

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 ~~*italics Times New Roman font*~~.  
9 **Board amendment additions** are in double-underlined Arial font.  
10 **Board amendment deletions** are in ~~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 90 180 days prior to the start of the leave period, (2) who performs at least eight  
4 hours of work per week for the employer within the geographic boundaries of the City, (3) at least 40%  
5 of whose total weekly hours worked for the employer are within the geographic boundaries of the City,  
6 and (4) 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 determine whether the person  
9 meets the eight-hour and/or 40% threshold requirements in the preceding sentence by using  
10 an average of the person’s weekly hours worked for the Covered Employer during the three monthly  
11 pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay periods immediately  
12 preceding the start of the person’s California Paid Family Leave period. If the person was on  
13 unpaid leave during any of the aforementioned pay periods, such pay period(s) shall not be  
14 counted towards the average referenced in the preceding sentence; rather, the Agency shall  
15 consider additional earlier corresponding pay periods for that person in order to satisfy the  
16 above designated number of pay periods, but in no case shall the Agency, in calculating the  
17 average, consider pay periods earlier than 26 weeks prior to the California Paid Family Leave  
18 period.

19           “Covered Employer”, as of January 1, 2017, means any person, as defined in Section 18 of  
20 the California Labor Code, including corporate officers or executives, who directly or indirectly or  
21 through an agent or any other person, including through the services of a temporary services or  
22 staffing agency or similar entity, employs or exercises control over the wages, hours, or working  
23 conditions of an employee and who regularly employs 20 50 or more the following number of  
24 employees, regardless of location: (1) commencing with January 1, 2017, 50 or more  
25 employees; (2) commencing with July 1, 2017, 35 or more employees; and (3) commencing

1 with January 1, 2018, 20 or more employees. Covered Employer, as of July 1, 2017, means  
2 any person, as defined in Section 18 of the California Labor Code, including corporate officers  
3 or executives, who directly or indirectly or through an agent or any other person, including  
4 through the services of a temporary services or staffing agency or similar entity, employs or  
5 exercises control over the wages, hours, or working conditions of an employee and who  
6 regularly employs 20 or more employees, regardless of location. Covered Employer shall not  
7 include the City or any other governmental entity.

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

11 “State” means the State of California, including the State of California Employment  
12 Development Department.

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

15 **SEC. 3300H.4. SUPPLEMENTAL PAID PARENTAL LEAVE.**

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

18 **(b) Supplemental Compensation.**

19 **(1) General.**

20 (A) Except as stated in subsection (b)(2), when a Covered Employee receives  
21 California Paid Family Leave compensation for the purpose of New Child Bonding, a Covered  
22 Employer shall, during the leave period, supplement the California Paid Family Leave weekly benefit  
23 amount that the employee is receiving by paying the employee Supplemental Compensation in an  
24 amount such that the total of the California Paid Family Leave compensation the employee is receiving  
25

1 and the Supplemental Compensation provides, but does not exceed, 100% of the employee's current  
2 normal gross weekly wage.

3 (B) If the Covered Employee's weekly wage fluctuates, the employee's normal  
4 gross weekly wage shall be calculated based on an average of the employee's weekly earnings from the  
5 Covered Employer during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or  
6 12 weekly pay periods immediately preceding the start of the employee's California Paid Family  
7 Leave period. If the employee was on unpaid leave during any of the aforementioned pay  
8 periods, such pay period(s) shall not be counted towards the average referenced in the  
9 preceding sentence; rather, the average shall be calculated using additional earlier  
10 corresponding pay periods in order to satisfy the above designated number of pay periods,  
11 but in no case shall pay periods earlier than 26 weeks prior to the California Paid Family  
12 Leave period be considered. ; provided, however, that Notwithstanding the preceding  
13 sentence, if the Covered Employee's weekly wage fluctuates and the employee has worked for the  
14 Covered Employer for less than 26 weeks, the weekly wage shall be calculated based on an average of  
15 the employee's weekly earnings for the entire period of employment to date.

16 (C) If the California Paid Family Leave weekly benefit amount that the Covered  
17 Employee is receiving from the State is based on earnings from a calendar quarter during which the  
18 employee did not work for the Covered Employer, or during which the employee earned a higher  
19 weekly wage from the Covered Employer than the employee is receiving at the time of his or her leave,  
20 the Supplemental Compensation amount shall be calculated to provide 100% of the employee's normal  
21 gross weekly wage in his or her current position; provided, however, that reducing a Covered  
22 Employee's wages during the leave period or within 90 days of the employee's having made a request  
23 or application for California Paid Family Leave shall raise a rebuttable presumption that such wage  
24 reduction was made to reduce the Covered Employer's Supplemental Compensation obligations under  
25 this Section 3300H.4. Unless the Covered Employer rebuts the presumption with clear and convincing

1 evidence that the reduction was solely for a reason other than reducing its obligation to pay  
2 Supplemental Compensation, the employer shall be obligated to pay Supplemental Compensation  
3 during the leave period based on the employee's prior wage rate.

4 (D) Multiple Employers.

5 (i) Where the Covered Employee works for more than one employer, the  
6 Supplemental Compensation amount shall be apportioned between or among the Covered Employers  
7 based on the percentage of the Employee's total gross weekly wages received from each employer. For  
8 example, if the Employee earns \$800 per week from Covered Employer A, and \$200 per week from  
9 Covered Employer B for a combined total of \$1,000, Employer A shall pay 80% of the Supplemental  
10 Compensation amount and Employer B shall pay 20% of the Supplemental Compensation amount. If  
11 the Employee's weekly wage for a given Employer fluctuates, the percentage referenced in this  
12 subsection shall be calculated by averaging the employee's weekly wages earned from the Employer  
13 during the three monthly pay periods, six bi-weekly or semi-monthly pay periods, or 12 weekly pay  
14 periods immediately preceding the leave period. If the employee was on unpaid leave during any  
15 of the aforementioned pay periods, such pay period(s) shall not be counted towards the  
16 average referenced in the preceding sentence; rather, the average shall be calculated using  
17 additional earlier corresponding pay periods in order to satisfy the above designated number  
18 of pay periods, but in no case shall pay periods earlier than 26 weeks prior to the California  
19 Paid Family Leave period be considered.

20 (ii) In cases where the Covered Employee works for a Covered Employer  
21 and a non-Covered Employer, the Covered Employer shall be responsible only for its percentage of the  
22 Employee's total gross weekly wages. For example, if the Employee earns \$800 per week from the  
23 Covered Employer, and \$200 per week from the non-Covered Employer for a combined total of \$1,000,  
24 the Covered Employer shall pay 80% of the Supplemental Compensation amount and the Non-Covered  
25

1 Employer shall pay nothing. Accordingly, in such cases, the Employee will not receive 100% of the  
2 Supplemental Compensation amount.

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

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

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

23 (4) **Termination Prior to Leave Period.** Terminating a Covered Employee prior to the  
24 employee's leave period but within 90 days of the employee's having made a request or application for  
25 California Paid Family Leave shall raise a rebuttable presumption that such termination was taken to



1 avoid the Covered Employer's Supplemental Compensation obligations under this Section 3300H.4.  
2 Unless the Covered Employer rebuts the presumption with clear and convincing evidence that the  
3 termination was solely for a reason other than avoidance of its obligation to pay Supplemental  
4 Compensation, the employer shall be obligated to pay the terminated employee Supplemental  
5 Compensation during the leave period.

6 (5) **Unused Vacation Leave.** To be eligible to receive Supplemental Compensation  
7 under this Section 3300H.4, a Covered Employee must ~~consent~~ agree to allowing a Covered  
8 Employer, in the employer's discretion, to apply up to two weeks of unused vacation leave that the  
9 employee has accrued as of the start of the leave period to help meet the employer's obligation under  
10 this Section to provide Supplemental Compensation during the leave period. If the Covered  
11 Employee does not agree, the Covered Employer is not required to provide Supplemental  
12 Compensation under this Section 3300H.4, but such lack of agreement shall have no effect on  
13 the Employee's eligibility for California Paid Family Leave benefits or other benefits under the  
14 law. The preceding sentence shall not prevent a Covered Employer, in the employer's discretion, from  
15 requiring a Covered Employee to take up to two weeks of earned but unused vacation leave prior to the  
16 employee's initial receipt of California Paid Family Leave compensation as allowed under subsection  
17 (c) of Section 3303.1 of the California Unemployment Insurance Code, as amended, in addition to or in  
18 lieu of exercising the option provided in the foregoing sentence.

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

1           (c) **Integration/Coordination of Benefits.** In accordance with California Unemployment  
2 Insurance Code Section 2656, a Covered Employee who is receiving California Paid Family Leave  
3 benefits may not receive Supplemental Compensation under this Article 33H which would result in the  
4 employee's receiving total compensation while on paid parental leave that is greater than the  
5 employee's normal gross weekly wages. As a precondition of receiving Supplemental Compensation, a  
6 Covered Employee must either (1) provide the Covered Employer with a copy of the employee's Notice  
7 of Computation of California Paid Family Leave Benefits from the State or other legally authorized  
8 statement, or (2) provide the State with written authorization to disclose the weekly benefit amount to  
9 the employer. A Covered Employee's failure to comply with this requirement shall relieve the Covered  
10 Employer of its obligation to provide the employee with Supplemental Compensation.

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

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

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

23           (a) The Agency shall, by the operative date of this Article 33H, publish and make available to  
24 Covered Employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice  
25 suitable for posting by employers in the workplace informing employees of their rights under this

1 Article. The Agency shall update this notice on December 1 of any year in which there is a change in  
2 the languages spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency  
3 may combine the notice required herein with one or more other notices it is required to publish and  
4 make available to employers under other provisions of City law.

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

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

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

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

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

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

22 (b) It shall be unlawful for a Covered Employer or any other person to discharge, threaten to  
23 discharge, demote, suspend, or in any manner discriminate or take adverse action against any person  
24 in retaliation for exercising rights to Supplemental Compensation protected under this Article 33H.  
25 Such rights include but are not limited to the right to Supplemental Compensation pursuant to this

1 Article; the right to file a complaint or inform any person about any employer's alleged violation of this  
2 Article; the right to cooperate with the Agency in its investigations of alleged violations of this Article;  
3 and the right to inform any person of his or her possible rights under this Article.

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

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

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

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

25 (b) **Administrative Enforcement.**

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

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

18                   (3) Where prompt compliance is not forthcoming, the Agency may take any appropriate  
19 enforcement action to secure compliance, including initiating a civil action, except where prohibited by  
20 State or Federal law, requesting that City agencies or departments revoke or suspend any registration  
21 certificates, permits, or licenses held or requested by the employer or person until such time as the  
22 violation is remedied. In order to compensate the City for the costs of investigating and remedying the  
23 violation, the Agency may also order the violating employer or person to pay to the City a sum of not  
24 more than \$50.00 for each day or portion thereof and for each employee or person as to whom the  
25

1 violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the  
2 costs of implementing and enforcing this Article 33H.

3 (4) An employee or other person may report to the Agency any suspected violation of  
4 this Article 33H. The Agency shall encourage reporting pursuant to this subsection (b)(4) by keeping  
5 confidential, to the maximum extent permitted by applicable laws, the name and other identifying  
6 information of the employee or person reporting the violation. Provided, however, that with the  
7 authorization of such person, the Agency may disclose his or her name and identifying information as  
8 necessary to enforce this Article or for other appropriate purposes.

9 (5) The Agency shall not proceed with administrative enforcement under this  
10 subsection 3300H.8(b) during the pendency of a civil action brought under subsection  
11 3300H.8(c).

12 (c) Civil Enforcement.

13 (1) The Agency, the City, Attorney, any person aggrieved by a violation of this  
14 Article 33H, any entity a member of which is aggrieved by a violation of this Article, or any  
15 other person or entity acting on behalf of the public as provided for under applicable State law, may  
16 bring a civil action in a court of competent jurisdiction against the employer or other person violating  
17 this Article and, at any time.

18 (2) No person aggrieved by a violation of this Article 33H, or any entity a  
19 member of which is aggrieved by a violation of this Article, may bring a civil action in a court of  
20 competent jurisdiction against a Covered Employer or other person violating this Article  
21 without first serving a written notice to the Agency and the City Attorney of intent to bring an  
22 action, including a statement of the grounds for believing one or more violations have  
23 occurred. No aggrieved person or entity may bring a civil action under this subsection  
24 3300H.8(c)(2) if, within 90 days after service of the notice, the City brings a civil action  
25 alleging a violation or the Agency informs the person or entity in writing that (A) it has found

1 probable cause to believe a violation has occurred and it intends to initiate administrative  
2 enforcement under subsection 3300H.8(b), or (B) it has determined that no violation occurred.  
3 If the City fails to file suit and the Agency fails to provide written notice within the  
4 forementioned 90-day period, the person or entity may bring a civil action for violation of this  
5 Article. The statute of limitations for filing a civil action under this subsection 3300H.8(c)(2)  
6 shall be tolled during the aforementioned 90-day period.

7 (3) Upon prevailing, any party that has brought a civil action under this  
8 subsection 3300H.8(c) shall be entitled to such legal or equitable relief as may be appropriate to  
9 remedy the violation including, but not limited to, reinstatement, back pay, the payment of any  
10 Supplemental Compensation unlawfully withheld, the payment of an additional sum as liquidated  
11 damages in the amount of \$50.00 to each employee or person whose rights under this Article were  
12 violated for each day or portion thereof that the violation occurred or continued, plus, where the  
13 Covered Employer has unlawfully withheld Supplemental Compensation to a Covered Employee, the  
14 dollar amount of Supplemental Compensation withheld from the employee multiplied by three; or  
15 \$250.00, whichever amount is greater; and/or injunctive relief; and, further, shall be awarded  
16 reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this  
17 Article on behalf of the public as provided for under applicable State law shall, upon prevailing, be  
18 entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

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

22 (e) Remedies Cumulative. The remedies, penalties, and procedures provided under this Article  
23 33H are cumulative.

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

1 All or any portion of the applicable requirements of this Article 33H shall not apply to  
2 employees covered by a bona fide collective bargaining agreement if (1) such requirements are  
3 expressly waived in the collective bargaining agreement in clear and unambiguous terms, or (2) the  
4 agreement was entered into before the effective date of the ordinance enacting this Article 33H, on file  
5 with the Clerk of the Board of Supervisors in File No. 160065. The exception designated (2) in the  
6 preceding sentence shall not apply to any such agreement once it has been ~~amended or extended,~~ or  
7 has expired.

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

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

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

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

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

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

25 **SEC. 3300H.12. SEVERABILITY.**



1 If any section, subsection, sentence, clause, phrase, or word of this Article 33H, or any  
2 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a  
3 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining  
4 portions or applications of the Article. The Board of Supervisors hereby declares that it would have  
5 passed this Article and each and every section, subsection, sentence, clause, phrase, and word not  
6 declared invalid or unconstitutional without regard to whether any other portion of this Article or  
7 application thereof would be subsequently declared invalid or unconstitutional.

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

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

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

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

17 **SEC. 3300H.15. CHANGE IN FEDERAL LAW.**

18 Within 90 days of final enactment of any federal law requiring private employers to  
19 provide paid parental leave to employees or providing governmentally funded paid parental  
20 leave, the Controller shall provide a report to the Board of Supervisors analyzing the impact of  
21 the newly adopted federal law on employers and employees subject to this Article 33H, as  
22 well as any overlap between the federal benefits and benefits required under this Article 33H.  
23 In the report, the Controller may, in his or her discretion, recommend changes to this Article  
24 33H.

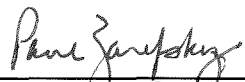

1           Section 2. By June 1, 2016, the Controller and the Office of Labor Standards  
2 Enforcement shall provide to the Board of Supervisors a report including (1) an estimate of the  
3 cost of compliance with Article 33H of the Police Code for nonprofit organizations that  
4 currently have contracts with the City, and (2) policy or budget options that would enable the  
5 City to subsidize these costs through the annual budget.

6  
7           Section 23. Effective and Operative Dates.

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

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

13  
14 APPROVED AS TO FORM:  
15 DENNIS J. HERRERA, City Attorney

16 By:   
17  \_\_\_\_\_  
18 FRANCESCA GESSNER  
19 Deputy City Attorney

20 n:\legana\as2016\1600043\01095756.docx



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

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

**File Number:** 160065

**Date Passed:** April 12, 2016

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.

March 23, 2016 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

March 23, 2016 Budget and Finance Sub-Committee - AMENDED

March 23, 2016 Budget and Finance Sub-Committee - AMENDED

March 23, 2016 Budget and Finance Sub-Committee - AMENDED

March 23, 2016 Budget and Finance Sub-Committee - RECOMMENDED AS AMENDED

April 05, 2016 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

April 05, 2016 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 10 - Avalos, Breed, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee  
Noes: 1 - Campos

April 05, 2016 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

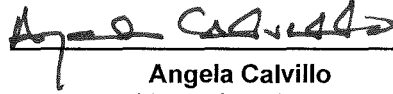
Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

April 12, 2016 Board of Supervisors - FINALLY PASSED

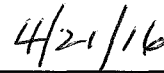
Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

File No. 160065

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 4/12/2016 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo  
Clerk of the Board

  
Mayor

Date Approved