

BOARD of SUPERVISORS



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MEMORANDUM

TO: Youth Commission

FROM: Alisa Miller, Clerk, Rules Committee
Board of Supervisors

DATE: June 25, 2014

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Rules Committee

The Board of Supervisors' Rules Committee has received the following proposed Initiative Ordinance for the November 4, 2014, Election, which is being referred to the Youth Commission, 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. 140687

Motion ordering submitted to the voters an ordinance amending the Administrative Code to increase the minimum wage for employees in San Francisco to \$12.25 per hour on May 1, 2015, with annual increases, reaching \$15.00 per hour in 2018, followed thereafter by annual cost-of-living increases; following 2015, provide only for annual cost-of-living increases in the minimum wage for two narrow categories of employees; and include the City government and In-Home Supportive Services Public Authority as employers subject to the Minimum Wage Ordinance at an election to be held on November 4, 2014.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM YOUTH COMMISSION

Date: _____

No Comment

Recommendation Attached

Chairperson, Youth Commission

1 [Initiative Ordinance - Administrative Code - Minimum Wage]

2
3 **Motion ordering submitted to the voters an ordinance amending the Administrative**
4 **Code to increase the minimum wage for employees in San Francisco to \$12.25 per hour**
5 **on May 1, 2015, with annual increases, reaching \$15.00 per hour in 2018, followed**
6 **thereafter by annual cost-of-living increases; following 2015, provide only for annual**
7 **cost-of-living increases in the minimum wage for two narrow categories of employees;**
8 **and include the City government and In-Home Supportive Services Public Authority as**
9 **employers subject to the Minimum Wage Ordinance, at an election to be held on**
10 **November 4, 2014.**

11
12 **MOVED,** That the Board of Supervisors hereby submits the following ordinance to the
13 voters of the City and County of San Francisco, at an election to be held on November 4,
14 2014.

15
16 **Ordinance amending the Administrative Code to increase the minimum wage for**
17 **employees in San Francisco to \$12.25 per hour on May 1, 2015, with annual increases,**
18 **reaching \$15.00 per hour in 2018, followed thereafter by annual cost-of-living**
19 **increases; following 2015, provide only for annual cost-of-living increases in the**
20 **minimum wage for two narrow categories of employees; and include the City**
21 **government and In-Home Supportive Services Public Authority as employers subject to**
22 **the minimum wage ordinance.**

23 **NOTE:** **Unchanged Code text and uncodified text** are in plain font.
24 **Additions to Codes** are in *single-underline italics Times New Roman font*.
25 **Deletions to Codes** are in ~~strikethrough italics Times New Roman font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

1
2 Be it ordained by the People of the City and County of San Francisco:

3 Section 1. The Administrative Code is hereby amended by revising Chapter 12R,
4 Sections 12R.3, 12R.4, 12R.7, 12R.10, 12R.11, and 12R.17, to read as follows:

5 **SEC. 12R.3. DEFINITIONS.**

6 As used in this Chapter, the following capitalized terms shall have the following
7 meanings:

8 "Agency" shall mean the Living Wage/Living Health Division of the Office of Contract
9 Administration or such other City department or agency as the City shall by resolution
10 designate.

11 "City" shall mean the City and County of San Francisco.

12 "Employee" shall mean any person who:

13 (a) In a particular week performs at least two (2) hours of work for an Employer
14 within the geographic boundaries of the City; and

15 (b) Qualifies as an employee entitled to payment of a minimum wage from any
16 employer under the California minimum wage law, as provided under Section 1197 of the
17 California Labor Code and wage orders published by the California Industrial Welfare
18 Commission, or is a participant in a Welfare-to-Work Program.

19 "Employer" shall mean any person, as defined in Section 18 of the California Labor
20 Code, including corporate officers or executives, who directly or indirectly or through an agent
21 any other person, including through the services of a temporary services or staffing agency or
22 similar entity, employs or exercises control over the wages, hours or working conditions of any
23 Employee. "Employer" shall include the City and the San Francisco In-Home Supportive Services
24 Public Authority.

1 "Government Supported Employee" shall mean any Employee who is: (1) under the age of 18
2 and is employed as an after-school or summer Employee in a bona fide training or apprenticeship
3 program in a position that is subsidized by the federal, state, or local government ; or (2) over the age
4 55 and is employed by a Non-Profit Corporation that provides social welfare services as a core mission
5 to individuals who are over the age of 55 and is in a position that is subsidized by federal, state, or
6 local government. The second category shall apply only to Non-Profit Corporations operating as of
7 January 1, 2015, and apply only as to the number of employees over the age of 55 holding positions in
8 the Corporation as of January 1, 2015 that are subsidized by federal, state, or local government, plus
9 25% of that number. Any employees hired by a Non-Profit Corporation after January 1, 2015 that
10 exceed the numerical threshold in the prior sentence (including the additional 25%) shall not qualify as
11 "Government Supported Employees." If at any time the number of employees over the age of 55
12 holding positions in the Corporation that are subsidized by federal, state, or local government falls
13 below that numerical threshold (including the additional 25%), then those positions shall qualify as
14 "Government Supported Employee" positions.

15 "Minimum Wage" shall have the meaning set forth in Section 12R.4 of this Chapter.

16 ~~"Small Business" shall mean an Employer for which fewer than ten (10) persons perform work~~
17 ~~for compensation during a given week. In determining the number of persons performing work for an~~
18 ~~Employer during a given week, all persons performing work for compensation on a full-time, part-time,~~
19 ~~or temporary basis shall be counted, including persons made available to work through the services of~~
20 ~~a temporary services or staffing agency or similar entity.~~

21 "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly
22 existing and in good standing under the laws of the jurisdiction of its incorporation and (if a
23 foreign corporation) in good standing under the laws of the State of California, which
24 corporation has established and maintains valid nonprofit status under Section 501(c)(3) of
25

1 the United States Internal Revenue Code of 1986, as amended, and all rules and regulations
2 promulgated under such Section.

3 "Welfare-to-Work Program" shall mean the City's CalWORKS Program, County Adult
4 Assistance Program (CAAP) which includes the Personal Assisted Employment Services
5 (PAES) Program, and General Assistance Program, and any successor programs that are
6 substantially similar to them.

7 **SEC. 12R.4. MINIMUM WAGE.**

8 (a) Employers shall pay Employees no less than the Minimum Wage for each hour
9 worked within the geographic boundaries of the City.

10 *(1) Except as provided in subsection 12R.4(b), the Minimum Wage paid to Employees*
11 *shall be as follows:*

12 *(A) Beginning on May 1, 2015, the Minimum Wage shall be an hourly rate of*
13 *\$12.25.*

14 *(B) Beginning on July 1, 2016, the Minimum Wage shall be an hourly rate of*
15 *\$13.00.*

16 *(C) Beginning on July 1, 2017, the Minimum Wage shall be an hourly rate of*
17 *\$14.00.*

18 *(D) Beginning on July 1, 2018, the Minimum Wage shall be an hourly rate of*
19 *\$15.00.*

20 *(E) Beginning on July 1, 2019, and each year thereafter, the Minimum Wage*
21 *shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price*
22 *Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA*
23 *metropolitan statistical area, as determined by the Controller.*

24 (b) Beginning on *May 1, 2015, the Minimum Wage paid to Government Supported Employees*
25 *shall be an hourly rate of \$12.25. Beginning on July 1, 2016, and each year thereafter, the Minimum*

1 Wage paid to Government Supported Employees shall increase by an amount corresponding to the
2 prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers
3 for the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as determined by the
4 Controller. the effective date of this Chapter, the Minimum Wage shall be an hourly rate of \$8.50. To
5 prevent inflation from eroding its value, beginning on January 1, 2005, and each year thereafter, the
6 Minimum Wage shall increase by an amount corresponding to the prior year's increase, if any, in the
7 Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-
8 San Jose, CA metropolitan statistical area.

9 ~~(c) The Minimum Wage for Employers that are Small Businesses or Nonprofit Corporations~~
10 ~~shall phase in over a two year period in order to afford such Employers time to adjust. For such~~
11 ~~Employers, the effective date of this Chapter shall be January 1, 2005. For a transition period~~
12 ~~beginning January 1, 2005 and ending December 31, 2005, the Minimum Wage for Employees of such~~
13 ~~Employers shall be an hourly rate of \$7.75. Beginning January 1, 2006, the Minimum Wage for~~
14 ~~Employees of such Employers shall be the regular Minimum Wage established pursuant to Section~~
15 ~~4(b)1 of this Chapter.~~

16 * * * *

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

18 (a) **Implementation.** The Agency shall be authorized to coordinate implementation
19 and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such
20 purposes consistent with this Chapter. Any guidelines or rules promulgated by the Agency
21 shall have the force and effect of law and may be relied on by Employers, Employees and
22 other parties to determine their rights and responsibilities under this Chapter. Any guidelines
23 or rules may establish procedures for ensuring fair, efficient and cost-effective implementation
24 of this Chapter, including supplementary procedures for helping to inform Employees of their
25 rights under this Chapter, for monitoring Employer compliance with this Chapter, and for

1 providing administrative hearings to determine whether an Employer or other person has
2 violated the requirements of this Chapter. The Agency shall make every effort to resolve
3 complaints in a timely manner and shall have a policy that the Agency shall take no more than
4 one year to settle, request an administrative hearing under Section 12R.7(b), or initiate a civil
5 action under Section 12R.7(c). The failure of the Agency to meet these timelines within one
6 year shall not be grounds for closure or dismissal of the complaint.

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

1 costs of investigating and remedying the violation, the Agency may also order the violating
2 Employer or person to pay to the City a sum of not more than \$50 for each day and for each
3 Employee or person as to whom the violation occurred or continued. Such funds shall be
4 allocated to the Agency and shall be used to offset the costs of implementing and enforcing
5 this Chapter. The amounts of all sums and payments authorized or required under this
6 Chapter shall be updated annually for inflation, beginning January 1, 2005, using the inflation
7 rate and procedures set forth in Section ~~4(b)~~12R.4 of this Chapter. An Employee or other
8 person may report to the Agency in writing any suspected violation of this Chapter. The
9 Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the
10 maximum extent permitted by applicable laws, the name and other identifying information of
11 the Employee or person reporting the violation. Provided, however, that with the authorization
12 of such person, the Agency may disclose his or her name and identifying information as
13 necessary to enforce this Chapter or for other appropriate purposes. In order to further
14 encourage reporting by Employees, if the Agency notifies an Employer that the Agency is
15 investigating a complaint, the Agency shall require the Employer to post or otherwise notify its
16 Employees that the Agency is conducting an investigation, using a form provided by the
17 Agency.

18 (c) **Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a
19 violation of this Chapter, any entity a member of which is aggrieved by a violation of this
20 Chapter, or any other person or entity acting on behalf of the public as provided for under
21 applicable state law, may bring a civil action in a court of competent jurisdiction against the
22 Employer or other person violating this Chapter and, upon prevailing, shall be entitled to such
23 legal or equitable relief as may be appropriate to remedy the violation including, without
24 limitation, the payment of any back wages unlawfully withheld, the payment of an additional
25 sum as ~~liquidated damages~~ penalties in the amount of \$50 to each Employee or person whose

1 rights under this Chapter were violated for each day that the violation occurred or continued,
2 reinstatement in employment and/or injunctive relief, and shall be awarded reasonable
3 attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter
4 on behalf of the public as provided for under applicable state law shall, upon prevailing, be
5 entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and
6 costs. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise
7 limiting a separate or concurrent criminal prosecution under the Municipal Code or state law.
8 Jeopardy shall not attach as a result of any administrative or civil enforcement action taken
9 pursuant to this Chapter.

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

16 (e) **Posting Notice of Violation.** If an Employer fails to comply with a settlement
17 agreement with the Agency, a final determination by the Agency after an administrative
18 hearing officer issues a decision after a hearing under Section 12R.7(b), an administrative
19 citation issues under Section 12R.19, a decision made in an administrative appeal brought
20 under Section 12R.21, or judgment issued by the Superior Court, and the Employer has not
21 filed an appeal from the administrative hearing decision, administrative citation, administrative
22 appeal decision, or judgment, or the appeal is final, the Agency may require the Employer to
23 post public notice of the Employer's failure to comply in a form determined by the Agency.
24
25

1 (f) **City Employees.** Where the aggrieved party is an Employee of the City, the Employee shall
2 be entitled to all rights and remedies available under this Section 12R.7 except the Employee may not
3 recover the \$50 per diem penalty provided for in subsections (b) and (c) of this Section 12R.7.

4 * * * *

5 **SEC. 12R.10. APPLICATION OF MINIMUM WAGE TO WELFARE-TO-WORK**
6 **PROGRAMS.**

7 The Minimum Wage established pursuant to Section 12R.4 4(b) of this Chapter shall
8 apply to the City's Welfare-to-Work Programs under which persons must perform work in
9 exchange for receipt of benefits. Participants in Welfare-to-Work Programs shall not, during a
10 given benefits period, be required to work more than a number of hours equal to the value of
11 all cash benefits received during that period, divided by the Minimum Wage. Where state or
12 federal law would preclude the City from reducing the number of work hours required under a
13 given Welfare-to-Work Program, the City may comply with this Section by increasing the cash
14 benefits awarded so that their value is no less than the product of the Minimum Wage
15 multiplied by the number of work hours required.

16 **SEC. 12R.11. EFFECTIVE OPERATIVE DATE.**

17 The changes to this Chapter adopted at the November 4, 2014 municipal election shall have
18 prospective effect only and shall become operative effective on January 1, 2015. ninety (90) days after
19 it is adopted. This Chapter is intended to have prospective effect only.

20 * * * *

21 **SEC. 12R.17. VIOLATIONS.**

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

23 Each and every day that a violation exists constitutes a separate and distinct offense. Each
24 section violated constitutes a separate violation for any day at issue. If the person or persons
25 responsible for a violation fail to correct the violation within the time period specified on the

1 citation and required under Section 12R.18, the Director of the Office of Labor Standards
2 Enforcement may issue subsequent administrative citations for the uncorrected violation(s)
3 without issuing a new notice as otherwise required by Section 12R.18~~(b)(a)~~. Payment of the
4 penalty shall not excuse the failure to correct the violation nor shall it bar any further
5 enforcement action by the City. If penalties and costs are the subject of administrative appeal
6 or judicial review, then the accrual of such penalties and costs shall be stayed until the
7 determination of such appeal or review is final.

8 **(b) Payments to City; Due Date; Late Payment Penalty.** All penalties assessed
9 under Section 12R.16 shall be payable to the City and County of San Francisco.
10 Administrative penalties and costs assessed by means of an administrative citation shall be
11 due within thirty (30) days from the date of the citation. The failure of any person to pay an
12 administrative penalty and costs within that time shall result in the assessment of an additional
13 late fee. The amount of the late fee shall be ten (10) percent of the total amount of the
14 administrative penalty assessed for each month the penalty and any already accrued late
15 payment penalty remains unpaid.

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

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

24 **(e) Payment to City.** The Labor Standards Enforcement Officer has the authority to
25 require that payment of back wages found to be due and owing to employees be paid directly

1 to the City and County of San Francisco for disbursement to the employees. The Controller
2 shall hold the back wages in escrow for workers whom the Labor Standards Enforcement
3 Officer, despite his/her best efforts, including any required public notice, cannot locate; funds
4 so held for three years or more shall be dedicated to the enforcement of the Minimum Wage
5 Ordinance or other laws enforced by the Office of Labor Standards Enforcement.

6 * * * *

7 Section 2. The Administrative Code is hereby amended by revising Chapter 70, to
8 read as follows:

9 **CHAPTER 70: IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY**

10 * * * *

11 **SEC. 70.11. MINIMUM COMPENSATION.**

12 ~~(a)~~ All Employees of the In-Home Supportive Services Public Authority, including,
13 without limitation, IHSS personnel referred to consumers, or referred by consumers for
14 inclusion in the Authority, shall be deemed to be "Covered Employees" and shall be paid no
15 less than the "Minimum Compensation," as ~~such terms are~~ that term is defined in Chapter 12P-2
16 of the ~~San Francisco~~ Administrative Code, and shall be deemed "Employees" and paid no less than
17 the "Minimum Wage," as that term is defined in Chapter 12.R of the Administrative Code. This
18 Section shall be implemented in a manner that does not conflict with applicable federal or
19 State laws.


20
21 Section 3. Scope of Ordinance. In enacting this ordinance, the People of the City and
22 County of San Francisco intend to amend only those words, phrases, paragraphs,
23 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other
24 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions
25

1 or deletions, in accordance with the "Note" that appears under the official title of the
2 ordinance.

3
4 Section 4. Conflict with Other Measures. This Initiative will be deemed to conflict with
5 any other measure appearing on the same ballot establishing minimum wage rates. In the
6 event that this Initiative and any other such measure(s) are approved by the voters at the
7 same election, and this initiative receives a greater number of affirmative votes than any other
8 such measure or measures, this initiative shall control in its entirety and the other measure or
9 measures shall be rendered void and without any legal effect. If this Initiative is approved by
10 a majority of the voters but does not receive a greater number of affirmative votes than any
11 other measure appearing on the same ballot establishing minimum wage rates, this Initiative
12 shall take effect to the extent not in conflict with said measure or measures.

13 APPROVED AS TO FORM:

14 DENNIS J. HERRERA, City Attorney

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16 By: 
17 FRANCESCA GESSNER
18 Deputy City Attorney

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