

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

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

19 NOTE: Additions are *single-underline italics Times New Roman*;  
20 deletions are *strike-through-italics Times New Roman*.  
21 Board amendment additions are double-underlined;  
22 Board amendment deletions are ~~strikethrough-normal~~.

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

23 Section 1. The San Francisco Administrative Code is hereby amended by amending  
24 Section 12R.5 to read as follows:  
25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           **(b) Administrative Penalty Amounts.** In addition to all other civil penalties provided  
 2 for by law, the following violations shall be subject to administrative penalties in the amounts  
 3 set forth below:

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

23           The penalty amounts shall be increased cumulatively by fifty percent (50%) for each  
 24 subsequent violation of the same provision by the same employer or person within a three (3)  
 25 year period. The maximum penalty amount that may be imposed by administrative citation in

1 a calendar year for each type of violation listed above shall be \$5,000 or \$10,000 if a citation for  
2 retaliation is issued. In addition to the penalty amounts listed above, the Office of Labor  
3 Standards Enforcement may assess enforcement costs to cover the reasonable costs  
4 incurred in enforcing the administrative penalty, including reasonable attorneys' fees.  
5 Enforcement costs shall not count toward the \$5,000 annual maximum.  
6

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

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

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

### 19 **(b) Payments to City; Due Date; Late Payment Penalty.** All penalties assessed

20 under Section 12R.16 shall be payable to the City and County of San Francisco.  
21 Administrative penalties and costs assessed by means of an administrative citation shall be  
22 due within thirty (30) days from the date of the citation. The failure of any person to pay an  
23 administrative penalty and costs within that time shall result in the assessment of an additional  
24 late fee. The amount of the late fee shall be ten (10) percent of the total amount of the  
25



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

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

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

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

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

20 (a) Issuance of Citation. The Director or his or her designee has the authority to issue an  
21 administrative citation for any violation of this Chapter that is identified in Section 12R.16(b). The  
22 administrative citation shall be issued on a form prescribed by the Office of Labor Standards  
23 Enforcement.

24 **(b~~a~~) Notice and Opportunity to Cure.** In order to facilitate compliance, ~~The~~ Director of  
25 the Office of Labor Standards Enforcement ("Director") or his or her designee ~~may shall~~ notify

1 any person in violation of the Code provisions identified in Section 12R.16(b) of such violation  
2 prior to the issuance of an administrative citation. Regardless of the manner of service of the  
3 notice under Section 12R.19, the Director or his or her designee may post the notice of  
4 violation by affixing the notice to a surface in a conspicuous place on property that is (1) the  
5 person's principal place of business in the City, or (2) if the person's principal place of  
6 business is outside the City, the fixed location within the City from or at which the person  
7 conducts business in the City, or (3) if the person does not regularly conduct business from a  
8 fixed location in the City, one of the following: (i) the location where the person maintains  
9 payroll records if the notice of violation is for violation of Section 12R.5(c), or (ii) the jobsite or  
10 other primary location where the person's employees perform services in the City at the time  
11 the notice is posted. The notice of violation shall specify the action required to correct or  
12 otherwise remedy the violation(s). At the discretion of the Director or his or her designee,  
13 ~~The person or persons responsible for the violation shall~~ may be allowed ~~not less than ten~~  
14 (10) days from the date of the notice of violation to establish that no violation occurred or such  
15 person or persons are not responsible for the violation, or correct or otherwise remedy the  
16 violation; provided, however, that the Director may, in his or her discretion, assign a longer  
17 period, not to exceed twenty-one (21) days, within which to correct or otherwise remedy each  
18 violation, or establish that no violation occurred or such person or persons are not responsible  
19 for the violation. The Director may consider the cost of correction and the time needed to  
20 obtain information, documents, data and records for correction in assigning a specific period  
21 of time within which to correct or otherwise remedy each violation, or obtain and submit  
22 evidence that no violation occurred or such person or persons are not responsible for the  
23 violation.

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

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

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

6 **SEC 12R.25. OUTREACH.**

7 The Office of Labor Standards Enforcement shall establish a community-based  
8 outreach program to conduct education and outreach to employees. In partnership with  
9 organizations involved in the community-based outreach program, the Office of Labor Standards shall  
10 create outreach materials that are designed for workers in particular industries.

11  
12 Section 5. Effective Date. This ordinance shall become effective 30 days from the  
13 date of passage.

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

17 By:   
18 for LINDA M. ROSS  
19 Deputy City Attorney



**City and County of San Francisco**  
**Tails**  
**Ordinance**

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 110594

**Date Passed:** September 06, 2011

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

July 20, 2011 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

July 20, 2011 Budget and Finance Sub-Committee - CONTINUED AS AMENDED

July 27, 2011 Budget and Finance Committee - RECOMMENDED

August 02, 2011 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

September 06, 2011 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Campos, Chiu, Chu, Cohen, Elsbernd, Farrell, Kim, Mar, Mirkarimi and Wiener

File No. 110594

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 9/6/2011 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo  
Clerk of the Board



Mayor Edwin Lee



Date Approved