

File No. 160065

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date March 23, 2016

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
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Completed by: Linda Wong Date March 18, 2016
Completed by: Linda Wong Date _____

1 [Police Code - Paid Parental Leave for Bonding with New Child]

2

3 **Ordinance amending the Police Code to require employers to provide supplemental**
4 **compensation to employees who are receiving State Paid Family Leave for purposes of**
5 **bonding with a new child.**

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

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

14 Section 1. The Police Code is hereby amended by adding Article 33H, consisting of
15 Sections 3300H.1 through 3300H.14, to read as follows:

16 **ARTICLE 33H: PAID PARENTAL LEAVE**

17 **SEC. 3300H.1. TITLE.**

18 *This Article 33H shall be known as the "Paid Parental Leave Ordinance."*

19 **SEC. 3300H.2. FINDINGS.**

20 *(a) In 2004, California became the first state in the United States to create a family leave*
21 *insurance program (referred to herein as "California Paid Family Leave") that provides partial wage*
22 *replacement to eligible employees on leave for family caregiving or bonding with a new child. Under*
23 *the program, codified at Unemployment Insurance Code Section 3300 et seq., employees who*
24 *contribute to the California State Disability Insurance (SDI) fund are entitled to six weeks of partial*
25 *pay each year while taking time off from work to bond with a newborn baby, newly adopted child, or*
new foster child, or to care for a seriously ill family member.

1 (b) As of January 2016, workers eligible for California Paid Family Leave can take up to six
2 weeks of paid time off at 55% of their weekly wages up to a maximum weekly benefit amount to bond
3 with a new child or care for a seriously ill family member. The weekly benefit amount is determined by
4 using the employee's highest-earning calendar quarter during an approximately 12-month base period.
5 As of January 2016, the maximum weekly benefit amount is \$1,129. To qualify for this maximum
6 weekly benefit amount, an individual must earn at least \$26,070.92 in a calendar quarter during the
7 base period. The Legislature is considering legislation that would extend the number of weeks of paid
8 time off and increase the weekly benefit amount, but as of the enactment of this Article 33H, the state
9 legislation had not been passed.

10 (c) California Paid Family Leave is available to nearly all private sector workers who pay into
11 the SDI program, either through payroll deductions or voluntarily.

12 (d) Through 2014, approximately 1.8 million California Paid Family Leave claims were
13 approved by the State of California Employment Development Department ("EDD") for a total of \$4.6
14 billion in payments. According to EDD, approximately 90% of claims are for bonding with a new
15 child.

16 (e) Babies whose mothers work during the first three months of the baby's life are less likely to
17 be breastfed, taken to the doctor for well-baby visits, or be up to-date on immunizations. According to
18 a 2015 study, rates of breastfeeding through infancy in California increased by 10-20 percentage
19 points after development of the California Paid Family Leave program.

20 (f) Experts have found that it takes at least several months for a pattern of interaction to begin
21 to develop between parent and child where they recognize and learn to respond to each other's distinct
22 cues. Short-changing this time for parents to learn to be responsive caregivers may have impacts for
23 children's cognitive as well as social and emotional development.

24 (g) A 2012 survey by the U.S. Department of Labor found that the main reason employees in
25 the United States do not take unpaid leave under the federal Family Medical Leave Act is that they

1 cannot afford to take it. Further, studies show that low-wage workers in particular would benefit from
2 expanded paid family leave policies.

3 (h) According to a 2014 report by the California Senate Office of Research, the number of
4 California Paid Family Leave claims filed by individuals in the lowest income bracket consistently is
5 much smaller than the number filed by those in the highest income bracket, and claims in the two
6 lowest income brackets decreased gradually over the prior nine years. Numerous factors may
7 contribute to this declining participation rate, including the current California Paid Family Leave
8 wage-replacement rate of 55%, which may provide insufficient income, particularly for low-income
9 households.

10 (i) This Article 33H is intended to supplement the California Paid Family Leave partial wage
11 replacement by providing compensation that, in combination with the California Paid Family Leave
12 payment, will total 100% of an employee's weekly salary, subject to a weekly maximum benefit amount,
13 during the six-week leave period, to help ensure that concern over loss of income does not preclude
14 parents in San Francisco from bonding with their new child.

15 **SEC. 3300H.3. DEFINITIONS.**

16 For purposes of this Article 33H, the following definitions apply:

17 "Agency" means the Office of Labor Standards Enforcement or any successor department or
18 office.

19 "California Paid Family Leave" means the State of California's partial wage replacement
20 insurance plan for paid family leave codified at California Unemployment Insurance Code, Division 1,
21 Part 2, Chapter 7 (commencing with Section 3300), as that law may be amended from time to time with
22 respect to eligibility for, duration of, or amount of paid family leave compensation, or any other matter
23 pertaining to paid family leave under that law.

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

1 “Covered Employee” means any person, including but not limited to part-time and temporary
2 employees, who is employed by a Covered Employer (1) who commenced employment with the Covered
3 Employer at least 90 days prior to the start of the leave period, (2) who performs at least eight hours of
4 work per week for the employer within the geographic boundaries of the City, (3) at least 40% of whose
5 total weekly hours worked for the employer are within the geographic boundaries of the City, and (4)
6 who is eligible to receive paid family leave compensation from the State of California under the
7 California Paid Family Leave law for the purpose of bonding with a new child. Where a person’s
8 weekly work hours fluctuate from week to week, the Agency shall use an average of the person’s weekly
9 hours worked for the Covered Employer during the three monthly pay periods, six bi-weekly or semi-
10 monthly pay periods, or 12 weekly pay periods immediately preceding the leave period for purposes of
11 determining whether the person meets the eight-hour and 40% threshold requirements in the preceding
12 sentence.

13 “Covered Employer” means any person, as defined in Section 18 of the California Labor Code,
14 including corporate officers or executives, who directly or indirectly or through an agent or any other
15 person, including through the services of a temporary services or staffing agency or similar entity,
16 employs or exercises control over the wages, hours, or working conditions of an employee and who
17 regularly employs 20 or more employees, regardless of location. Covered Employer shall not include
18 the City or any other governmental entity.

19 “New Child Bonding” means bonding with the Covered Employee’s minor child during the first
20 year after the birth of the child or after placement of the child with the Covered Employee through
21 foster care or adoption, per Section 3301 of the California Unemployment Insurance Code.

22 “State” means the State of California, including the State of California Employment
23 Development Department.

24 “Supplemental Compensation” means a Covered Employer’s obligation to pay a Covered
25 Employee’s partial weekly salary in accordance with Section 3300H.4.

1 SEC. 3300H.4. SUPPLEMENTAL PAID PARENTAL LEAVE.

2 (a) Applicability. This Article 33H applies to Covered Employees who are receiving California
3 Paid Family Leave benefits for the purpose of New Child Bonding.

4 (b) Supplemental Compensation.

5 (1) General.

6 (A) Except as stated in subsection (b)(2), when a Covered Employee receives
7 California Paid Family Leave compensation for the purpose of New Child Bonding, a Covered
8 Employer shall, during the leave period, supplement the California Paid Family Leave weekly benefit
9 amount that the employee is receiving by paying the employee Supplemental Compensation in an
10 amount such that the total of the California Paid Family Leave compensation the employee is receiving
11 and the Supplemental Compensation provides, but does not exceed, 100% of the employee's current
12 normal gross weekly wage.

13 (B) If the Covered Employee's weekly wage fluctuates, the employee's normal
14 gross weekly wage shall be calculated based on an average of the employee's weekly earnings from the
15 Covered Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or
16 12 weekly pay periods immediately preceding the employee's leave period; provided, however, that if
17 the Covered Employee's weekly wage fluctuates and the employee has worked for the Covered
18 Employer for less than 26 weeks, the weekly wage shall be calculated based on an average of the
19 employee's weekly earnings for the entire period of employment to date.

20 (C) If the California Paid Family Leave weekly benefit amount that the Covered
21 Employee is receiving from the State is based on earnings from a calendar quarter during which the
22 employee did not work for the Covered Employer, or during which the employee earned a higher
23 weekly wage from the Covered Employer than the employee is receiving at the time of his or her leave,
24 the Supplemental Compensation amount shall be calculated to provide 100% of the employee's normal
25 gross weekly wage in his or her current position; provided, however, that reducing a Covered

1 Employee's wages during the leave period or within 90 days of the employee's having made a request
2 or application for California Paid Family Leave shall raise a rebuttable presumption that such wage
3 reduction was made to reduce the Covered Employer's Supplemental Compensation obligations under
4 this Section 3300H.4. Unless the Covered Employer rebuts the presumption with clear and convincing
5 evidence that the reduction was solely for a reason other than reducing its obligation to pay
6 Supplemental Compensation, the employer shall be obligated to pay Supplemental Compensation
7 during the leave period based on the employee's prior wage rate.

8 (D) Multiple Employers.

9 (i) Where the Covered Employee works for more than one employer, the
10 Supplemental Compensation amount shall be apportioned between or among the Covered Employers
11 based on the percentage of the Employee's total gross weekly wages received from each employer. For
12 example, if the Employee earns \$800 per week from Covered Employer A, and \$200 per week from
13 Covered Employer B for a combined total of \$1,000, Employer A shall pay 80% of the Supplemental
14 Compensation amount and Employer B shall pay 20% of the Supplemental Compensation amount. If
15 the Employee's weekly wage for a given Employer fluctuates, the percentage referenced in this
16 subsection shall be calculated by averaging the employee's weekly wages earned from the Employer
17 during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay
18 periods immediately preceding the leave period.

19 (ii) In cases where the Covered Employee works for a Covered Employer
20 and a non-Covered Employer, the Covered Employer shall be responsible only for its percentage of the
21 Employee's total gross weekly wages. For example, if the Employee earns \$800 per week from the
22 Covered Employer, and \$200 per week from the non-Covered Employer for a combined total of \$1,000,
23 the Covered Employer shall pay 80% of the Supplemental Compensation amount and the Non-Covered
24 Employer shall pay nothing. Accordingly, in such cases, the Employee will not receive 100% of the
25 Supplemental Compensation amount.

1 (iii) In cases of multiple employers, the Covered Employee shall, as a
2 precondition of receiving Supplemental Compensation, provide the Covered Employer(s) with both (1)
3 a copy of the employee's Notice of Computation of California Paid Family Leave Benefits from the
4 State or other legally authorized statement, and (2) information pertaining to wages received from all
5 employers during the 90 days prior to the leave period on a form prepared by the Agency and signed by
6 the employee under penalty of perjury. A Covered Employee's failure to comply with this requirement
7 shall relieve the Covered Employer(s) of their obligation to provide the employee with Supplemental
8 Compensation.

9 (2) Maximum Weekly Benefit Amount. In the case of a Covered Employee who is
10 receiving the maximum weekly benefit amount under the California Paid Family Leave law, the
11 Supplemental Compensation shall not be calculated to reach 100% of the employee's total normal
12 gross weekly wage. Rather, the amount of Supplemental Compensation shall be calculated based on
13 the gross wage that is derived from dividing the State's maximum weekly benefit amount by the
14 percentage rate of wage replacement provided under the California Paid Family Leave law.

15 (3) Termination During Leave Period. A Covered Employer's obligation to provide
16 Supplemental Compensation under this Section 3300H.4 applies only during the period the Covered
17 Employee is eligible for and is receiving California Paid Family Leave benefits for New Child
18 Bonding; provided, however, that if a Covered Employer terminates a Covered Employee during the
19 leave period, the employer's obligation to pay Supplemental Compensation shall continue for the
20 remainder of the California Paid Family Leave period.

21 (4) Termination Prior to Leave Period. Terminating a Covered Employee prior to the
22 employee's leave period but within 90 days of the employee's having made a request or application for
23 California Paid Family Leave shall raise a rebuttable presumption that such termination was taken to
24 avoid the Covered Employer's Supplemental Compensation obligations under this Section 3300H.4.
25 Unless the Covered Employer rebuts the presumption with clear and convincing evidence that the

1 termination was solely for a reason other than avoidance of its obligation to pay Supplemental
2 Compensation, the employer shall be obligated to pay the terminated employee Supplemental
3 Compensation during the leave period.

4 (5) Unused Vacation Leave. To be eligible to receive Supplemental Compensation
5 under this Section 3300H.4, a Covered Employee must consent to allowing a Covered Employer, in the
6 employer's discretion, to apply up to two weeks of unused vacation leave that the employee has accrued
7 as of the start of the leave period to help meet the employer's obligation under this Section to provide
8 Supplemental Compensation during the leave period. The preceding sentence shall not prevent a
9 Covered Employer, in the employer's discretion, from requiring a Covered Employee to take up to two
10 weeks of earned but unused vacation leave prior to the employee's initial receipt of California Paid
11 Family Leave compensation as allowed under subsection (c) of Section 3303.1 of the California
12 Unemployment Insurance Code, as amended, in addition to or in lieu of exercising the option provided
13 in the foregoing sentence.

14 (6) Voluntary Plans. A Covered Employer who has received State approval to pay
15 California Paid Family Leave compensation through a voluntary disability insurance plan in
16 accordance with California Unemployment Insurance Code, Division 1, Part 2, Chapter 6
17 (commencing with Section 3251) must comply with the Supplemental Compensation requirements of
18 this Section 3300H.4 either by providing the Supplemental Compensation through the approved
19 voluntary plan or by paying Supplemental Compensation directly to the Covered Employee.

20 (c) Integration/Coordination of Benefits. In accordance with California Unemployment
21 Insurance Code Section 2656, a Covered Employee who is receiving California Paid Family Leave
22 benefits may not receive Supplemental Compensation under this Article 33H which would result in the
23 employee's receiving total compensation while on paid parental leave that is greater than the
24 employee's normal gross weekly wages. As a precondition of receiving Supplemental Compensation, a
25 Covered Employee must either (1) provide the Covered Employer with a copy of the employee's Notice

1 of Computation of California Paid Family Leave Benefits from the State or other legally authorized
2 statement, or (2) provide the State with written authorization to disclose the weekly benefit amount to
3 the employer. A Covered Employee's failure to comply with this requirement shall relieve the Covered
4 Employer of its obligation to provide the employee with Supplemental Compensation.

5 (d) Existing Paid Parental Leave Policies. This Article 33H does not require a Covered
6 Employer to provide Supplemental Compensation under Section 3300H.4 to a Covered Employee if the
7 employer's existing policy provides the employee with at least six weeks fully paid parental leave within
8 any twelve-month period for purposes of New Child Bonding, whether or not such paid leave includes
9 California Paid Family Leave benefits. Unless the Employee elects otherwise, the six weeks fully paid
10 parental leave referenced in the prior sentence must be provided as six consecutive weeks.

11 (e) Reimbursement. As a precondition of receiving Supplemental Compensation, a Covered
12 Employee must agree, by signing a form prescribed by the Agency, to reimburse the full amount of
13 Supplemental Compensation received from any Covered Employer(s) if the employee voluntarily
14 separates from employment with the Covered Employer(s) within 90 days of the end of the Employee's
15 leave period and if the Employer requests such reimbursement in writing.

16 **SEC. 3300H.5. NOTICE AND POSTING.**

17 (a) The Agency shall, by the operative date of this Article 33H, publish and make available to
18 Covered Employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice
19 suitable for posting by employers in the workplace informing employees of their rights under this
20 Article. The Agency shall update this notice on December 1 of any year in which there is a change in
21 the languages spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency
22 may combine the notice required herein with one or more other notices it is required to publish and
23 make available to employers under other provisions of City law.

24 (b) Every Covered Employer shall post in a conspicuous place at any workplace or job site
25 where any Covered Employee works the notice required by subsection (a). Every Covered Employer

1 shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the
2 employees at the workplace or job site.

3 **SEC. 3300H.6. EMPLOYER RECORDS.**

4 (a) Covered Employers shall retain records documenting Supplemental Compensation paid to
5 employees as required by this Article 33H, for a period of three years, and shall allow the Agency
6 access to such records, with appropriate notice and at a mutually agreeable time, to monitor
7 compliance with the requirements of this Article 33H.

8 (b) When an issue arises as to an employee's entitlement to Supplemental Compensation under
9 this Article 33H, if the Covered Employer does not maintain or retain adequate records documenting
10 Supplemental Compensation paid to the employee, or does not allow the Agency reasonable access to
11 such records, it shall be presumed that the employer has violated this Article, absent clear and
12 convincing evidence otherwise.

13 **SEC. 3300H.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

14 (a) It shall be unlawful for a Covered Employer or any other person to interfere with, restrain,
15 or deny the exercise of or the attempt to exercise, any right protected under this Article 33H.

16 (b) It shall be unlawful for a Covered Employer or any other person to discharge, threaten to
17 discharge, demote, suspend, or in any manner discriminate or take adverse action against any person
18 in retaliation for exercising rights to Supplemental Compensation protected under this Article 33H.
19 Such rights include but are not limited to the right to Supplemental Compensation pursuant to this
20 Article; the right to file a complaint or inform any person about any employer's alleged violation of this
21 Article; the right to cooperate with the Agency in its investigations of alleged violations of this Article;
22 and the right to inform any person of his or her possible rights under this Article.

23 (c) Protections of this Section 3300H.7 shall apply to any person who mistakenly but in good
24 faith alleges violations of this Article 33H.

1 (d) Taking adverse action against a person within 90 days of the person's filing a complaint
2 with the Agency or a court alleging a violation of any provision of this Article 33H; of informing any
3 person about an employer's alleged violation of this Article; of cooperating with the Agency or other
4 persons in the investigation or prosecution of any alleged violation of this Article; of opposing any
5 policy, practice, or act that is unlawful under this Article; or of informing any person of his or her
6 rights under this Article, shall raise a rebuttable presumption that such adverse action was taken in
7 retaliation for the exercise of one or more of the aforementioned rights. Unless the Covered Employer
8 rebutts the presumption with clear and convincing evidence that the adverse action was solely for a
9 reason other than retaliation, the employer shall be deemed to have violated this Section 3300H.7.

10 **SEC. 3300H.8. IMPLEMENTATION AND ENFORCEMENT.**

11 (a) **Implementation.** The Agency shall be authorized to coordinate implementation and
12 enforcement of this Article 33H and may promulgate appropriate guidelines or rules for such purposes.
13 Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be
14 relied on by employers, employees, and other persons to determine their rights and responsibilities
15 under this Article. Any guidelines or rules may establish procedures for ensuring fair, efficient, and
16 cost-effective implementation of this Article, including supplementary procedures for helping to inform
17 employees of their rights under this Article, for monitoring employer compliance with this Article, and
18 for providing administrative hearings to determine whether an employer or other person has violated
19 the requirements of this Article.

20 (b) **Administrative Enforcement.**

21 (1) The Agency is authorized to take appropriate steps to enforce this Article 33H. The
22 Agency may investigate any possible violations of this Article by an employer or other person. Where
23 the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary
24 or interim relief to mitigate the violation or maintain the status quo pending completion of a full
25 investigation or hearing.

1 (2) Where the Agency, after a hearing that affords a suspected violator due process,
2 determines that a violation has occurred, it may order any appropriate relief including, but not limited
3 to, the payment of any Supplemental Compensation unlawfully withheld, and the payment of an
4 additional sum as an administrative penalty to each employee or person whose rights under this Article
5 33H were violated. If any Supplemental Compensation was unlawfully withheld, the dollar amount of
6 Supplemental Compensation withheld from the employee multiplied by three, or \$250.00, whichever
7 amount is greater, shall be included in the administrative penalty paid to the employee. In addition, if
8 a violation of this Article resulted in other harm to the employee or any other person, or otherwise
9 violated the rights of employees or other persons, such as a failure to post the notice required by
10 Section 3300H.5, or an act of retaliation prohibited by Section 3300H.7, this administrative penalty
11 shall also include \$50.00 to each employee or person whose rights under this Article were violated for
12 each day or portion thereof that the violation occurred or continued.

13 (3) Where prompt compliance is not forthcoming, the Agency may take any appropriate
14 enforcement action to secure compliance, including initiating a civil action, except where prohibited by
15 State or Federal law, requesting that City agencies or departments revoke or suspend any registration
16 certificates, permits, or licenses held or requested by the employer or person until such time as the
17 violation is remedied. In order to compensate the City for the costs of investigating and remedying the
18 violation, the Agency may also order the violating employer or person to pay to the City a sum of not
19 more than \$50.00 for each day or portion thereof and for each employee or person as to whom the
20 violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the
21 costs of implementing and enforcing this Article 33H.

22 (4) An employee or other person may report to the Agency any suspected violation of
23 this Article 33H. The Agency shall encourage reporting pursuant to this subsection (b)(4) by keeping
24 confidential, to the maximum extent permitted by applicable laws, the name and other identifying
25 information of the employee or person reporting the violation. Provided, however, that with the

1 authorization of such person, the Agency may disclose his or her name and identifying information as
2 necessary to enforce this Article or for other appropriate purposes.

3 (c) **Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a violation of
4 this Article 33H, any entity a member of which is aggrieved by a violation of this Article, or any other
5 person or entity acting on behalf of the public as provided for under applicable State law, may bring a
6 civil action in a court of competent jurisdiction against the employer or other person violating this
7 Article and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to
8 remedy the violation including, but not limited to, reinstatement, back pay, the payment of any
9 Supplemental Compensation unlawfully withheld, the payment of an additional sum as liquidated
10 damages in the amount of \$50.00 to each employee or person whose rights under this Article were
11 violated for each day or portion thereof that the violation occurred or continued, plus, where the
12 Covered Employer has unlawfully withheld Supplemental Compensation to a Covered Employee, the
13 dollar amount of Supplemental Compensation withheld from the employee multiplied by three; or
14 \$250.00, whichever amount is greater; and/or injunctive relief; and, further, shall be awarded
15 reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this
16 Article on behalf of the public as provided for under applicable State law shall, upon prevailing, be
17 entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

18 (d) **Interest.** In any administrative or civil action brought under this Article 33H, the Agency or
19 court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest
20 specified in subdivision (b) of Section 3289 of the California Civil Code.

21 (e) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Article
22 33H are cumulative.

23 **SEC. 3300H.9. WAIVER THROUGH COLLECTIVE BARGAINING.**

24 All or any portion of the applicable requirements of this Article 33H shall not apply to
25 employees covered by a bona fide collective bargaining agreement if (1) such requirements are

1 expressly waived in the collective bargaining agreement in clear and unambiguous terms, or (2) the
2 agreement was entered into before the effective date of the ordinance enacting this Article 33H, on file
3 with the Clerk of the Board of Supervisors in File No. _____ . The exception designated (2) in the
4 preceding sentence shall not apply to any such agreement once it has been amended or extended, or
5 has expired.

6 **SEC. 3300H.10. OTHER LEGAL REQUIREMENTS.**

7 (a) This Article 33H provides minimum requirements pertaining to paid parental leave as
8 provided herein. This Article shall not be construed to preempt, limit, or otherwise affect the
9 applicability of any other law, regulation, requirement, policy, or standard that provides for greater
10 parental leave, whether paid or unpaid, or that extends other protections to employees.

11 (b) This Article 33H provides minimum requirements pertaining to paid parental leave and
12 shall not be construed to prevent employers from adopting or retaining leave policies that are more
13 generous than policies that comply with this Article.

14 (c) This Article 33H is intended to supplement other available sources of income during
15 specified periods of leave to which the employee is otherwise eligible. Nothing in this Article shall be
16 construed to expand, reduce, or otherwise affect the total amount of parental or other leave time
17 available to employees under federal, state, or local law.

18 **SEC. 3300H.11. UNDERTAKING FOR THE GENERAL WELFARE.**

19 In enacting and implementing this Article 33H, the City is assuming an undertaking only to
20 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
21 obligation for breach of which it is liable in money damages to any person who claims that such breach
22 proximately caused injury.

23 **SEC. 3300H.12. SEVERABILITY.**

24 If any section, subsection, sentence, clause, phrase, or word of this Article 33H, or any
25 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a

1 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
2 portions or applications of the Article. The Board of Supervisors hereby declares that it would have
3 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not
4 declared invalid or unconstitutional without regard to whether any other portion of this Article or
5 application thereof would be subsequently declared invalid or unconstitutional.

6 **SEC. 3300H.13. NO CONFLICT WITH FEDERAL OR STATE LAW.**

7 Nothing in this Article 33H shall be interpreted or applied so as to create any requirement,
8 power, or duty in conflict with any federal or state law.

9 **SEC. 3300H.14. EXPIRATION OF ARTICLE.**

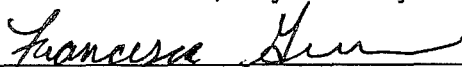
10 This Article 33H shall expire by operation of law if the Legislature amends the California Paid
11 Family Leave program such that the benefits provided under that program amount to 100% of an
12 eligible employee's wages, as capped by any maximum benefit amount under the State law. Upon
13 certification from the City Attorney to the Clerk of the Board of Supervisors that such a change in State
14 law has occurred, the City Attorney shall cause the Article to be removed from the Police Code.

15
16 Section 2. Effective and Operative Dates.

17 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
18 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
19 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
20 Supervisors overrides the Mayor's veto of the ordinance.

21 (b) Operative Date. This ordinance shall become operative on January 1, 2017.

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

24 By: 
25 FRANCESCA GESSNER
Deputy City Attorney

n:\egana\las2016\1600043\01089795.docx

REVISED LEGISLATIVE DIGEST

(3/15/2016, Substituted)

[Police Code - Paid Parental Leave for Bonding with New Child]

Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child.

Existing Law

No City law requires employers to provide paid parental leave for bonding with a new child. Under the "California Paid Family Leave" program, employees who contribute to the California State Disability Insurance (SDI) fund are entitled to six weeks of partial (55%) pay each year while taking time off from work to bond with a newborn baby, newly adopted child, or new foster child. The 55% wage replacement is funded by employee payroll contributions.

Amendments to Current Law

General Requirement

The proposed ordinance would require San Francisco employers with 20 or more employees to provide partial wage replacement to employees taking leave to bond with a new child under the California Paid Family Leave program. It would require such employers to provide the remaining portion (45%) of the employee's normal gross weekly wage ("Supplemental Compensation") during the six-week leave period.

Coverage

A "Covered Employee" entitled to Supplemental Compensation under this ordinance is an employee (1) who commenced employment with the Covered Employer at least 90 days prior to the start of the leave period, (2) who performs at least eight hours of work per week for the employer within the geographic boundaries of the City, (3) at least 40% of whose total weekly hours worked for the employer are within the geographic boundaries of the City, and (4) who is eligible to receive paid family leave compensation under the California Paid Family Leave law for the purpose of bonding with a new child.

A "Covered Employer" under the ordinance is an employer with 20 or more employees, regardless of location. All governmental entities, including the City and County of San Francisco, are exempt from the ordinance.

Supplemental Compensation Amount

During the leave period, Covered Employers would be required to provide Supplemental Compensation in an amount such that the California Paid Family Leave compensation plus the Supplemental Compensation equals but does not exceed 100% of the employee's gross weekly wage. Based on the current 55% wage replacement rate under State law, the ordinance would require employers to pay the remaining 45% of the employee's weekly wages during the leave period. If the State wage replacement rate were to change, the employer's Supplemental Compensation obligation would change accordingly. For example, if the State wage replacement rate increased to 75%, the employer's Supplemental Compensation rate would drop to 25%.

In cases where an employee has multiple Covered Employers, the Supplemental Compensation amount would be apportioned between or among the Employers based on the percentage of the employee's total gross weekly wages received from each employer. In cases where an employee works for a Covered Employer and a non-Covered Employer, the Covered Employer would be responsible only for its percentage of the employee's total gross weekly wages.

Maximum Weekly Benefit Limitation

The California Paid Family Leave program places a cap on the 55% weekly benefit amount for higher-earning workers. As of January 1, 2016, the State's "maximum weekly benefit amount" is \$1,129, which represents 55% of a person's weekly wages based on an annual salary of approximately \$106,740. Employees who earn more than \$106,740 per year therefore do not receive the full 55% of their salary under the State program.

An employer's Supplemental Contribution obligation under the ordinance would be proportionally capped by reference to the State maximum weekly benefit amount. Using the 2016 State rates, an employer's maximum weekly Supplemental Compensation amount under the ordinance would be \$924 per week. The State's maximum weekly benefit amount (\$1,129) is 55% of \$2,053; 45% of \$2,053 is \$924.

Use of Unused, Accrued Vacation Leave

To be eligible to receive Supplemental Compensation under the ordinance, an employee must consent to allowing the employer (if the employer so chooses) to use up to two weeks of the employee's unused, accrued vacation leave to help satisfy the employer's obligation to pay Supplemental Compensation during the leave period.

Parenthetically, the California Paid Family Leave program allows an employer to require an employee to use up to two weeks of unused, accrued vacation as a precondition to the employee's initial receipt of Paid Family Leave. If the employer exercises that option under State law, the employee must first take two weeks of vacation before starting the six-week family leave period, resulting in a total of eight weeks of leave. The ordinance would not prevent an employer from exercising that option, but would provide another option for the

employer in addition to, or in lieu of, the State option, depending upon the amount of unused vacation leave that the employee in question has accrued.

Reimbursement

As a precondition of receiving Supplemental Compensation under the ordinance, an employee must sign a form agreeing to reimburse the full amount of Supplemental Compensation received from any Covered Employer(s) if the employee voluntarily separates from employment within 90 days of the end of the employee's leave period and if the Employer requests such reimbursement in writing.

Reducing Employee Wages or Termination of Employee

- Reducing an employee's wages during the leave period or within 90 days of the employee's requesting or applying for California Paid Family Leave would give rise to a rebuttable presumption that it was done for purposes of reducing the amount of Supplemental Compensation required under the ordinance. The presumption could be rebutted by clear and convincing evidence that the wage reduction was done solely for another reason.
- Terminating an employee within 90 days of the employee's requesting or applying for California Paid Family Leave would give rise to a rebuttable presumption that it was done for purposes of avoiding the employer's Supplemental Compensation obligation under this ordinance. The presumption could be rebutted by clear and convincing evidence that the termination was done solely for another reason.
- If an employer terminates an employee during the leave period, the employer would be required to pay Supplemental Compensation for the remainder of the leave period.

Collective Bargaining Agreements

The requirements of this ordinance shall not apply to employees covered by a bona fide collective bargaining agreement ("CBA") if such requirements are expressly waived in the CBA in clear and unambiguous terms. In addition, the ordinance shall not apply to CBAs entered into before the effective date of the ordinance, but only until the CBA is amended or extended, or expires.

Administrative Enforcement Provisions

The Office of Labor Standards Enforcement ("OLSE") would implement and enforce the ordinance, including the following:

- **Workplace Notice:** Employers would be required to post a notice in the workplace informing employees of their rights under the ordinance.

- **Employer Records:** Employers would be required to retain records pertaining to the payment of Supplemental Compensation for a period of three years and make records available to OLSE on request.
- **Anti-Retaliation:** Employers would be prohibited from retaliating against employees for exercising their rights under the ordinance.
- **Penalties:** After a due process hearing, OLSE may order any appropriate relief including payment of Supplemental Compensation and monetary penalties.

Civil Enforcement

The OLSE, the City Attorney, any person aggrieved by a violation of the ordinance, any entity with a member aggrieved by a violation, or any other person or entity acting on behalf of the public as provided for under applicable State law, may bring a civil action in court against an employer for violating the ordinance.

Operative Date: The ordinance would become operative on January 1, 2017.

Background Information

Many workers, particularly low-wage workers, cannot afford to take parental leave at only 55% wage replacement. This ordinance is intended to supplement California Paid Family Leave by providing compensation that, in combination with the California Paid Family Leave payment, will total 100% of an employee's weekly salary, subject to a weekly maximum benefit amount, during the six-week leave period, to help ensure that concern over loss of income does not preclude parents in San Francisco from bonding with their new child.

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Linda Wong, Assistant Clerk
Board of Supervisors

DATE: March 2, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following legislation; which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 160065

Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child.

Please return this cover sheet with the Commission's response to Linda Wong, Assistant Clerk, Budget and Finance Committee, at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

President, District 5
BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7630
Fax No. 554-7634
TDD/TTY No. 544-5227

Bos-11, PSNS, B+F
(OB, Leg Dep.) Dep City
atty
Mayor.

London Breed

PRESIDENTIAL ACTION

Date: February 9th, 2016
To: Angela Calvillo, Clerk of the Board of Supervisors

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2016 FEB - 9 PM 12:30
RBR

Madam Clerk,
Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____
(Primary Sponsor)

Title. _____

Transferring (Board Rule No 3.3)

File No. 160065 Wiener
(Primary Sponsor)

Title. Police Code - Paid Parental Leave for Bonding with New Child

From: Public Safety & Neighborhood Services Committee

To: Budget & Finance Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ Meeting
(Date) (Committee)

London Breed, President
Board of Supervisors

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Adele Carpenter, Director
Youth Commission

FROM: Angela Calvillo, Clerk of the Board

Vista Jarama for

DATE: February 12, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following proposed legislation which is being referred to the Youth Commission as per Charter Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 160065

Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child.

Please return this cover sheet with the Commission's response to **Linda Wong, Assistant Clerk, Budget and Finance Committee.**

RESPONSE FROM YOUTH COMMISSION Date: _____

____ No Comment

____ Recommendation Attached

Chairperson, Youth Commission

Lew, Lisa (BOS)

To: Guzman, Monica (BOS)
Cc: Young, Victor; Wong, Linda (BOS)
Subject: RE: BOS Referral: File No. 160065 - Police Code - Paid Parental Leave for Bonding with New Child

Hello,

The following request for proposed legislation is being referred to the Youth Commission as per Charter Section 4.124 for comment and recommendation.

File No. 160065 Police Code - Paid Parental Leave for Bonding with New Child

Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child.

The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

If you have any questions or concerns please call Linda Wong at (415) 554-7719 or email linda.wong@sfgov.org.

Sincerely,

Lisa Lew
Board of Supervisors Clerk's Office
San Francisco City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
P 415-554-7718 | F 415-554-5163
lisa.lew@sfgov.org | www.sfbos.org

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Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

From: Young, Victor
Sent: Friday, February 12, 2016 2:58 PM
To: Lew, Lisa (BOS) <lisa.lew@sfgov.org>
Subject: FW: Request for Referral - BOS File No. 160065

Victor Young 415-554-7724

Administrator, Sunshine Ordinance Task Force

From: Guzman, Monica (BOS)
Sent: Friday, February 12, 2016 2:08 PM
To: Young, Victor <victor.young@sfgov.org>
Subject: FW: Request for Referral - BOS File No. 160065

Hi Victor,

I am writing to request referral of BOS File No. 160065, Administrative Code- Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child. This item will be heard at the Youth Commission meeting on Tuesday February 16th and a referral response will be sent to Linda Wong by end of day Thursday February 18th.

Thank you,

Monica Guzman
Coordinator of Youth Development and Administration
San Francisco Youth Commission
Office: (415) 554-6464 | Fax: (415) 554-6140

Visit the official [Youth Commission site](#) and [YC facebook page](#).

Complete a Board of Supervisors [Customer Satisfaction form](#).

From: Major, Erica (BOS)
Sent: Friday, February 12, 2016 2:05 PM
To: Guzman, Monica (BOS) <Monica.Guzman@sfgov.org>; Wong, Linda (BOS) <linda.wong@sfgov.org>
Subject: RE: Request for Referral - BOS File No. 160065

Hi Monica,

This item was transferred to Budget and Finance, looping Linda in.

Erica Major
Assistant Committee Clerk
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102
Phone: (415) 554-4441 | Fax: (415) 554-5163
Erica.Major@sfgov.org | www.sfbos.org

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Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

From: Guzman, Monica (BOS)
Sent: Friday, February 12, 2016 1:54 PM
To: Major, Erica (BOS) <erica.major@sfgov.org>
Subject: Request for Referral - BOS File No. 160065

Good Afternoon Erica,

I am writing to request referral of BOS File No. 160065, Administrative Code- Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child. This item will be heard at the Youth Commission meeting on Tuesday February 16th and a referral response will be sent to you by end of day Thursday February 18th.

Thank you,

Monica Guzman
Coordinator of Youth Development and Administration
San Francisco Youth Commission
Office: (415) 554-6464 | Fax: (415) 554-6140

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Greg Suhr, Chief, Police Department
Micki Callahan, Director, Department of Human Resources
Laurel Kloomok, Executive Director, Children and Families Commission
Maria Su, Director, Department of Children, Youth and Their Families
Catherine Dodd, Director, Health Service System
Trent Rhorer, Executive Director, Human Services Agency
Donna Levitt, Division Manager, Office of Labor Standards Enforcement

FROM: Erica Major, Assistant Committee Clerk, Public Safety and
Neighborhood Services Committee, Board of Supervisors

DATE: February 1, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Wiener on January 26, 2016:

File No. 160065

Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child.

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

c:
Christine Fountain, Police Department
Sergeant Rachael Kilshaw
Susan Gard, Department of Human Resources

Major, Erica (BOS)

From: Major, Erica (BOS)
Sent: Monday, February 01, 2016 4:13 PM
To: Suhr, Greg (POL); Callahan, Micki (HRD); Kloomok, Laurel (CFC) (CHF) (CFC); Su, Maria (CHF); Dodd, Catherine (HSS); Rhorer, Trent (HSA) (DSS); Levitt, Donna (ADM)
Cc: Fountain, Christine (POL); Kilshaw, Rachael (POL); Gard, Susan (HRD)
Subject: REFERRAL FYI (160065) Police Code - Paid Parental Leave for Bonding with New Child
Attachments: 160065 FYI.pdf

Greetings:

This matter is being forwarded to your department for informational purposes. If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Thank you for your attention.

Best,

Erica Major
Assistant Committee Clerk
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102
Phone: (415) 554-4441 | Fax: (415) 554-5163
Erica.Major@sfgov.org | www.sfbos.org

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Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.

1516-RBM-20

Youth Commission
City Hall ~ Room 345
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4532



(415) 554-6446
(415) 554-6140 FAX
www.sfgov.org/youth_commission

YOUTH COMMISSION
MEMORANDUM

TO: Linda Wong, Committee Clerk, Budget & Finance Committee
FROM: Youth Commission
DATE: Thursday, February 18, 2016
RE: Referral response to BOS Files No. 160065

At our **Tuesday, February 16, 2016 meeting**, the Youth Commission voted to unanimously support the following motion:

To support BOS File No. 160065—Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child.

Youth Commissioners thank the Board of Supervisors for their attention to issue. If you have any questions, please contact our office at (415) 554-6446, or your Youth Commissioner.

A handwritten signature in cursive script, reading "Luis Avalos-Nunez".

Chair, Luis Avalos-Nunez
Adopted on February 16, 2016
2015-2016 San Francisco Youth Commission

Wong, Linda (BOS)

From: Carpenter, Adele
Sent: Thursday, February 18, 2016 1:49 PM
To: Wong, Linda (BOS)
Cc: Somera, Alisa (BOS)
Subject: YC Referral Responses 151184; 160065; 160075; 160076
Attachments: 1516-RBM-15.pdf; 1516-RBM-16.pdf; 1516-RBM-17.pdf; 1516-RBM-20.pdf

Hi, Linda,

I hope this finds you well. I wanted to send along the YC's referral responses from their Feb. 16th meeting to the following items up in Budget and Finance committee:

151184
160065
160075
160076

Thanks very much,

Adele Failes-Carpenter
Director
San Francisco Youth Commission
Office: (415) 554-7112 | Fax: (415) 554-6140

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Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date _____

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 [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. 160065
- 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 []

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):

Supervisor Wiener

Subject:

Police Code - Paid Parental Leave for Bonding With New Child

The text is listed below or attached:

Ordinance amending the Police Code to require employers to provide supplemental compensation to employees who are receiving State Paid Family Leave for purposes of bonding with a new child.

Signature of Sponsoring Supervisor: Scott Wiener

For Clerk's Use Only:

