

1 [San Francisco Family Friendly Workplace Ordinance]

2

3 **Motion ordering submitted to the voters an ordinance amending the Administrative**
4 **Code to: allow San Francisco-based employees who are caregivers to request flexible**
5 **working arrangements, subject to the employer’s right to deny a request based on**
6 **specified undue hardship; require that employers give advance notice of changes in an**
7 **employee’s work schedule; prohibit adverse employment actions based on caregiver**
8 **status; prohibit interference with rights or retaliation against employees for exercising**
9 **rights under the Ordinance; require employers to post a notice informing employees of**
10 **their rights under the Ordinance; require employers to maintain records regarding**
11 **compliance with the Ordinance; authorize enforcement by the Office of Labor**
12 **Standards Enforcement, including the imposition of remedies and penalties for a**
13 **violation, and an appeal process to an independent hearing officer; authorize waiver of**
14 **the provisions of the Ordinance in a collective bargaining agreement; and making**
15 **environmental findings, to the voters of the City and County of San Francisco at an**
16 **election to be held on November 5, 2013.**

17

18 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
19 voters of the City and County of San Francisco, at an election to be held on November 5,
20 2013.

21

22 **Ordinance amending the Administrative Code to: allow San Francisco-based**
23 **employees who are caregivers to request flexible working arrangements, subject to the**
24 **employer’s right to deny a request based on specified undue hardship; require that**
25 **employers give advance notice of changes in an employee’s work schedule; prohibit**

1 adverse employment actions based on caregiver status; prohibit interference with
2 rights or retaliation against employees for exercising rights under the Ordinance;
3 require employers to post a notice informing employees of their rights under the
4 Ordinance; require employers to maintain records regarding compliance with the
5 Ordinance; authorize enforcement by the Office of Labor Standards Enforcement,
6 including the imposition of remedies and penalties for a violation, and an appeal
7 process to an independent hearing officer; authorize waiver of the provisions of the
8 Ordinance in a collective bargaining agreement; and making environmental findings.

9 NOTE: Additions are *single-underline italics Times New Roman*;
10 deletions are ~~*strike-through italics Times New Roman*~~.

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

12 Section 1. Environmental Findings. The Planning Department has determined that the
13 actions contemplated in this ordinance comply with the California Environmental Quality Act
14 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with
15 the Clerk of the Board of Supervisors in File No. ____ and is incorporated herein by reference.

16 Section 2. The San Francisco Administrative Code is hereby amended by adding
17 Chapter 12Z to read as follows:

18 **SEC. 12Z.1. TITLE.**

19 *This Chapter shall be known as the “San Francisco Family Friendly Workplace Ordinance.”*

20 **SEC. 12Z.3. DEFINITIONS.**

21 *For purposes of this Chapter, the following definitions apply.*

22 *“Agency” shall mean the Office of Labor Standards Enforcement or any successor department*
23 *or office.*

24 *“Caregiver” means an Employee who is a primary contributor to the ongoing care of either of*
25 *the following:*

1 (1) A child or children for whom the person has assumed parental responsibility.

2 (2) A person or persons with a serious medical condition in a legally dependent
3 relationship with the caregiver.

4 “Child” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a
5 person standing in loco parentis to that child, who is under 18 years of age.

6 “Child care emergency” means a situation in which a parent’s usual child care becomes
7 unavailable unexpectedly and on short notice and a Caregiver must miss work to provide care until the
8 child care is restored or the Caregiver finds alternate child care.

9 “City” means the City and County of San Francisco.

10 “Dependent relationship” means the relationship of a Caregiver to a person who is related by
11 blood, legal custody, marriage, or to his or her domestic partner, as defined in San Francisco
12 Administrative Code Chapter 62 or California Family Code Section 297, or to a person with whom the
13 caregiver lives in a familial relationship.

14 “Director” means the Director of the Office of Labor Standards Enforcement or his or her
15 designee.

16 “Employee” means any person who is employed within the geographic boundaries of the City
17 by an employer, including part-time and temporary employees. "Employee" includes a participant in a
18 Welfare-to-Work Program when the participant is engaged in work activity that would be considered
19 "employment" under the federal Fair Labor Standards Act, 29 U.S.C. §201 et seq., and any applicable
20 U.S. Department of Labor Guidelines. "Welfare-to-Work Program" shall include any public assistance
21 program administered by the Human Services Agency, including but not limited to CalWORKS, and
22 any successor programs that are substantially similar, that require a public assistance applicant or
23 recipient to work in exchange for their grant.

24 “Employer” means the City, or any person as defined in Section 18 of the California Labor
25 Code who regularly employs 10 or more Employees, including an agent of that Employer, or corporate

1 officers or executives who directly or indirectly or through an agent or any other person, including
2 through the services of a temporary services or staffing agency or similar entity, employ or exercise
3 control over the wages, hours, or working conditions of an employee. The term “Employer” shall also
4 include any successor in interest of an Employer. The term “Employer” shall not include the state or
5 federal government or any local government entity other than the City.

6 “Flexible Working Arrangement” means a change in an Employee’s terms and conditions of
7 employment that assist a Caregiver with caregiving responsibilities. A Flexible Working Arrangement
8 may include but is not limited to, part-time employment, a modified work schedule, flexible start and/or
9 end times for work, job sharing arrangements, working from home, telecommuting, reduction in work
10 duties, and part-year employment.

11 “Serious health condition” means an illness, injury, impairment, or physical or mental
12 condition that involves either of the following:

13 (1) Inpatient care in a hospital, hospice, or residential health care facility.

14 (2) Continuing treatment or continuing supervision by a health care provider.

15 “Work schedule” means those days and times within a work period that an employee is
16 required by an Employer to perform the duties of his or her employment for which he or she will
17 receive compensation.

18 **SEC. 12Z.4. RIGHT TO REQUEST FLEXIBLE WORKING ARRANGEMENT.**

19 (a) An Employee who is a Caregiver and has been employed with an Employer for six
20 months or more may request a Flexible Working Arrangement, including but not limited to a change in
21 the Employee’s terms and conditions of employment as they relate to:

22 (1) The number of hours the employee is required to work;

23 (2) The times when the employee is required to work;

24 (3) Where the employee is required to work; or
25

1 (4) Work assignments or other factors.

2 (b) Any application submitted to the employer under this section shall be in writing and:

3 (1) Specify the change applied for, the date on which the employee requests that the
4 change becomes effective, and the duration of the change; and

5 (2) Explain what effect, if any, the employee thinks the change applied for would have
6 on the Employer and how any such effect may be dealt with.

7 (c) An Employer may require verification of Caregiver status as part of the request.

8 (d) An Employee may make the initial request verbally, after which the Employer must
9 notify the Employee of the requirements of this section and instruct the Employee to prepare a written
10 request under subsection (b).

11
12 **SEC. 12Z.5. RESPONSE TO REQUEST FOR FLEXIBLE WORKING ARRANGEMENT.**

13 (a) An Employer to whom an Employee submits an application under Section 12Z.4 must
14 meet with an Employee requesting a Flexible Working Arrangement within 14 days of the request. The
15 Employee may bring a coworker employed by the same Employer or a representative to the meeting.

16 (b) An Employer must consider and respond to an Employee's request for a Flexible
17 Working Arrangement in writing within 14 days of the meeting required in subsection (a). The
18 deadline in this Section may be extended with an agreement with the Employee confirmed in writing.

19 (c) An Employer may deny a request for Flexible Working Arrangement if it would cause an
20 undue hardship, which may include but is not limited to the following business reasons:

21 (1) The identifiable cost of the change in a term or condition of employment requested
22 in the application, including the cost of productivity loss, retraining or hiring employees, or
23 transferring employees from one facility to another facility.

24 (2) Detrimental effect on ability to meet customer or client demands.

25 (3) Inability to organize work among other employees.

1 (4) Insufficiency of work to be performed during the time the employee proposes to
2 work.

3 (d) A Flexible Working Arrangement shall not require an Employer to grant a schedule that
4 includes overtime unless the Employer and Employee agree to such an arrangement.

5 (e) A Flexible Working Arrangement shall not excuse an Employee from the duty to
6 satisfactorily perform Employee's job duties.

7 (f) An Employer must explain in the denial letter how the business reason relied upon
8 applies to the individual circumstances of the Employee who requested a Flexible Working
9 Arrangement. The denial letter shall notify the Employee of the right to appeal under Section 12Z.6
10 and include a copy of the text of that Section.

11 (g) An Employer who grants a Flexible Working Arrangement to an Employee may:

12 (1) place reasonable limits on the duration of the arrangement; and

13 (2) modify or revoke the arrangement based on undue hardship(s) after 14 day's written
14 notice describing the proposed modification or revocation and identifying the undue hardship(s) and
15 how such hardship(s) apply to the Employee's individual circumstances.

16 The appeal process described in Section 12Z.6 shall apply to such modification or revocation.

17 Nothing in this subsection is intended to prevent an Employee from applying for another Flexible
18 Working Arrangement after the expiration or revocation of the Employee's arrangement.

19 **SEC. 12Z.6. APPEAL FROM THE DENIAL OF REQUEST FOR FLEXIBLE WORKING**
20 **ARRANGEMENT.**

21 (a) An Employee whose request for Flexible Working Arrangement has been denied may
22 appeal to the Employer in writing within 30 days of the decision.

23 (b) If an Employee submits an appeal pursuant to this Section, the Employer must arrange
24 an appeal meeting to take place within 14 days after receiving the notice of appeal, and the Employee
25 may be accompanied by a coworker or representative.

1 (c) The Employer must inform the Employee of the outcome of the appeal in writing within
2 14 days after the appeal meeting. If the appeal is denied, this notice must explain the Employer's
3 reasons for the denial.

4 (d) The Employee must appeal a denial of a request for Flexible Working Arrangement to
5 the Employer before submitting a complaint to the Agency alleging a violation of this Chapter.

6
7 **SEC. 12Z.7. OTHER EMPLOYER DUTIES.**

8 (a) Duty to Interact. An Employer has an ongoing duty to interact upon request with the
9 Employee who has been granted a Flexible Working Arrangement to ensure that the Employee's
10 assignments and duties reasonably can be completed within the parameters of the Flexible Working
11 Arrangement.

12 (b) Predictability in Scheduling. Employers with Employees subject to the overtime
13 requirements of state or federal law must provide such Employees at least two weeks notice of Work
14 Schedules. Nothing in this section shall be construed to prevent an Employer from offering a
15 consenting Employee additional hours of work or to require an Employer to pay an Employee for time
16 not worked.

17
18 **SEC. 12Z.8. EXERCISE OF RIGHTS AND CAREGIVER STATUS PROTECTED;**
19 **RETALIATION PROHIBITED.**

20 (a) It shall be unlawful for an employer or any other person to interfere with, restrain, or
21 deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

22 (b) It shall be unlawful for an Employer to discharge, threaten to discharge, demote,
23 suspend, or otherwise take adverse employment action against any person on the basis of Caregiver
24 status or in retaliation for exercising rights protected under this Chapter. Such rights include but are
25 not limited to:

- 1 (1) the right to request a Flexible Working Arrangement under this Chapter;
- 2 (2) the right to appeal the denial of a request for a Flexible Working Arrangement under
3 this Chapter;
- 4 (3) the right to file a complaint with the Agency alleging a violation of any provision of
5 this Chapter;
- 6 (4) the right to inform any person about an employer's alleged violation of this Chapter;
- 7 (5) the right to cooperate with the Agency or other persons in the investigation or
8 prosecution of any alleged violation of this Chapter;
- 9 (6) the right to oppose any policy, practice, or act that is unlawful under this Chapter;
10 or
- 11 (7) the right to inform any person of his or her rights under this Chapter.
- 12 (c) Protections of this Section shall apply to any person who mistakenly but in good faith
13 alleges violations of this Chapter.
- 14 (d) Taking adverse employment action against a person within 90 days of the exercise of
15 one or more of the rights described in Section 12Z.8(b) shall create a rebuttable presumption that such
16 adverse action was taken in retaliation for the exercise of those rights.

17

18 **SEC. 12Z.9. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.**

19 (a) The Agency shall, by the operative date of this Chapter, publish and make available to
20 employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice suitable
21 for posting by employers in the workplace informing employees of their rights under this Chapter. The
22 Agency shall update this notice on December 1 of any year in which there is a change in the languages
23 spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency may combine the
24 notice required herein with the notice required by Section 12R.5(a) and/or 12W.5(a) of the
25 Administrative Code.

1 **(b) Every employer shall post in a conspicuous place at any workplace or job site where any**
2 **employee works the notice required by subsection (a). Every employer shall post this notice in English,**
3 **Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job**
4 **site.**

5
6 **SEC. 12Z.10. EMPLOYER RECORDS.**

7 **Employers shall retain documentation required under this Chapter for a period of four years**
8 **from the date of the request, and shall allow the Agency access to such records, with appropriate notice**
9 **and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. When**
10 **an issue arises as to an alleged violation of an Employee's rights under this Chapter, if the Employer**
11 **has failed to maintain or retain documentation required under this Chapter, or does not allow the**
12 **Agency reasonable access to such records, it shall be presumed that the Employer has violated this**
13 **Chapter, absent clear and convincing evidence otherwise.**

14
15 **SEC. 12Z.11. IMPLEMENTATION AND ENFORCEMENT.**

16 **(a) Administrative Enforcement.**

17 **(1) The Agency is authorized to take appropriate steps to enforce this Chapter and**
18 **coordinate enforcement of this Chapter. The Agency may investigate possible violations of this**
19 **Chapter. Where the Agency has reason to believe that a violation has occurred, it may order any**
20 **appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending**
21 **completion of a full investigation or hearing.**

22 **(2) Where the Agency determines that a violation has occurred, it may issue a**
23 **determination and order any appropriate relief including, but not limited to, ordering legal and**
24 **equitable relief as identified in Section 12Z.11(b), and a Flexible Working Arrangement. If a request**
25 **for Flexible Working Arrangement was unlawfully denied and the denial resulted in harm to the**

1 Employee or any other person, such as discharge from employment, or otherwise violated the rights of
2 Employees, such as a failure to post the notice required by Section 12Z.9, or an act of retaliation or
3 other adverse employment action prohibited by Section 12Z.8, the Agency may impose an
4 administrative penalty up to \$50.00 to each Employee or person whose rights under this Chapter were
5 violated for each day or portion thereof that the violation occurred or continued.

6 (3) Where prompt compliance is not forthcoming, the Agency may take any
7 appropriate enforcement action to secure compliance, including initiating a civil action pursuant to
8 Section 12Z.11(b) and/or, except where prohibited by state or federal law, requesting that City
9 agencies or departments revoke or suspend any registration certificates, permits or licenses held or
10 requested by the Employer or person until such time as the violation is remedied. In order to
11 compensate the City for the costs of investigating and remedying the violation, the Agency may also
12 order the violating Employer or person to pay to the City a sum of not more than \$50.00 for each day
13 or portion thereof and for each Employee or person as to whom the violation occurred or continued.
14 Such funds shall be allocated to the Agency and used to offset the costs of implementing and enforcing
15 this Chapter.

16 (4) An Employee or other person may report to the agency any suspected violation
17 of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping
18 confidential, to the maximum extent permitted by applicable laws, the name and other identifying
19 information of the Employee or person reporting the violation; provided, however, that with the
20 authorization of such person, the Agency may disclose his or her name and identifying information as
21 necessary to enforce this Chapter or for other appropriate purposes.

22 (5) In accordance with the procedures described in Section 12Z.14, the Director
23 shall establish rules governing the administrative process for determining and appealing violations of
24 this Chapter. The rules shall include procedures for:

1 (A) providing the Employer with notice that it may have violated this Chapter;

2 (B) providing the Employer with a right to respond to the notice;

3 (C) providing the Employer with notice of the Agency's determination of a
4 violation;

5 (D) providing the Employer with an opportunity to appeal the Agency's
6 determination to a hearing officer, not employed by the Agency, who is appointed by the City
7 Controller or his or her designee.

8 (6) If there is no appeal of the Agency's determination of a violation, that determination
9 shall constitute the City's final decision. An Employer's failure to appeal the Agency's determination
10 of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a
11 complete defense to any petition or claim brought by the Employer against the City regarding the
12 Agency's determination of a violation.

13 (7) If there is an appeal of the Agency's determination of a violation, the hearing before
14 the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any
15 such hearing, the Agency's determination of a violation shall be considered prima facie evidence of a
16 violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that
17 the Agency's determination of a violation is incorrect. The hearing officer's decision of the appeal
18 shall constitute the City's final decision. The sole means of review of the City's final decision, rendered
19 by the hearing officer, shall be by filing in the San Francisco Superior Court a petition for writ of
20 mandate under Section 1094.5 of the California Code of Civil Procedure. The Agency shall notify the
21 Employer of this right of review after issuance of the City's final decision by the hearing officer.

22 (b) **Civil Enforcement.** The City may bring a civil action in a court of competent jurisdiction
23 against the Employer or other person violating this Chapter and, upon prevailing, shall be entitled to
24 such legal or equitable relief as may be appropriate to remedy the violation including, but not limited
25 to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an

1 additional sum as liquidated damages in the amount of \$50.00 to each Employee or person whose
2 rights under this Chapter were violated for day such violation continued or was permitted to continue;
3 appropriate injunctive relief; and, further, shall be awarded reasonable attorneys' fees and costs.

4 (c) **Interest.** In any administrative or civil action brought under this Chapter, the Agency or
5 court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest
6 specified in subdivision (b) of Section 3289 of the California Civil Code.

7 (d) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this
8 Chapter are cumulative.

9
10 **SEC. 12Z.12. WAIVER THROUGH COLLECTIVE BARGAINING.**

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

14
15 **SEC. 12Z.13. OTHER LEGAL REQUIREMENTS.**

16 This Chapter provides minimum employment requirements pertaining to Caregivers and
17 Employees and shall not be construed to preempt, limit, or otherwise affect the applicability of any
18 other law, regulation, requirement, policy, or standard, or provision of a collective bargaining
19 agreement, that provides for greater or other rights of or protections for Caregivers or Employees, or
20 that extends other rights or protections to employees.

21
22 **SEC. 12Z.14. RULEMAKING AUTHORITY.**

23 The Director shall have authority to issue regulations or develop guidelines that implement
24 provisions of this Chapter. Notwithstanding the definition of "Director" in this Chapter, a designee of

1 the Director shall not have authority under the foregoing sentence of this Section; but a designee of the
2 Director shall have authority to conduct hearings leading to the adoption of regulations or guidelines.

3
4 **SEC. 12Z.15. OPERATIVE DATE.**

5 This Chapter shall become operative on July 1, 2014 and shall have prospective effect only.

6
7 **SEC. 12Z.16. PREEMPTION.**

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

10
11 **SEC. 12Z.17. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
12 **WELFARE.**

13 In enacting and implementing this Chapter, the City is assuming an undertaking only to
14 promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees,
15 an obligation for breach of which it is liable in money damages to any person who claims that such
16 breach proximately caused injury. This Chapter does not create a legally enforceable right against the
17 City.

18
19 **SEC. 12Z.18. AMENDMENT BY THE BOARD OF SUPERVISORS**

20 The Board of Supervisors may amend this Chapter by a two-thirds vote of its members in order
21 to (1) facilitate its implementation or enforcement, (2) increase its substantive requirements, (3) expand
22 the scope of its coverage, or (4) make technical, nonsubstantive changes.

23
24 **SEC. 12Z.19. SEVERABILITY.**

1 If any of the parts or provisions of this Chapter (including sections, subsections, sentences,
2 clauses, phrases, words, numbers) or the application thereof to any person or circumstance is held
3 invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this
4 Chapter, including the application of such part or provisions to persons or circumstances other than
5 those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect.
6 To this end, the provisions of this Chapter are severable.

7
8 APPROVED AS TO FORM:
9 DENNIS J. HERRERA, City Attorney

10 By: _____
11 Elizabeth Salveson
12 Chief Labor Attorney
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