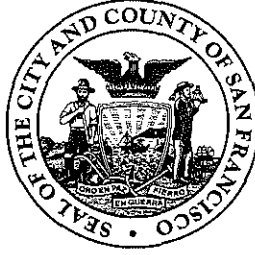


BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
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## MEMORANDUM

TO: Jaci Fong, Director, Office of Contract Administration  
Mawuli Tugbenyoh, Office of the Mayor  
Ben Rosenfield, City Controller, Office of the Controller  
Ivan Satero, Director, San Francisco International Airport

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee

DATE: May 1, 2017

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Budget and Finance Committee has received the following substituted legislation:

**File No. 170297**

**Ordinance amending the Administrative Code to increase the minimum hourly compensation rate for employees of City contractors other than nonprofit corporations or public entities to \$15.86 per hour on July 1, 2017, \$16.86 per hour on July 1, 2018, and followed thereafter by annual cost-of-living increases; and to require that City contractors pay the minimum hourly compensation rate to employees who perform any work funded under an applicable contract with the City.**

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: Todd Rydstrom, Office of the Controller

1 [Administrative Code - Increasing the Minimum Compensation Hourly Rate]

2

3 Ordinance amending the Administrative Code to increase the minimum hourly  
4 compensation rate for employees of City contractors other than nonprofit corporations  
5 or public entities to \$15.86 per hour on July 1, 2017, \$16.86 per hour on July 1, 2018,  
6 and followed thereafter by annual cost-of-living increases; and to require that City  
7 contractors pay the minimum hourly compensation rate to employees who perform any  
8 work funded under an applicable contract with the City.

9

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

14

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

16

17 Section 1. The Administrative Code is hereby amended by revising Sections 12P.2,  
18 12P.3, and 12P.4 to read as follows:

19

20 **SEC 12P.2. DEFINITIONS.**

21 As used in this Chapter the following capitalized terms shall have the following  
22 meanings:

23

\* \* \* \*

24 (i) "Covered Employee" shall mean:

25

1 (1) An Employee of a Contractor who, during the applicable Pay Period,  
2 performs, ~~at least four (4) hours per week~~ during the Pay Period, of any work funded (in whole or  
3 in part) under the applicable Contract or on the project funded under the applicable Contract:

4 (A) Within the geographic boundaries of the City;

5 (B) On real property owned or controlled by the City, but outside the  
6 geographic boundaries of the City; or

7 (C) Elsewhere in the United States, ~~but only if such related work performed~~  
8 ~~elsewhere within the United States consists of at least ten (10) hours per each work week during the~~  
9 ~~Pay Period in question.~~

10 (2) Notwithstanding the provisions of subsection (i)(1), for every Contract and  
11 Contract Amendment entered into on or after the Effective Date of the Amendment the term  
12 "Covered Employee" shall include an Employee of a Contractor who works elsewhere in the  
13 United States and who, during the applicable Pay Period, performs ~~at least four (4) hours per~~  
14 ~~week of any~~ work funded (in whole or in part) under the applicable Contract or to on the project  
15 funded under the applicable Contractor.

16 (3) Employees of the In-Home Supportive Services Public Authority shall be  
17 covered employees as designated in Section 70.11 of this Code.

18 (4) Notwithstanding the foregoing, the term "Covered Employee" shall exclude  
19 the following Employees of a Contractor that is a Nonprofit Corporation:

20 (A) Any Employee who is under the age of eighteen (18) and is claimed  
21 as a dependent for federal income tax purposes and is employed as an after-school or  
22 summer Employee; or employed as a trainee in a bona fide training program consistent with  
23 Federal law, which training program enables the Employee to advance into a permanent  
24 position; provided, however, these exemptions only apply when the Employee does not  
25 replace, displace or lower the wage or benefits of any existing position or Employee; and,

1 (B) Any disabled Employee of a Contractor, which disabled Employee: is  
2 covered by a current sub-minimum wage certificate issued to the Contractor by the U.S.  
3 Department of Labor; or would be covered by such a certificate but for the fact that the  
4 Contractor is paying a wage equal to or higher than the minimum wage.

5 (5) For every Contract and Contract Amendment entered into on or after the  
6 Effective Date of the Amendment, the term "Covered Employee" shall include an Employee of  
7 a Contractor who also participates in the CalWorks Program, or any similar successor  
8 program, who during the applicable Pay Period performs any welfare-to-work activities  
9 considered "employment" under the Fair Labor Standards Act (29 U.S.C. §§ 201 et. seq.) and  
10 any applicable United States Department of Labor regulations or guideline, funded (in whole  
11 or in part) under the applicable Contract or on the project funded under the applicable  
12 Contract; provided, however, that the hourly rate of payment for these Covered Employees  
13 shall be set by the Executive Director of the Department of Human Services at the maximum  
14 rate that is in conformance with CalWorks eligibility criteria so that these Covered Employees  
15 maintain CalWorks eligibility. Prior to June 1 of each year, the Executive Director shall provide  
16 such rate to the Office of Labor Standards Enforcement for publication. This amount shall be  
17 adjusted yearly, as necessary, to reflect any changes in federal or state law governing  
18 CalWorks eligibility.

19 \* \* \* \*

20  
21 **SEC 12P.3. MINIMUM COMPENSATION COMPONENTS.**

22 (a) Minimum Compensation shall consist of each of the following:

- 23 (1) ~~(A) (i) Hourly gross compensation in the amount of nine dollars (\$9.00) per hour.~~  
24 ~~(ii) In no less than twelve (12) nor more than eighteen (18) months from the~~  
25 ~~Effective Date, the City shall increase the hourly gross compensation to ten dollars (\$10.00) per hour;~~

1 ~~provided, however, that in the case of Nonprofit Corporations and public entities, this adjustment shall~~  
2 ~~only be made if the Joint Report issued by the Controller, Mayor's Budget Office, and Budget Analyst,~~  
3 ~~pursuant to San Francisco Administrative Code Section 3.6, finds that the City has sufficient funds to~~  
4 ~~pay the anticipated costs of the adjustment. A finding of "sufficient funds" shall mean that the City will~~  
5 ~~not be required to reduce services in order to pay the anticipated costs of the adjustment.~~

6 ~~\_\_\_\_\_ (iii) For each of the next three (3) years after the adjustment provided in~~  
7 ~~Subsection (a)(ii) is made, at annual intervals, the City shall make an additional adjustment of two and~~  
8 ~~one half (2.5) percent.~~

9 (BA) For Contracts and Contract Amendments with parties other than  
10 Nonprofit Corporations or public entities ~~entered into on or after the Effective Date of the~~  
11 ~~Amendment, hourly gross compensation in the amount of ten dollars and seventy seven cents~~  
12 ~~(\$10.77) shall be as follows:~~

13 ~~\_\_\_\_\_ (i) Beginning on July 1, 2017, an hourly gross compensation of \$15.86.~~

14 ~~\_\_\_\_\_ (ii) Beginning on July 1, 2018, an hourly gross compensation of \$16.86.~~

15 ~~(iii) In order to prevent inflation from eroding the value of this rate,~~  
16 ~~on January 1, 2008 July 1, 2019, the ten dollars and seventy seven cent (\$10.77) rate the hourly gross~~  
17 ~~compensation rate shall increase by an amount corresponding to the prior year's increase, if~~  
18 ~~any, in the CPI Consumer Price Index. Annually thereafter on the first of January July 1, the~~  
19 ~~hourly gross compensation in effect for the prior calendar year shall increase by an amount~~  
20 ~~corresponding to any prior year's increase in the CPI Consumer Price Index.~~

21 (CB) (i) For Contracts and Contract Amendments with Nonprofit  
22 Corporations and public entities ~~entered into on or after the Effective Date of the Amendment,~~  
23 ~~hourly gross compensation in the amount of ten dollars and seventy seven cents (\$10.77). It shall be~~  
24 ~~the policy of the City to endeavor to maintain the hourly gross compensation for Contracts with~~  
25 ~~Nonprofit Corporations and public entities equal to the rate that applies to for profit Contractors. As~~

1 ~~such, this ten dollars and seventy seven cent (\$10.77) rate shall increase by an amount corresponding~~  
2 ~~to the prior year's increase, if any, in the CPI. These CPI adjustments shall be made on January 1,~~  
3 ~~2008 and every January 1 thereafter. Notwithstanding the provisions of this Subsection, when the Joint~~  
4 ~~Report shows a projected shortfall, there shall be no automatic CPI increase in hourly gross~~  
5 ~~compensation for Nonprofit Corporations and public entities as otherwise provided in this Subsection~~  
6 ~~and the Mayor and the Board of Supervisors shall follow the procedures set forth in Subsections (C)(ii)~~  
7 ~~and (iii) shall be the Minimum Wage, as set forth in Administrative Code Section 12R.4, as may be~~  
8 ~~amended from time to time.~~

9 (ii) YEARS WITH PROJECTED BUDGET SHORTFALL. When submitting the  
10 annual proposed budget to the Board of Supervisors for any upcoming fiscal year in which  
11 there is a projected shortfall, the Mayor shall transmit a written report to the Clerk and to each  
12 member of the Board of Supervisors stating whether the proposed budget contains funding to  
13 pay all of the costs of the projected CPI increase for Nonprofit Corporations and public entities  
14 for the upcoming fiscal year, as well as for any prior fiscal years for which the Agency has  
15 granted a waiver. If the proposed budget does not contain sufficient funding for all of such  
16 costs, the report shall state the extent to which any portion of the CPI increase has been  
17 funded in the proposed budget and, in addition, shall set forth the basis for the Mayor's  
18 determination that no alternative funding sources or prudent reductions in City expenses were  
19 available to enable the City to pay the additional costs of the CPI increase for the upcoming  
20 fiscal year, and for any prior fiscal years for which the Agency has granted a waiver, without  
21 jeopardizing City operations.

22 (iii) When the Mayor has transmitted a report to the members of the Board  
23 providing notice that the proposed budget does not contain sufficient funding to pay the  
24 additional costs of the CPI increase for the upcoming fiscal year for Nonprofit Corporations  
25 and public entities and for any prior fiscal years for which the Agency has granted a waiver,

1 the Budget and Finance Committee of the Board (or any successor committee as determined  
2 by the President of the Board) shall hold a hearing before adoption of the budget to consider  
3 the report and whether there are alternative funding sources or prudent reductions in City  
4 expenses available to enable the City to pay the additional costs of the CPI increase for the  
5 upcoming fiscal year, and for any prior fiscal year for which the Agency has granted a waiver,  
6 without jeopardizing City operations. The Board may amend the budget to provide full or  
7 partial funding for the CPI increase(s).

8 (iv) The hourly gross compensation for Nonprofit Corporations and public  
9 entities for the upcoming calendar year following the adoption of the budget shall be the rate  
10 required in the current calendar year, plus the amount of any CPI increase provided for in the  
11 budget. This rate shall apply notwithstanding the failure of the Mayor to make the report or the  
12 Board to conduct the hearing required by Subsection (C)(ii) and (iii). The Agency shall provide  
13 notice of the amount of hourly gross compensation for Nonprofit Corporations and public  
14 entities on the Agency's website. Except for those years in which the budget has sufficient  
15 funds to bring the rate for Nonprofit Corporations and public entities into parity with rate for  
16 for-profits, the Agency shall grant a blanket waiver applicable to all contracts with Nonprofit  
17 Corporations and public entities, which waiver shall authorize payment under such contract of  
18 hourly gross compensation that reflects either no CPI increase or only such increase as is  
19 covered by the budget. The Controller's Office shall provide notice to all City departments of  
20 the hourly gross compensation for Nonprofit Corporations and public entities as determined by  
21 the Agency.

22 (v) Years with no one (~~1~~) percent projected budget shortfall. As provided in  
23 Subsection (a)(1)(C)(i), the hourly gross compensation for Nonprofit Corporations and public  
24 entities shall be adjusted in any year in which there is no projected budget shortfall by an  
25 amount corresponding to the prior year's increase, if any, in the CPI. When submitting the

1 annual proposed budget to the Board of Supervisors for any upcoming fiscal year in which  
2 there is no projected shortfall but there is disparity between the rate for for-profit entities and  
3 for Nonprofit Corporations and public entities, the Mayor shall transmit a written report to the  
4 Clerk and to each member of the Board of Supervisors stating whether the proposed budget  
5 contains sufficient funding to bring the hourly gross compensation for Nonprofit Corporations  
6 and public entities into parity with the amount applicable to for-profit entities under Section  
7 (a)(1)(B).

8 (vi) When the Mayor has transmitted a report to the members of the Board  
9 providing notice that the proposed budget does not contain sufficient funding to bring the  
10 hourly gross compensation for Nonprofit Corporations and public entities into parity with the  
11 amount applicable to for-profit entities, the Budget and Finance Committee of the Board (or  
12 any successor committee as determined by the President of the Board) shall hold a hearing  
13 before adoption of the budget to consider the report. The Board may amend the budget to  
14 provide full or partial funding toward such parity. If additional funds are provided in the budget  
15 to obtain such parity or to bring Nonprofit Corporation and public entities closer to such parity,  
16 the hourly gross compensation for such entities shall increase to the extent provided in the  
17 budget and the Agency shall provide notice of the amount of hourly gross compensation on  
18 the Agency's website.

19 (C) For Contracts and Contract Amendments covered by Section 12P.4 of this  
20 Chapter 12P, hourly gross compensation shall be as follows:

21 (i) Beginning on July 1, 2017, an hourly gross compensation of \$14.39.

22 (ii) Beginning on January 1, 2018, an hourly gross compensation of  
23 \$15.86.

24 (iii) Beginning on July 1, 2018, an hourly gross compensation of \$16.86.



1 (iv) In order to prevent inflation from eroding the value of this rate, on  
2 July 1, 2019, the hourly gross compensation rate shall increase by an amount corresponding to the  
3 prior year's increase, if any, in the Consumer Price Index. Annually thereafter on July 1, the hourly  
4 gross compensation in effect for the prior calendar year shall increase by an amount corresponding to  
5 any prior year's increase in the Consumer Price Index.

6 (2) Compensated time off (at the compensation rates specified in subsections  
7 (a)(1) of this Section 12P.3) in an hourly amount that, on an annualized basis for a full-time  
8 employee, equals twelve (~~12~~) days per year. Such time off shall vest with the Covered  
9 Employee at the end of the applicable Pay Period and may be used, for sick leave, vacation  
10 or personal necessity. Notwithstanding the foregoing, if a Contractor reasonably determines,  
11 in good faith, that the Contractor cannot comply with this requirement for compensated time  
12 off, the Contractor shall provide the Covered Employee with a cash equivalent of such  
13 compensated time off.

14 (3) Uncompensated time off in an hourly amount that, on an annualized basis  
15 for a full-time employee, equals ten (~~10~~) days per year. Such time off shall vest with the  
16 Covered Employee at the end of the applicable Pay Period and may be used, at the option of  
17 the Covered Employee, for sick leave for the illness of the Covered Employee or such  
18 Covered Employee's spouse, domestic partner, child, parent, sibling, grandparent or  
19 grandchild.

20 (b) By ~~December~~ March 1 of each year, the Agency shall make available at its office  
21 and on its website the hourly rates required by this Section 12P.3.

22 (c) When preparing proposed budgets and requests for supplemental appropriations  
23 for contract services, City departments that regularly enter into agreements for the provision of  
24 services by ~~#~~Nonprofit ~~e~~Corporations shall transmit with their proposal a written confirmation  
25 that the department has considered in its calculations the costs that the ~~#~~Nonprofit

1 eCorporations calculate that they will incur in complying with the Minimum Compensation  
2 Ordinance.

3 (d) Subject to the budgetary and fiscal provisions of the Charter, it shall be the  
4 policy of the City to ensure sufficient funding to prevent a reduction in the services to the  
5 community provided by Nonprofit Corporations and public entities.

6  
7 **SEC. 12P.4. SAN FRANCISCO INTERNATIONAL AIRPORT.**

8 The requirements of this Chapter 12P shall apply to a written agreement (including,  
9 without limitation, any lease, concession, franchise or easement agreement) for the exclusive  
10 use of real property that is owned by the City or of which the City has exclusive use, if such  
11 property is under the jurisdiction of the San Francisco Airport Commission and the term of the  
12 agreement exceeds twenty-nine ~~(29)~~ days in any calendar year, whether by single or  
13 cumulative instruments. If cumulative instruments cause the term of the agreement to exceed  
14 twenty-nine ~~(29)~~ days, the agreement in question shall be subject to this Article only on and  
15 after the effective date of the instrument which causes the term to exceed twenty-nine ~~(29)~~  
16 days. The requirements of this Chapter shall also apply to (i) any sublease or other agreement  
17 allowing other parties the exclusive right to occupy or use all or any portion of the property  
18 covered by the agreement and (ii) any agreement between a tenant or subtenant and any  
19 other person or entity to perform services on the airport property. Contractors who have  
20 agreements covered by this Section shall comply with the requirements of this Chapter insofar  
21 as they have "Covered Employees." For purposes of this Section, "Covered Employee" shall  
22 mean an employee who ~~provides at least ten (10) hours of~~ performs any work on the property that  
23 is the subject of the agreement in a two-week Pay Period, adjusted proportionately if the Pay  
24 Period is other than two ~~(2)~~ weeks. Notwithstanding the provisions of this Section, all  
25 exemptions and waivers from the requirements of this Chapter that apply to Contracts shall

1 also apply to agreements for the use of airport property described in this Section, except that  
2 the exemption in Section 12P.2(e)(16) does not apply to agreements for the use of real  
3 property owned by the City or of which the City has exclusive use if the property is under the  
4 jurisdiction of the San Francisco Airport Commission. Except as otherwise specifically  
5 provided, all requirements of this Chapter, and the monitoring and enforcement mechanisms  
6 provided in this Chapter, shall apply to agreements covered by this Section.

7  
8 Section 2. Effective Date. This ordinance shall become effective 30 days after  
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
11 of Supervisors overrides the Mayor's veto of the ordinance.

12  
13 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
17 additions, and Board amendment deletions in accordance with the "Note" that appears under  
18 the official title of the ordinance.

19  
20 Section 4. If any section, subsection, sentence, clause, phrase, or word of this Chapter  
21 12P, or any application thereof to any person or circumstance, is held to be invalid or  
22 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not  
23 affect the validity of the remaining portions or applications of the Article. The Board of  
24 Supervisors hereby declares that it would have passed this Article and each and every  
25 section, subsection, sentence, clause, phrase, and word not declared invalid or

1 unconstitutional without regard to whether any other portion of this Article or application  
2 thereof would be subsequently declared invalid or unconstitutional.

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

By:   
\_\_\_\_\_  
JOSHUA WHITE  
Deputy City Attorney

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**REVISED LEGISLATIVE DIGEST**  
(Substituted, 4/25/2017)

[Administrative Code - Increasing the Minimum Compensation Hourly Rate]

**Ordinance amending the Administrative Code to increase the minimum hourly compensation rate for employees of City contractors other than nonprofit corporations or public entities to \$15.86 per hour on July 1, 2017, \$16.86 per hour on July 1, 2018, and followed thereafter by annual cost-of-living increases; and to require that City contractors pay the minimum hourly compensation rate to employees who perform any work funded under an applicable contract with the City.**

Existing Law

The Minimum Compensation Ordinance (“MCO”) generally requires City contractors to provide their covered employees with no less than the MCO hourly compensation rate. The MCO covers most City service contractors, as well as those who hold leases or perform work at San Francisco International Airport.

For contracts and contract amendments with parties other than Nonprofit Corporations or public entities, the MCO hourly gross compensation is currently is \$13.64 per hour.

On July 1, 2017, the minimum wage will increase to \$14 per hour. That hourly rate will apply to City contractors, except for those who hold leases or perform work at San Francisco International Airport.

From 2004 through 2015, the MCO hourly compensation rate has been, on average, \$1.86 per hour higher than the minimum wage.

To be a “Covered Employee” under the MCO, the employee of a contractor must generally perform at least four hours per week during a pay period on work funded by the contract with the City within the geographic boundaries of the City or on City-owned or controlled property, or ten hours per week if the work is performed elsewhere in the United States and not on City-owned or controlled property.

Amendments to Current Law

For contracts and contract amendments with parties other than Nonprofit Corporations or public entities, hourly gross compensation would be as follows:

- Beginning on July 1, 2017, an hourly gross compensation of \$15.86.
- Beginning on July 1, 2018, an hourly gross compensation of \$16.86.

- Beginning on July 1, 2019, the hourly gross compensation rate would increase by the prior year's increase, if any, in the Consumer Price Index.

This ordinance would expand the definition of "Covered Employee" such that an employee would be "covered" by the MCO if he or she performed any work funded by a contract with the City during a pay period.

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