

ATTACHMENT D

**3333 California Street
San Francisco Administrative Code
Chapter 12R: Minimum Wage**

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San Francisco Administrative Code

CHAPTER 12R: MINIMUM WAGE

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SEC. 12R.1. TITLE.

This Chapter shall be known as the "Minimum Wage Ordinance."

(Added by Proposition L, 11/4/2003)

SEC. 12R.2. AUTHORITY.

This Chapter is adopted pursuant to the powers vested in the City and County of San Francisco ("the City") under the laws and Constitution of the State of California and the City Charter including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and Section 1205(b) of the California Labor Law.

(Added by Proposition L, 11/4/2003)

SEC. 12R.3. DEFINITIONS.

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

"Agency" shall mean the Office of Labor Standards Enforcement or its successor agency.

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

"Employee" shall mean any person who:

- (a) In a particular week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and
- (b) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a

Welfare-to-Work Program.

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

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

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

"Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.

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

(Added by Proposition L, 11/4/2003; amended by Proposition J, 11/4/2014)

SEC. 12R.4. MINIMUM WAGE.

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

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

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

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

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

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

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

(b) Beginning on May 1, 2015, the Minimum Wage paid to Government Supported Employees shall be an hourly rate of \$12.25. Beginning on July 1, 2016, and each year thereafter, the Minimum Wage paid to Government Supported Employees shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as determined by the Controller.

(Added by Proposition L, 11/4/2003; amended by Proposition J, 11/4/2014)

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

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

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

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

(d) The Director of the Agency or his or her designee shall have access to all places of labor subject to this ordinance during business hours to inspect books and records, interview employees and investigate such matters necessary or appropriate to determine whether an Employer has violated any provisions of this ordinance.

(e) The Agency shall be authorized under Section 12R.7 to develop guidelines or rules to govern Agency investigative activities, including but not

limited to legal action to be taken in the event of employer noncompliance or interference with Agency investigative actions.

(Added by Proposition L, 11/4/2003; amended by Ord. [175-11](#), File No. 110594, App. 9/16/2011, Eff. 10/16/2011)

SEC. 12R.6. RETALIATION PROHIBITED.

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter and to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

(Added by Proposition L, 11/4/2003)

SEC. 12R.7. IMPLEMENTATION AND ENFORCEMENT.

(a) **Enforcement Priority.** It is the policy of the City and County of San Francisco that all employees be compensated fairly according to the law and that Employers who engage in wage theft be held accountable. Towards that end, the Mayor and Board of Supervisors shall study and review the feasibility of enacting additional measures consistent with state law to enhance the Agency's enforcement tools and the City's efforts to combat wage theft. The Mayor and Board of Supervisors shall also take steps to ensure optimal collaboration among all City agencies and departments, as well as between the City and state and federal labor standards agencies, in the enforcement of this Chapter.

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

(c) **Administrative Enforcement.**

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

(2) Where the Agency, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, the payment of any back wages unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued. A violation for unlawfully withholding wages shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full. Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section 12R.7(c) of this Chapter and/or, except where prohibited by state or federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the Employer or person until such time as the violation is remedied. All City agencies and departments shall cooperate with revocation or suspension requests from the Agency. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating Employer or person to pay to the City a sum of not more than \$50 for each day and for each Employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the Agency and shall be used to offset the costs of implementing and enforcing this Chapter. The amounts of all sums and payments authorized or required under this Chapter shall be updated annually for inflation, beginning January 1, 2005, using the inflation rate and procedures set forth in Section 4(b) 12R.4¹ of this Chapter.

(3) An Employee or other person may report to the Agency in writing any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes. In order to further encourage reporting by Employees, if the Agency notifies an Employer that the Agency is investigating a complaint, the Agency shall require the Employer to post or otherwise notify its Employees that the Agency is conducting an investigation, using a form provided by the Agency.

(d) **Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as penalties in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Chapter.

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

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

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

(Added by Proposition L, 11/4/2003; amended by Ord. 205-06, File No. 060247, App. 7/25/2006; Ord. 175-11, File No. 110594, App. 9/16/2011, Eff. 10/16/2011; Proposition J, 11/4/2014)

CODIFICATION NOTES

1. So in Proposition J.

SEC. 12R.8. WAIVER THROUGH COLLECTIVE BARGAINING.

All or any portion of the applicable requirements of this Chapter shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

(Added by Proposition L, 11/4/2003)

SEC. 12R.9. RELATIONSHIP TO OTHER REQUIREMENTS.

This Chapter provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections including, but not limited to, the San Francisco Minimum Compensation Ordinance.

(Added by Proposition L, 11/4/2003)

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

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

(Added by Proposition L, 11/4/2003; amended by Proposition J, 11/4/2014)

SEC. 12R.11. OPERATIVE DATE.

The changes to this Chapter adopted at the November 4, 2014 municipal election shall have prospective effect only and shall become operative on May 1, 2015.

(Added by Proposition L, 11/4/2003; amended by Proposition J, 11/4/2014)

SEC. 12R.12. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

(Added by Proposition L, 11/4/2003)

SEC. 12R.13. AMENDMENT BY THE BOARD OF SUPERVISORS.

This Chapter may be amended by the Board of Supervisors as regards the implementation or enforcement thereof, but not as regards the substantive requirements of the Chapter or its scope of coverage.

(Added by Proposition L, 11/4/2003)

SEC. 12R.14. CIVIL ACTIONS.

In addition to the actions provided for in Section 12R.7(c), the City Attorney may bring a civil action to enjoin any violation of this Chapter. The City shall be entitled to its attorney's fees and costs in any action brought pursuant to this Section where the City is the prevailing party.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.15. REMEDIES CUMULATIVE.

The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

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

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

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

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

The penalty amounts shall be increased cumulatively by fifty percent (50%) for each subsequent violation of the same provision by the same employer or person within a three (3) year period. The maximum penalty amount that may be imposed by administrative citation in a calendar year for each type of violation listed above shall be \$5,000 or \$10,000 if a citation for retaliation is issued. In addition to the penalty amounts listed above, the Office of Labor Standards Enforcement may assess enforcement costs to cover the reasonable costs incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Enforcement costs shall not count toward the \$5,000 annual maximum.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006; amended by Ord. [175-11](#), File No. 110594, App. 9/16/2011, Eff. 10/16/2011)

SEC. 12R.17. VIOLATIONS.

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

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

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

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

such liens.

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

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006; amended by Ord. [175-11](#), File No. 110594, App. 9/16/2011, Eff. 10/16/2011; Ord. [75-14](#), File No. 140226, App. 5/28/2014, Eff. 6/27/2014; Proposition J, 11/4/2014)

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

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

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

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006; amended by Ord. [175-11](#), File No. 110594, App. 9/16/2011, Eff. 10/16/2011)

SEC. 12R.19. ADMINISTRATIVE CITATION AND NOTICE OF VIOLATION; SERVICE.

Service of a notice of violation and an administrative citation under Section 12R.16 may be accomplished as follows:

(a) The Director or his or her designee may obtain the signature of the person responsible for the violation to establish personal service of the citation; or

(b) (1) Director or his or her designee shall post the citation by affixing the citation to a surface in a conspicuous place on the property described in Section 12R.18. Conspicuous posting of the citation is not required when personal service is accomplished or when conspicuous posting poses a hardship, risk to personal health or safety or is excessively expensive; and

(2) The Director or his or her designee shall serve the citation by first class mail as follows:

(i) The administrative citation shall be mailed to the person responsible for the violation by first class mail, postage prepaid, with a declaration of service under penalty of perjury; and

(ii) A declaration of service shall be made by the person mailing the administrative citation showing the date and manner of service by mail and reciting the name and address of the person to whom the citation is issued; and

(iii) Service of the administrative citation by mail in the manner described above shall be effective on the date of mailing.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.20. ADMINISTRATIVE CITATION; CONTENTS.

The administrative citation under Section 12R.16 shall include all the following:

- (1) A description of the violation;
- (2) The date and location of the violation(s) observed;
- (3) A citation to the provisions of law violated;
- (4) A description of corrective action required;
- (5) A statement explaining that each day of a continuing violation may constitute a new and separate violation;
- (6) The amount of administrative penalty imposed for the violation(s);
- (7) A statement informing the violator that the fine shall be paid to the City and County of San Francisco within thirty (30) days from the date on the administrative citation, the procedure for payment, and the consequences of failure to pay;
- (8) A description of the process for appealing the citation, including the deadline for filing such an appeal; and

(9) The name and signature of the Director.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.21. ADMINISTRATIVE APPEAL.

(a) **Period of Limitation for Appeal.** Persons receiving an administrative citation may appeal it within fifteen (15) days from the date the citation is served. The appeal must be in writing and must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for the appeal in detail, and must be filed with both the Office of Labor Standards Enforcement and the Controller's Office as indicated in the administrative citation.

(b) **Hearing Date.** As soon as practicable after receiving the written notice of appeal and the penalty amount, the Controller or his or her designee shall promptly select a hearing officer (who shall not be an employed in the Office of Labor Standards Enforcement) to hear and decide the administrative appeal. The hearing officer shall fix a date, time and place for the hearing on the appeal. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the notice must be made at least ten (10) days prior to the date of the hearing to the person appealing the citation. The hearing shall be held no later than thirty (30) days after service of the notice of hearing, unless that time is extended by mutual agreement of the parties.

(c) **Notice.** Except as otherwise provided by law, the failure of any person with an interest in property affected by the administrative citation, or other person responsible for a violation, to receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under this Chapter. Service by first class mail, postage prepaid, shall be effective on the date of mailing.

(d) **Failure to Appeal.** Failure of any person to file an appeal in accordance with the provisions of this Section or to appear at the hearing shall constitute a failure to exhaust administrative remedies and a forfeiture of the penalty amount previously remitted.

(e) **Submittals for the Hearing.** No later than five (5) days prior to the hearing, the person to whom the citation was issued and the Office of Labor Standards Enforcement shall submit to the hearing officer, with simultaneous service on the opposing party, written information including, but not limited to, the following: the statement of issues to be determined by the hearing officer and a statement of the evidence to be offered and the witnesses to be presented at the hearing.

(f) **Conduct of Hearing.** The hearing officer appointed by the Controller or the Controller's designee shall conduct all appeal hearings under this Chapter. The Office of Labor Standards Enforcement shall have the burden of proof in such hearings. The hearing officer may accept evidence on which persons would commonly rely in the conduct of their serious business affairs, including but not limited to the following:

- (1) A valid citation shall be prima facie evidence of the violation;
- (2) The hearing officer may accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;
- (3) The person responsible for the violation, or any other interested person, may present testimony or evidence concerning the violation and the means and time frame for correction.

The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The hearing officer may continue the hearing and request additional information from the Office of Labor Standards Enforcement or the appellant prior to issuing a written decision.

(g) **Hearing Officer's Decision; Findings.** The hearing officer shall make findings based on the record of the hearing and issue a decision based on such findings within fifteen (15) days of conclusion of the hearing. The hearing officer's decision may uphold the issuance of a citation and penalties stated therein, may dismiss a citation, or may uphold the issuance of the citation but reduce, waive or conditionally reduce or waive the penalties stated in a citation or any late fees assessed if mitigating circumstances are shown and the hearing officer finds specific grounds for reduction or waiver in the evidence presented at the hearing. The hearing officer may impose conditions and deadlines for the correction of violations or the payment of outstanding civil penalties. Copies of the findings and decision shall be served upon the appellant and the Office of Labor Standards Enforcement by certified mail.

(h) **Hearing Officer's Decision.** The decision of the hearing officer is final. If the hearing officer concludes that the violation charged in the citation did not occur or that the person charged in the citation was not the responsible party, the Office of Labor Standards Enforcement shall refund or cause to be refunded the penalty amount to the person who deposited such amount. The hearing officer's decision shall be served on the appellant by certified mail.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.22. REGULATIONS.

The Office of Labor Standards Enforcement may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to the administrative penalty and citation system pursuant to Sections 12R.16 through 12R.20, inclusive. The Controller may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to the conduct of administrative appeals under Section 12R.21. Any rules and regulations promulgated by the Office of Labor Standards Enforcement or Controller shall be approved as to legal form by the City Attorney, and shall be subject to not less than one noticed public hearing. The rules and regulations shall become effective 30 days after receipt by the Clerk of the Board of Supervisors, unless the Board of Supervisors by resolution disapproves or modifies the regulations. The Board of Supervisors' determination to modify or disapprove a rule or regulation submitted by the Office of Labor Standards Enforcement or Controller shall not impair the ability of the Office of Labor Standards Enforcement or Controller to resubmit the same or similar rule or regulation directly to the Board of Supervisors if the Office of Labor Standards Enforcement or Controller determines it is necessary to effectuate the purposes of this Chapter.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.23. JUDICIAL REVIEW.

(a) **Procedures.** After receipt of the decision of the hearing officer under Section 12R.21, the appellant may file an appeal with the superior court pursuant to California Government Code Section 53069.4. The appeal shall be submitted within twenty (20) days of the date of mailing of the hearing officer's decision, with the applicable filing fee. The appeal shall state the reasons the appellant objects to the findings or decision.

(b) **Review.** The superior court shall conduct a de novo hearing, except that the contents of the Office of Labor Standards Enforcement's file (excluding attorney client communications and other privileged or confidential documents and materials that are not discoverable or may be excluded from evidence in judicial proceedings under the Evidence Code, Civil Code, Code of Civil Procedure or other applicable law) shall be received into evidence. A copy of the notice of violation and imposition of penalty shall be entered as prima facie evidence of the facts stated therein.

(c) **Filing Fee.** The superior court filing fee shall be twenty-five (\$25.00). If the court finds in favor of the appellant, the amount of the fee shall be reimbursed to the appellant by the City and County of San Francisco. Any deposit of penalty shall be refunded by the City and County of San Francisco in accordance with the judgment of the court.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.24. OTHER REMEDIES NOT AFFECTED.

The administrative citation procedures established in this Chapter shall be in addition to any other criminal, civil, or other remedy established by law which may be pursued to address violations of this Chapter. An administrative citation issued pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.25. OUTREACH.

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

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006; amended by Ord. [175-11](#), File No. 110594, App. 9/16/2011, Eff. 10/16/2011)

SEC. 12R.26. REPORTS.

The Office of Labor Standards Enforcement shall provide annual reports to the Board of Supervisors on the implementation of the Minimum Wage Ordinance.

(Added by Ord. 205-06, File No. 060247, App. 7/25/2006)