FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.

(a) An Employee who is a Caregiver and has been employed with an Employer for six months or more and works at least eight hours per week on a regular basis may request a Flexible or Predictable Working Arrangement to assist with caregiving responsibilities for 1) a Child or children for whom the Employee has assumed parental responsibility, 2) a person or persons with a serious medical condition in a Family relationship with the Employee, or 3) a parent age 65 or older of the Employee. That request may include, including but not be limited to, a change in the Employee’s terms and conditions of employment as they relate to:

(1) The number of hours the Employee is required to work;

(2) The times when the Employee is required to work;

(3) Where the Employee is required to work; or

(4) Work assignments or other factors;

(5) Predictability in a Work schedule.
(b) Any request for a change in the arrangement shall be in writing and:

(1) Specify the arrangement change applied for, the date on which the arrangement change becomes effective, and the duration of the arrangement, and explain how the request is related to caregiving;

(2) Explain what effect, if any, the employee thinks the change applied for would have on the Employer and how any such effect may be dealt with.

(c) An Employer may require verification of caregiving responsibilities as part of the request.

(d) An Employer may make the initial request verbally, after which the Employer must notify the Employee of the requirements of this section and instruct the Employee to prepare a written request under subsection (b).

(e) A request made under this Section may be made twice every 12 months, unless the Employee experiences a Major Life Event, in which case the Employee may make, and the Employer must consider, and additional request.

SEC. 12Z.5. RESPONSE TO REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.

(a) An Employer to whom an Employee submits a request for a Flexible or Predictable Working Arrangement under Section 12Z.4 must meet with an Employee requesting a Flexible or Predictable Working Arrangement within 2144 days of the request. The Employee may bring a coworker employed by the same Employer or a representative to the meeting.

(b) An Employer must consider and respond to an Employee's request for a Flexible or Predictable Working Arrangement in writing within 2144 days of the meeting required in subsection
(a) The deadline in this Section may be extended by with an agreement with the Employee confirmed in writing.

(c) An Employer may grant or deny a request for Flexible or Predictable Working Arrangement. An Employer who grants the request shall confirm the arrangement in writing to the Employee. An Employer who denies a request must explain the denial in a written response that sets out a bona fide business reason for the denial, notifies the Employee of the right to request reconsideration by the Employer under Section 12Z.6, and includes a copy of the text of that Section. Bona fide business reasons if it would cause an undue hardship, which may include but are not limited to, the following business reasons:

(1) The identifiable cost of the change in a term or condition of employment requested in the application, including but not limited to the cost of productivity loss, retraining or hiring Employees, or transferring Employees from one facility to another facility.

(2) Detrimental effect on ability to meet customer or client demands.

(3) Inability to organize work among other Employees.

(4) Insufficiency of work to be performed during the time the Employee proposes to work.

(d) A Flexible Working Arrangement shall not require an Employer to grant a schedule that includes overtime unless the Employer and Employee agree to such an arrangement.

(e) A Flexible Working Arrangement shall not excuse an Employee from the duty to satisfactorily perform Employee's job duties.

(f) An Employer must explain in the denial letter how the business reason relied upon applies to the individual circumstances of the Employee who requested a Flexible Working Arrangement. The denial letter shall notify the Employee of the right to appeal under Section 12Z.6 and include a copy of the text of that Section.
(g) An Employer who grants a Flexible Working Arrangement to an Employee may:

(1) place reasonable limits on the duration of the arrangement; and

(2) modify or revoke the arrangement based on undue hardship(s) after 14 day's written notice describing the proposed modification or revocation and identifying the undue hardship(s) and how such hardship(s) apply to the Employee's individual circumstances.

The appeal process described in Section 12Z.6 shall apply to such modification or revocation. Nothing in this subsection is intended to prevent an Employee from applying for another Flexible Working Arrangement after the expiration or revocation of the Employee's arrangement.

(d)(f) Either an Employer or an Employee may revoke an applicable Flexible or Predictable Working Arrangement with 14 days written notice to the other party; if either party so revokes, the Employee may submit a request for a different Flexible or Predictable Working Arrangement and the Employer must respond to that request as set forth in Sections 12Z.5 and 12Z.6.

(e) For an Employer who grants a Predictable Working Arrangement, if the Employer has insufficient work for the Employee during the period of the Predictable Working Arrangement, nothing in this Ordinance requires the Employer to compensate the Employee during such period of insufficient work.

SEC. 12Z.6. REQUEST FOR RECONSIDERATION APPEAL BY EMPLOYEE FROM THE DENIAL OF REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.

(a) An Employee whose request for Flexible or Predictable Working Arrangement has been denied may submit a request for reconsideration appeal to the Employer in writing within 30 days of the decision.

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(b) If an Employee submits an appeal pursuant to a request for reconsideration under this Section, the Employer must arrange an appeal meeting to discuss this request to take place within 2144 days after receiving the notice of appeal-the request, and the Employee may be accompanied by a coworker or representative.

(c) The Employer must inform the Employee of the outcome of the appeal Employer’s final decision in writing within 2144 days after the appeal meeting to discuss the request for reconsideration. If the appeal request for reconsideration is denied, this notice must explain the Employer’s reasons for the denial.

(d) The Employee must appeal a denial of a request for Flexible Working Arrangement to the Employer before submitting a complaint to the Agency alleging a violation of this Chapter.

SEC. 12Z.7. OTHER EMPLOYER DUTIES.

(a) Duty to Interact. An Employer has an ongoing duty to interact upon request with the Employee who has been granted a Flexible Working Arrangement to ensure that the Employee’s assignments and duties reasonably can be completed within the parameters of the Flexible Working Arrangement.

(b) Predictability in Scheduling. Employers with Employees subject to the overtime requirements of state or federal law must provide such Employees at least two weeks notice of Work Schedules. Nothing in this section shall be construed to prevent an Employer from offering a consenting Employee additional hours of work or to require an Employer to pay an Employee for time not worked.

SEC. 12Z.87. EXERCISE OF RIGHTS AND CAREGIVER STATUS PROTECTED; RETALIATION PROHIBITED.
(a) It shall be unlawful for an Employer or any other person to interfere with,
restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

(b) It shall be unlawful for an Employer to discharge, threaten to discharge, demote,
suspend, or otherwise take adverse employment action against any person on the basis of Caregiver
status or in retaliation for exercising rights protected under this Chapter. Such rights include but are
not limited to:

(1) the right to request a Flexible or Predictable Working Arrangement under this
Chapter;

(2) the right to request reconsideration of appeal the denial of a request for a Flexible
or Predictable Working Arrangement under this Chapter;

(3) the right to file a complaint with the Agency alleging a violation of any provision of
this Chapter;

(4) the right to inform any person about an Employer's alleged violation of
this Chapter;

(5) the right to cooperate with the Agency or other persons in the investigation or
prosecution of any alleged violation of this Chapter;

(6) the right to oppose any policy, practice, or act that is unlawful under this Chapter;
or

(7) the right to inform any person of his or her rights under this Chapter.

(c) Protections of this Section shall apply to any person who mistakenly but in good
faith alleges violations of this Chapter.

(d) Taking adverse employment action against a person within 90 days of the
exercise of one or more of the rights described in Section 12Z.8(b) shall create a rebuttable
presumption that such adverse action was taken in retaliation for the exercise of those rights.
SEC. 12Z.98. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.

(a) The Agency shall, by the operative date of this Chapter, publish and make available to employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by employers in the workplace informing employees of their rights under this Chapter. The Agency shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency may combine the notice required herein with the notice required by Section 12R.5(a) and/or 12W.5(a) of the Administrative Code or any other Agency notice that Employers are required to post in the workplace.

(b) Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works the notice required by subsection (a). Every Employer shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the Employees at the workplace or job site.

SEC. 12Z.109. EMPLOYER RECORDS.

Employers shall retain documentation required under this Chapter for a period of four years from the date of the request for a Flexible or Predictable Working Arrangement, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. When an issue arises as to an alleged violation of an Employee's rights under this Chapter, if the Employer has failed to maintain or retain documentation required under this Chapter, or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer has violated this Chapter, absent clear and convincing evidence otherwise.

SEC. 12Z.4410. IMPLEMENTATION AND ENFORCEMENT.
(a) Administrative Enforcement.

(1) The Agency is authorized to take appropriate steps to enforce this Chapter and coordinate enforcement of this Chapter. The Agency may investigate possible violations of this Chapter. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing. The Agency’s finding of a violation may not be based on the validity of the Employer’s bona fide business reason for denying an Employee’s request for a Flexible or Predictable Working Arrangement. Instead, the Agency’s review shall be limited to an Employer’s adherence to procedural, posting and documentation requirements, set forth in this Chapter, as well as the validity of any claims under Section 12Z.7.

(2) Where the Agency determines that a violation has occurred, it may issue a determination and order any appropriate relief, including, but not limited to, ordering legal and equitable relief as identified in Section 12Z.11(b), and a Flexible Working Arrangement. If a request for Flexible Working Arrangement was unlawfully denied and the denial resulted in harm to the Employee or any other person, such as discharge from employment, or otherwise violated the rights of Employees, such as a failure to post the notice required by Section 12Z.9, or an act of retaliation or other adverse employment action prohibited by Section 12Z.8, the The Agency may impose an administrative penalty up to $50.00 requiring the Employer to pay to each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued.

(3) Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section 12Z.44.10(b) and/or, except where prohibited by state or federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or
licenses held or requested by the Employer or person until such time as the violation is
remedied. In order to compensate the City for the costs of investigating and remedying the violation,
the Agency may also order the violating Employer or person to pay to the City a sum of not more than
$50.00 for each day or portion thereof and for each Employee or person as to whom the violation
occurred or continued. Such funds shall be allocated to the Agency and used to offset the costs of
implementing and enforcing this Chapter.

(4) An Employee or other person may report to the Agency any suspected
violation of this Chapter, but if an Employee is reporting a violation pertaining to that
Employee's own request for Flexible or Predictable Working Arrangement, that Employee
must first have submitted a request for reconsideration to the Employer under Section 12Z.6.
The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the
maximum extent permitted by applicable laws, the name and other identifying information of the
Employee or person reporting the violation, provided, however, that with the authorization of such
person, the Agency may disclose his or her name and identifying information as necessary to enforce
this Chapter or for other appropriate purposes. The filing of a report of a suspected violation by
an Employee does not create any right of appeal to the Agency by the Employee; based on its
sole discretion, the Agency may decide whether to investigate or pursue a violation of this
Chapter.

(5) In accordance with the procedures described in Section 12Z.14, the Director
shall establish rules governing the administrative process for determining and appealing violations of
this Chapter. The rules shall include procedures for:

(A) providing the Employer with notice that it may have violated this Chapter;

(B) providing the Employer with a right to respond to the notice;

(C) providing the Employer with notice of the Agency's determination of a

violation:
(D) providing the Employer with an opportunity to appeal the Agency’s
determination to a hearing officer, not employed by the Agency, who is appointed by the City
Controller or his or her designee.

(6) If there is no appeal of the Agency’s determination of a violation, that determination
shall constitute the City’s final decision. An Employer’s failure to appeal the Agency’s determination
of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a
complete defense to any petition or claim brought by the Employer against the City regarding the
Agency’s determination of a violation.

(7) If there is an appeal of the Agency’s determination of a violation, the hearing before
the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any
such hearing, the Agency’s determination of a violation shall be considered prima facie evidence of a
violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that
the Agency’s determination of a violation is incorrect. The hearing officer’s decision of the appeal
shall constitute the City’s final decision. The sole means of review of the City’s final decision, rendered
by the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of
mandate under Section 1094.5 of the California Code of Civil Procedure. The Agency shall notify the
Employer of this right of review after issuance of the City’s final decision by the hearing officer.

(b) Civil Enforcement. The City may bring a civil action in a court of competent jurisdiction
against the Employer or other person violating this Chapter and, upon prevailing, shall be entitled to
such legal or equitable relief as may be appropriate to remedy the violation including, but not limited
to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an
additional sum as liquidated damages in the amount of $50.00 to each Employee or person whose
rights under this Chapter were violated for each day such violation continued or was permitted to
continue; appropriate injunctive relief; and, further, shall be awarded reasonable attorneys’ fees and
costs.
(c) **Interest.** In any administrative or civil action brought under this Chapter, the Agency or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(d) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Chapter are cumulative.

**SEC. 12Z.11. EXEMPTION OF CERTAIN JOB CLASSIFICATIONS PERTAINING TO PUBLIC HEALTH AND PUBLIC SAFETY**

The City's Director of Human Resources may exempt from this Chapter certain classifications of City employees working in public health or public safety functions. The Director of Human Resources shall notify the Agency of any exemptions.

**SEC. 12Z.12. WAIVER THROUGH COLLECTIVE BARGAINING.**

All and any portions of the applicable requirements of this Chapter shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

**SEC. 12Z.13. OTHER LEGAL REQUIREMENTS.**

This Chapter provides minimum employment requirements pertaining to Caregivers and Employees and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, or provision of a collective bargaining agreement, that provides for greater or other rights of or protections for Caregivers or Employees, or that extends other rights or protections to Employees.
The Director shall have authority to issue regulations or develop guidelines that implement provisions of this Chapter. Notwithstanding the definition of "Director" in this Chapter, a designee of the Director shall not have authority under the foregoing sentence of this Section; but a designee of the Director shall have authority to conduct hearings leading to the adoption of regulations or guidelines.

SEC. 12Z.15. OPERATIVE DATE.

This Chapter shall become operative on July 1, 2014 and shall have prospective effect only.

SEC. 12Z.16. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with federal or state law.

SEC. 12Z.17. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In enacting and implementing this Chapter, the City is assuming an undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Chapter does not create a legally enforceable right against the City.

SEC. 12Z.18. AMENDMENT BY THE BOARD OF SUPERVISORS.

The Board of Supervisors may amend this Chapter in accordance with the Charter-prescribed process for the enactment or amendment of ordinances. The Board of Supervisors may not repeal this Chapter, by a two-thirds vote of its members in order to (1)
facilitate its implementation or enforcement, (2) increase its substantive requirements, (3) expand the scope of its coverage, or (4) make technical, nonsubstantive changes.

SEC. 12Z.19. SEVERABILITY.

If any of the parts or provisions of this Chapter (including sections, subsections, sentences, clauses, phrases, words, numbers) or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this Chapter, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

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

By:  
Elizabeth S. Salveson  
Chief Labor Attorney

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LEGISLATIVE DIGEST

[San Francisco Family Friendly Workplace Ordinance]

Ordinance amending the Administrative Code to: allow San Francisco-based employees to request flexible or predictable working arrangements to assist with caregiving responsibilities, subject to the employer’s right to deny a request based on business reasons; prohibit adverse employment actions based on caregiver status; prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; require employers to post a notice informing employees of their rights under the Ordinance; require employers to maintain records regarding compliance with the Ordinance; authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation and an appeal process for an employer to an independent hearing officer; authorize waiver of the provisions of the Ordinance in a collective bargaining agreement; and making environmental findings.

Existing Law

Existing ordinances address certain employee rights and protections; for example, the Minimum Wage Ordinance (Administrative Code Chapter 12R), Paid Sick Leave Ordinance (Administrative Code Chapter 12W), and Health Care Security Ordinance (Administrative Code Chapter 14). But no ordinance addresses flexible or predictable working arrangements. California and federal laws require some employers to grant leave to an employee to care for children, or for parents, spouses, or children with serious health conditions, but are limited to employers with 50 or more employees, require employment of at least a year before leave may be taken, provide a 12 week annual maximum for the leave, and do not include requirements for other flexible working arrangements. See Cal. Gov’t Code Section 12945.2 (California Family Rights Act) and 29 U.S.C. Sections 2601-2619 (Family and Medical Leave Act).

Amendments to Current Law

The Family Friendly Workplace Ordinance ("Ordinance") applies to Employees—persons who are employed in San Francisco—by an Employer that employs 20 or more Employees. An Employee may request a Flexible Working Arrangement that will assist the Employee in carrying out caregiving responsibilities pertaining to a person in a Family relationship with the Employee. An Employee must be employed for at least 6 months before requesting a Flexible Working Arrangement. A person in a Family relationship with an Employee is defined as someone who is related to the Employee by blood, legal custody, marriage, or domestic partnerships, as defined in San Francisco Administrative Code Chapter 62 or California
Family Code Section 297, to another person as a spouse, domestic partner, Child, parent, sibling, grandchild or grandparent. Employees may seek from Employers changes in the terms and conditions of their employment that include, but are not limited to, "a modified work schedule, changes in start and/or end times for work, part-time employment, job sharing arrangements, working from home, telecommuting, reduction or change in work duties, or part-year employment." An Employee may also request a Predictable Working Arrangement that provides scheduling predictability to assist the Employee with caregiving responsibilities.

An Employer who receives a request for a Flexible or Predictable Working Arrangement may deny the request based on a bona fide business reason. A bona fide business reason may include, but is not limited to, identifiable cost of the arrangement, detrimental effect on the Employer's ability to meet customer or client demands, inability to organize work among other Employees, or insufficiency of work to be performed during the time the Employee proposes to work.

The Ordinance establishes a process through which the Employee receives the Employer's response and may submit a request for reconsideration to the Employer. During the process the Employer must supply written reasons for denial of the request.

The Ordinance protects Employees from interference with their rights under the Ordinance, and makes it unlawful for an Employer to take adverse employment action against a person because he or she is a Caregiver, or in retaliation for an Employee exercising his or her rights under the Ordinance.

Employers must post a notice at the workplace informing Employees of their rights under the Ordinance. Employers must also create and maintain certain records required by the Ordinance to document requests by Employees for a Flexible or Predictable Working Arrangement, and the response to those requests.

The City's Office of Labor Standards Enforcement is designated as the Agency to implement and enforce the Ordinance. The Agency may investigate certain aspects of compliance with the Ordinance, make a determination that the Ordinance has been violated, and award appropriate relief. The Agency's finding of a violation may not be based on the validity of the Employer's bona fide business reason for denying an Employee's request for a Flexible or Predictable Working Arrangement. Instead, the Agency's review is limited to consideration of an Employer's adherence to procedural, posting and documentation requirements, as well as the validity of any claims regarding Caregiver status discrimination or retaliation for exercising rights provided by the Ordinance. The Agency also may assess penalties in the case of certain types of violation. The Employer or other violator may appeal the Agency's determination to a neutral hearing officer. The Agency may also bring a civil action to enforce the Ordinance. There is no private right of action under the Ordinance.

The Director of the Agency has authority to issue regulations or develop guidelines to implement the Ordinance. The Director also must establish rules governing the administrative process for determining and appealing violations of the Ordinance.
FILE NO.

All or any portion of the Ordinance may be expressly waived in a collective bargaining agreement.

The Director of Human Resources may exempt from the Ordinance certain classifications of City employees working in public health or public safety functions.

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July 10, 2013

The Honorable Board of Supervisors
City and County of San Francisco
Room 244, City Hall

Angela Calvillo
Clerk of the Board of Supervisors
Room 244, City Hall

Re: Office of Economic Analysis Impact Report for File Number 130622

Dear Madam Clerk and Members of the Board:

The Office of Economic Analysis is pleased to present you with its economic impact report on file number 130622, “Family Friendly Workplace Ordinance: Economic Impact Report.” If you have any questions about this report, please contact me at (415) 554-5268.

Best Regards,

Ted Egan
Chief Economist

cc Linda Wong, Committee Clerk, Rules Committee
415-554-7500
City Hall • 1 Dr. Carlton B. Goodlett Place • Room 316 • San Francisco CA 94102-4694

FAX 415-554-7466
City and County of San Francisco
Office of the Controller - Office of Economic Analysis

Item #130662
July 10th, 2013
Office of Economic Analysis

Economic Impact Report
Family-Friendly Workplace Ordinance:

[Signature]
7/11/13
Received in Council
[Date]
7/11/13
7/11/13
[Signature]
This report is based on our analysis of the second amended version. On July 10th, the OEA was provided with a second amended version of the commission on July 8th. It formed the basis of the OEA presentation at the Small Business Commission on July 2, the OEA was provided with an amended version of the legislation. The legislation was introduced on June 11, 2013.
or any other term or condition of their employment that assists with their care.

Under both a predictable and flexible work arrangement, a qualified employee may request any change to his or her hours, timing, location, work assignment, or any other term or condition of their employment that assists with their care.

Approximately 8% of private employers in San Francisco are covered by this legislation. They employ 76% of private sector employees in the city.

According to the Mayor's office, the City and County of San Francisco.

A covered employer is any private employer in San Francisco with 20 or more employees, and the City and County of San Francisco.

An employer must consider at least two requests that are made within a 12-month period, or three if the employee experiences a major life event.

Temporary employees or employees who work for over six months are included.

Workers are included for whom they work for over six months and works 8 or more hours per week. Temporarily employed for over six months.

A qualified employee is anyone responsible for the care of a child, someone with a serious medical condition, or a parent over 65, who has worked for their employer for a covered employer for a covered arrangement.

The legislation allows a qualified employee to request a flexible or predictable work arrangement from a covered employer.

An employer must consider at least two requests that are made within a 12-month period, or three if the employee experiences a major life event.

Temporary employees or employees who work for over six months are included for whom they work for over six months and works 8 or more hours per week. Temporarily employed for over six months.

A qualified employee is anyone responsible for the care of a child, someone with a serious medical condition, or a parent over 65, who has worked for their employer for a covered employer.

The legislation allows a qualified employee to request a flexible or predictable work arrangement from a covered employer.

City and County of San Francisco
A denied employee has the right to request a reconsideration from the employer.

If the request is made, the employer must explain in writing the reason for the denial. If the request is denied, the employer may deny the request for a good-faith business reason, such as cost, a detrimental impact on customers, or insufficient work.

The employer may deny the request for a written request. If the request is made orally, the employer must notify the employee of the effect the employer, and how any such effect may be dealt with. Details of the desired arrangement, how the employer believes the change will affect the employee, and how any such effect may be dealt with will be made in writing by the employee. It must provide.
the employer.

made by a controller-appointed hearing officer, and the burden of proof is on

As is the case with other City policies, appeals against OLSE's determinations are

fails to comply with notifying requirements, or violates an employee's rights.

which an employer denies a request. OLSE may find a violation if an employer

OLSE may not find a violation on the basis of the good-faith business reason for

proposed legislation.

rules, investigate potential violations, and impose penalties pursuant to the

The City's Office of Labor Standards Enforcement (OLSE) is directed to establish

Enforcement Process
Voluntary working arrangements to maintain work-life balances are increasingly common, and are credited with increasing employee loyalty and productivity, reducing turnover and re-training costs, and reducing family expenditures on outside care providers. Legislation broadly similar to this proposal has been adopted in other jurisdictions, including recently in the U.S. state of Vermont.

In the United Kingdom, the right-to-request originally applied to parents, but the Conservative-led coalition has recently introduced plans to extend it to all employees. Indeed, the "nudge effect" of offering a right-to-request will likely lead to greater realization of the benefits of flexible working arrangements, across the San Francisco workforce, at little if any additional cost. By permitting employers to deny the request for a valid business reason, the legislation effectively insulates employers, and the broader city economy, from any negative impacts beyond minimal administrative costs.

It is therefore highly likely that the economic benefits of this legislation will exceed its costs, under a reasonable valuation of costs and benefits.
Asim Khan, Ph.D., Principal Economist
(415) 554-5369
asim.khan@sfgov.org

Ted Egan, Ph.D., Chief Economist
(415) 554-5268
ted.egan@sfgov.org

Staff Contacts
Hi Linda,

Please find attached the draft Controller’s Office Voter Information Packet for the Family Friendly ordinance that’s on today’s Rules Committee agenda. I’ll have copies to give you at the meeting to hand out to the supervisors.

Let me know if you have any questions.

Natasha Mihal
Office of the Controller, City Services Auditor
City & County of San Francisco
(415) 554-7429
natasha.mihal@sfgov.org
July 11, 2013

Mr. John Arntz
Department of Elections City Hall, Room 48
Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: Ordinance allowing employees who are caregivers to request flexible or predictable working arrangements from a covered employer.

Dear Mr. Arntz,

Should the proposed “San Francisco Family Friendly” ordinance be approved by the voters, in my opinion, there would be an increase in the cost of government in administrative costs ranging from $75,000 to $150,000 depending on how the ordinance is implemented.

Under the proposed ordinance, the Office of Labor Standards Enforcement (OLSE) will establish rules, investigate potential violations, and impose penalties pursuant to the proposed ordinance. The estimated costs of $75,000 to $150,000 could increase or decrease depending on the number of investigations and violations of the proposed ordinance.

This estimate does not address the potential impacts on employers or the local economy.

Sincerely,

Ben Rosenfield
Controller

Note: This analysis reflects our understanding of the proposal as of the date shown. At times further information is provided to us which may result in revisions being made to this analysis before the final Controller’s statement appears in the Voter Information Pamphlet.
June 18, 2013

File No. 130622

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On June 11, 2013, the Supervisor David Chiu introduced the following proposed legislation to the Board of Supervisors:

File No. 130622

Motion ordering submitted to the voters an Ordinance amending the Administrative Code to allow San Francisco based employees who are caregivers to request flexible working arrangements, subject to the employer’s right to deny a request based on specified undue hardship; require that employers give advance notice of changes in an employee’s work schedule; prohibit adverse employment actions based on caregiver status; prohibit interference with rights or retaliation against employees for exercising rights under the Ordinance; require employers to post a notice informing employees of their rights under the Ordinance; require employers to maintain records regarding compliance with the Ordinance; authorize enforcement by the Office of Labor Standards Enforcement, including the imposition of remedies and penalties for a violation, and an appeal process to an independent hearing officer; authorize waiver of the provisions of the Ordinance in a collective bargaining agreement; and making environmental findings, to the voters of the San Francisco at an election to be held on November 5, 2013.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

By: Linda Wong, Committee Clerk
Rules Committee

Attachment

c: Monica Pereira, Environmental Planning
   Joy Navarrete, Environmental Planning
Wong, Linda (BOS)

From: Caldeira, Rick
Sent: Tuesday, June 25, 2013 8:57 AM
To: Wong, Linda (BOS)
Subject: FW. Supervisor Campos Co-sponsorship

Please process and for file.

Rick Caldeira, MMC  
Legislative Deputy Director  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244  
San Francisco, CA 94102  
Phone: (415) 554-7711 | Fax: (415) 554-5163  
rick.caldeira@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.  

From: Ronen, Hillary  
Sent: Monday, June 24, 2013 1:00 PM  
To: Caldeira, Rick  
Cc: Allbee, Nate; Ashley, Stephany  
Subject: Re: Supervisor Campos Co-sponsorship

Yes. Thanks.

Sent from my iPad

On Jun 19, 2013, at 3:25 PM, "Caldeira, Rick" <rick.caldeira@sfgov.org> wrote:

Please confirm.

Rick Caldeira, MMC  
Legislative Deputy Director  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244  
San Francisco, CA 94102  
Phone: (415) 554-7711 | Fax: (415) 554-5163  
rick.caldeira@sfgov.org | www.sfbos.org

Complete a Board of Supervisors Customer Satisfaction form by clicking the link below.  

From: Rauschuber, Catherine  
Sent: Wednesday, June 19, 2013 2:30 PM  
To: Caldeira, Rick  
Cc: Campos, David; Ronen, Hillary  
Subject: Supervisor Campos Co-sponsorship

Rick,

David told me that Supervisor Campos would like to be added as a co-sponsor of Motion ordering the Family Friendly Workplace Ordinance submission to the ballot. Could you please add him?
(Thanks, Supervisor Campos!)

Cat

Catherine Rauscher
Office of Supervisor David Chiu
President, San Francisco Board of Supervisors
Linda,

Attached is the SBC response to File No. 130622 [San Francisco Family Friendly Workplace Ordinance]

The Commission does not recommend approval as presently drafted, detailed recommendation included. The Commission also recommends that this ordinance be forwarded through the legislative process versus a ballot measure.

Thank you for adding this response to the legislative file.

Chris Schulman | Senior Policy Analyst/Commission Secretary | Office of Small Business

chris.schulman@sfgov.org | D: 415.554.6408 | O: 415.554.6134 | F: 415.558.7844
City Hall, Suite 110 | San Francisco, CA 94102
July 10, 2013

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

File No. 130622 [San Francisco Family Friendly Workplace Ordinance]
Small Business Commission Recommendation: Dual Recommendation: 1. Do not approve as presently drafted, amendments are required. 2. Recommend forwarding through the legislative process versus ballot measure process.

Dear Ms. Calvillo:

On July 8, 2013 the Small Business Commission (SBC) voted 7-0 to make a dual recommendation on BOS File No. 130622. Firstly, the Commission cannot approve this proposed ballot measure as currently drafted. The Commission finds that this ordinance vastly exceeds the scope of model ordinances that were used as comparable examples of similar legislation in national and state jurisdictions. While touted as merely a right to request ordinance for “Flexible Working Arrangements,” this ballot measure goes beyond this right, which is supported in concept by the small business community, but adds a “Predicable Scheduling” component. Predicable Scheduling is a discussion which requires extensive consideration, more than the mere weeks that the ballot measure timeframe allows and is a distinct topic from Flexible Working Arrangements. Predicable Scheduling is unprecedented and is not part of the laws in other jurisdictions. Furthermore, the Predicable Scheduling component does not acknowledge the nuances, and complexity of scheduling in various business sectors which are difficult to legislate at the ballot box.

The Commission further recommended by a unanimous motion that President Chiu consider moving this proposal from the ballot process and forwarding it through the standard legislative process. The Commission finds that putting this ordinance on the ballot indicates that the elected officials were unable to enact this law through the legislative process. Additionally, this indicates that the business community was not in support of this proposal, when in fact they were not consulted prior to the measure being put forth.

The small business community is united behind the concept that right to request Flexible Working Arrangements is an employee friendly policy that many small businesses already provide to their employees. Voluntarily providing this policy often makes business sense and the benefits are tangible and lead to a happier and more productive workforce. The Commission does question the need to mandate such a right however, and while the SBC agrees with business leaders that the right to request a Flexible Working Arrangement is not in itself an overly burdensome employer mandate; it is never less yet another mandate that the City is considering imposing on businesses.

The Commission recognizes that the costs associated with implementing this mandate are not at the level of implementing Minimum Wage, Mandatory Sick Time, and Health Care Security Ordinance and is willing to consider supporting the main portion of the proposed ballot measure which addresses the right to request Flexible Working Arrangements. However, the Commission has directed staff to compile amendments that the small business community feels are necessary in order to make the ballot measure less burdensome on our small
businesses. These amendments keep the right to request intact and bring the proposed ballot measure largely in line with other jurisdictions that have implemented these policies.

In short, the Commission recommends that all references to guaranteed Predictable Working Arrangement be removed from the ordinance. As referenced above, this topic is distinct and different from Flexible Working Arrangements. It requires a level of discussion and collaboration that must go above and beyond the few weeks that are allotted for a ballot measure. A solution that does not place problematic and burdensome mandates on employers, especially laws drafted in such a way that may lead to litigation and other consequences which may not be the intention of the drafting Supervisors should be the goal of policy makers.

Should Supervisor Chiu and his co-sponsors not remove all references to guaranteed Predictable Working Arrangement then the SBC and small business community require the following amendments and/or deletions:

Section 12Z.5 Response to Request for Flexible or Predictable Working Arrangement.

Strike “and provides reasonable notice to Employee”

(g) For an employer who grants a Predictable Working Arrangement, if the Employer has insufficient work for the Employee during the period of the Predictable Working Assignment and provides reasonable notice to the Employee, nothing in this Ordinance requires the Employer to compensate the Employee during such period of insufficient work.

It may not always be possible for an employer to provide “reasonable notice” to an employee of schedule changes/cancelations, especially in certain business sectors. For instance, in the restaurant industry a banquet may be cancelled at the last minute, or in the construction industry there may be rain which cancels construction for the day. The “provides reasonable notice” portion needs to be struck from this section.

Section 12Z.7. Exercise of Rights and Caregiver Status Protected Retaliation Prohibited.

Strike Subsections 8 and 9

(8) the right of an Employee who has been granted a Predictable Working Assignment to refuse work requested by the Employer that does not conform to the Predictable Working Assignment, for so long as that arrangement is in place.

(9) for an Employee whose request for a Predictable Working Arrangement and request for reconsideration have been denied, the right to refuse an Employer’s request for a additional or different hours in a Work Schedule if given with less than a week’s notice. This subsection 12Z.7(b)(9) does not apply to an Employee who is exempt from the overtime requirements of state and federal law and does not preclude an Employer from reducing an Employee’s work hours if there is insufficient work.

The above subsections should be deleted from the ordinance. The Commission is in agreement with the small business community that references to the protected status related to Predictable Working Arrangements exceed the scope of the intent of the ordinance and open up the employer for litigation.
Of particular concern is subsection 9. This creates a new protected class, individuals who have been denied a Predicable Working Arrangement. Analysis of the ordinance has indicated that any employee, even those who are not caregivers or parents may request a Predicable Work Arrangement. Should the agreement be denied, these workers will receive this right, even if they are not a caregiver or parent. It is necessary for this language to be struck. While the Commission is confident that this is not the intent of the sponsor, this can be the unintended consequence of legislation that has not been thoroughly vetted.

Additionally, the following amendments are required by the Commission and Small Business Community:

**Section 12Z.3 Definitions**

**Strike or clarify the definition of familial relationship**

*"Dependent relationship" means the relationship of a Caregiver to a person who is related by blood, legal custody, marriage, or to his or her domestic partner, as defined in San Francisco Administrative Code Chapter 62 or California Family Code Section 297, or to a person with whom the Caregiver lives in a familial relationship.*

This section provides a definition of dependent relationship. It lists familial relationship as a part of the definition. Varying definitions from online searches indicate that it may mean anything ranging from first cousins, to any cousin relationship- third, fourth, etc. Clarity is necessary. The Commission and small business community recommend striking this term from the ordinance. If this is not possible, then the Commission recommends that the Supervisor work with the small business community to draft clarifying language that clearly identifies what a dependent relationship is.

**Section 12Z.17 Amendment by the Board of Supervisors.**

**Consistent threshold for modification of ordinance by Board of Supervisors**

*The Board of Supervisors may amend this Chapter by a two-thirds vote. Enactment of this Chapter by the voters shall not preclude the Board of Supervisors by simple majority vote from adopting one or more ordinances that establish greater substantive rights for Employees, and greater obligations of Employers, regarding Flexible or Predicable Working Arrangements.***

This section provides for a majority vote at the Board of Supervisors to add rights for employees and greater obligations on employers. It provides for a two thirds vote for all other amendments. The small business community and SBC require that the threshold be the same for all amendments to the ordinance. The Commission leaves the threshold level as a policy matter to the Board of Supervisors and does not have a recommendation as to whether two thirds or a simple majority is preferred.

The above three amendments are required in order for the Commission to re-consider this proposed ordinance.

Further amendments that the Small Business Commission and Small Business Community request:
Section 12Z.3 Definitions

Modify number of employees to line up with HCSO

*Employer* means the City, or any person as defined in Section 18 of the California Labor who regularly employs 10 or more Employees.

The Commission recommends amending this section to twenty employees. This is consistent with the Health Care Security Ordinance.

Section 12Z.4. (a)

Amend the length of time an employee must be employed by an employer to qualify for benefit

An Employee who is a Caregiver and has been employed with an Employer for six months or more and works at least eight hours per week may request a Flexible or Predictable Working Arrangement, including but not limited to a change in the Employee’s terms and conditions of employment as they relate to:

The Federal Medical Leave Act threshold requires 12 months of employment in order to take effect. The Commission recommends increasing the threshold to 12 months in order to keep consistency.

Section 12Z.10 (a) 1

Remove interim relief provision for OLSE

Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.

The Commission and small business community request that the clause above providing for temporary or interim relief by OLSE be removed. The consensus is that enforcement should only take place after an investigation and ruling takes place following the completion of a full investigation by qualified officers.

Additional amendments were presented to the Commission by the Controller’s Office. The Commission was generally supportive of all recommendations, although the recommendations had not yet been vetted by the small business community. The Commission recommends that Supervisor Chiu and co-sponsors strongly consider these recommendations and incorporate them into the ordinance. The Commission does want to note that the Controller did concur with the Commission on removing the employee right to refuse to work a changed schedule with less than one week’s notice, if his or her request for a predictable schedule was denied.
The Small Business Commission thoughtfully considered the input of the small business community, broader business community and community supporters of this proposal when considering this matter. The first draft of the ordinance was met with extreme resistance by the business community and the Small Business Commission, but it must be clearly understood that it is not that the small business community and the SBC are opposed to employees having the right to ask. The small business community and the SBC were 1) taken by surprise with the ordinance being introduced without prior consultation, 2) the items of the greatest concern in the legislation could have been easily dealt with prior to introduction had the small business community and Office of Small Business staff been consulted with prior to introduction, and 3) once again the small business community and SBC are put in position of having to defensively respond.

The Small Business Commission appreciates the efforts and due diligence that Supervisor Chiu undertook to address the concerns of the business community when presenting the second draft of the ordinance at the SBC meeting. The Commission wants to stress that the right to request a Flexible Working Arrangement is, in itself not a serious point of contention in the small business community. The Commission indicated a serious willingness to consider an ordinance that solely dealt with this issue. Guaranteed Predictable Working Arrangement however, if it continues to be part of the ordinance, particularly if not amended as referenced above, will leave the Commission duty-bound to oppose the legislation.

The Commission appreciates the Supervisors continued willingness to engage with the small business community and I extend my capacity as Director of the Office of Small Business to help participate in productive discussions.

Sincerely,

[Signature]

Regina Dick-Endrizzi
Director, Office of Small Business

Cc: Supervisor David Chiu
    Supervisor’s Campos, Cohen, Mar
    Jason Elliot, Mayor’s Office
    Ted Egan, Controllers Office
    Small Business Network
    Small Business Advocates
    SF Chamber of Commerce
    Golden Gate Restaurant Association
    Scott Hauge
Wong, Linda (BOS)

From: Nevin, Peggy  
Sent: Monday, July 15, 2013 10:24 AM  
To: Wong, Linda (BOS)  
Subject: File 130662: Amended remarks for the legislative record of July 11 Rules Committee  
Attachments: Amended Testimony on Flexibility Request Legislation--07-12-13.docx; ATT00001.htm

From: Scanlon, Olivia  
Sent: Monday, July 15, 2013 10:01 AM  
To: Calvillo, Angela; Nevin, Peggy  
Subject: FW: Amended remarks for the legislative record of July 11 Rules Committee

FYI: for the file re: Family Friendly Leg.  

Olivia Scanlon  
Legislative Aide to Supervisor Norman Yee  
District 7  
1 Dr. Carlton B. Goodlett Place  
Room 244  
San Francisco, CA 94102  
415 554 6519

From: Yee, Norman (BOS)  
Sent: Monday, July 15, 2013 9:32 AM  
To: Scanlon, Olivia  
Subject: Fwd: Amended remarks for the legislative record of July 11 Rules Committee

Please forward to Clerk

Sent from my iPad

Begin forwarded message:

From: <paulrupertdc@cs.com>  
Date: July 13, 2013, 6:16:03 PM PDT  
To: <London.Breed@sfgov.org>, <Malia.Cohen@sfgov.org>, <Norman.Yee@sfgov.org>  
Subject: Amended remarks for the legislative record of July 11 Rules Committee

Honorable Supervisors Breed, Cohen and Yee --

I appreciated the opportunity to speak during the Public Comment period of the July 11 Rules Committee hearing on the Family-Friendly Workplace Ordinance. I have attached an amended version of my remarks which I hope can be included in the record of the hearing.

I trust my decades of experience in developing such formal flexibility request processes in large and small companies will shed some light on the challenges and opportunities.

Regards,  
Paul Rupert  
Rupert & Company

1
Amended Testimony on Flexibility Request Legislation – July 11, 2013
By Paul Rupert, President, Rupert & Company – National Flexibility Consultants

Wide experience with flexible request processes. I have been managing professional service firms using flexible schedules since 1972. I and my clients pioneered the use of the flexible schedule request form and process in the mid-1990s. I have consulted to over 100 large and small employers and their global subsidiaries who wanted to make access to flexible schedules fair, common and consistent across complex enterprises. We are known and well-regarded for our focus on implementing business-beneficial flexibility request processes.

The proposed SF process has business precedent. The essential process we have installed widely is straightforward: an employee uses a standard, simple form to make a request for a flexible schedule. A manager reviews the request and may discuss it and ask for modification. Then that manager makes a final decision. This process is essentially the one being proposed by President Chiu and the co-sponsors of the FFWO.

There is proven business value. The many business benefits of more flexible workplaces have been established and documented for decades: family supports, employee retention and recruitment, enhanced productivity, reduced commuting and more. Indeed, in discussion of this issue, the great majority of business owners say they offer flexibility and extol its virtues. Questions seem to center on the requirement of formality and the burden and conflict it might bring to workplaces that are already doing this. Our experience is quite the opposite.

Only formal request processes create equity. Most of our clients say, accurately, when we walk in the door that “We are already flexible.” But they have typically turned to us because their internal climate lets “good managers” be somewhat flexible and the majority of their managers be quite rigid and unresponsive to reasonable requests. They are not acting out of fear of lawsuits (which have been virtually non-existent in this field) but out of an overarching concern for attracting and inspiring the best and the brightest. And such people do not thrive in the midst of discriminatory and unequal practices. They watch how employers act and make judgments.

Asking is not as simple as it seems. We regularly hear from senior leaders in our client firms the query “Why do we need an elaborate process for someone to have such a simple conversation?” It is hard for people who have secure positions and feel entitled to challenge their employer on many fronts to imagine how hard it can be for many, many staff to raise a seemingly simple request to modify schedules. When the leadership of a company “de-
criminalizes" this process and actively encourages those with family or other needs to use a mutually beneficial process, the opportunities and gains of greater flexibility can flourish. When the leaders of a city make a similar statement, the same phenomenon can occur.

**These processes need not be burdensome**  Introducing a new process is like all change: the negatives occur to people first, and the range of possible breakdowns floods to the fore. The good news to those considering this ordinance for San Francisco is that the proposed process has been implemented in hundreds and hundreds of small to huge companies. Common fears of a flood of unmanageable requests, anger at denials, intense co-worker resentment and negative impacts on coverage and service have simply not occurred in a broad range of firms. We have implemented the request approach in small accounting and law firms, mid-sized hospitals and very large companies such as Bristol-Myers Squibb, Sodexo, Colgate and Amgen.

**There is no need to reinvent the wheel**  We have worked with our pioneering clients to make the overall process as productive and efficient as possible. No doubt companies in your community have already developed functional versions of the request form and supportive best practice guides to help get proposing and implementing flexibility right the first time. Many of our clients have turned to simple automation of the request decision-making and record-keeping process to virtually eliminate the “paper problem.” Individual businesses or the city on their behalf can access and make available such tools.

**The gains endure for companies and people**  Initiatives inside organizations can come and go. In our experience, once firms start down the road to a more flexible workplace, they may expand, refine and re-launch their approach, but it is startling national news when a company suspends telecommuting. That is because this trend in changing how we work is a part of the dramatic evolution of the economy, technology and family structure. We are not going back to the old economy nor to a time when people could not work with their employers to create schedules that serve individuals, the employer and the community.
Introduction Form
By a Member of the Board of Supervisors or the Mayor

I hereby submit the following item for introduction (select only one):

☒ 1. For reference to Committee.
   An ordinance, resolution, motion, or charter amendment.
☐ 2. Request for next printed agenda without reference to Committee.
☐ 3. Request for hearing on a subject matter at Committee.
☐ 4. Request for letter beginning "Supervisor [Name] inquires"
☐ 5. City Attorney request.
☐ 7. Budget Analyst request (attach written motion).
☐ 8. Substitute Legislation File No. [File Number]
☐ 9. Request for Closed Session (attach written motion).
☐ 10. Board to Sit as A Committee of the Whole.
☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on [Date]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission  ☐ Youth Commission  ☐ Ethics Commission
☐ Planning Commission  ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):
Supervisors Chiu, Cohen and Mar

Subject:
Motion ordering submitted to the voters an ordinance authorizing the San Francisco Family Friendly Workplace Ordinance at an election to be held on November 5, 2013

The text is listed below or attached:

[Blank space for text]

Signature of Sponsoring Supervisor: [Signature]

For Clerk's Use Only:

130622