

1 [Minimum Compensation Ordinance]
 2 AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING CHAPTER 12P,
 3 ENCOMPASSING SECTIONS 12P.1 TO 12P.16 TO PROVIDE THAT A PRESCRIBED
 4 MINIMUM LEVEL OF COMPENSATION BE PAID TO EMPLOYEES OF CONTRACTORS
 5 PROVIDING SERVICES TO THE CITY AND COUNTY, TO EMPLOYEES OF THEIR
 6 SUBCONTRACTORS, AND TO EMPLOYEES OF TENANTS AND SUBTENANTS ON
 7 AIRPORT PROPERTY AND THEIR CONTRACTORS ; AND AMENDING CHAPTER 70 OF
 8 THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING SECTION 70.11 TO
 9 PROVIDE THAT EMPLOYEES OF THE IN-HOME SUPPORTIVE SERVICES PUBLIC
 10 AUTHORITY BE PAID THE SPECIFIED MINIMUM COMPENSATION.

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Note: All sections are new.

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

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Section 1. Findings. The City and County of San Francisco (the "City") enters into

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many contracts with third parties to provide services to the public and to City government.

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These contracts have at times involved compensation to the third party's or its

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subcontractors' employees that is at or only slightly above the minimum wage levels required

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by federal and state laws. Requiring these third parties to provide a minimum level of

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compensation to their employees will improve the services rendered to the public and to City

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government. The compensation paid by some City contractors and their subcontractors fails

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to provide their employees with sufficient resources to afford life in the City. Such

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compensation places a burden on the City's limited social services. Jobs paying an adequate

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wage will increase consumer income, decrease poverty and invigorate neighborhood

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business.

MAYOR WILLIE L. BROWN, JR.
 SUPERVISORS AMMIANO, BECERRIL, BIERMAN, BROWN,
 KATZ, KAUFMAN, LENO, NEWSOM, TENG, YAKI, YEE

1 At San Francisco International Airport, the City has a heightened and unique interest in
2 ensuring that both tenants and their contractors provide high quality services. Although the
3 Airport is owned and run by the City and is vital to the economic well-being of the City, unlike
4 other city facilities, the vast majority of the Airport's large workforce is not comprised of City
5 employees. More individuals are employed by private employers at the Airport than are
6 employed by the entire City government combined.

7 The City has a significant investment in the success of the Airport, which is financed in
8 part by revenue bonds dependent on revenues from private tenants. Moreover, the quality of
9 the Airport is essential to attracting visitors to San Francisco – a major source of revenue for
10 the City and its residents.

11 The Bay Area is experiencing record low rates of unemployment. Especially in this
12 environment, adequate compensation ensures a more stable, higher quality workforce. A
13 high quality workforce, in turn, is necessary to satisfy the needs of the travelling public so that
14 individuals and groups return to the City, and encourage others to come.

15 To ensure that these goals are achieved without unintended adverse consequences,
16 this ordinance requires an examination of its impact on airport tenants one year after it
17 becomes effective. Upon receipt of the report, the Board will consider any changes or
18 modification of the ordinance necessary to ensure the City's strong interest is served
19 adequately.

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21 Section 2. Amendment to Chapter 12 of the Administrative Code. The San
22 Francisco Administrative Code is hereby amended by adding Chapter 12P, encompassing
23 Sections 12P.1 to 12P.13, to read as follows:
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1 **CHAPTER 12P**

2 **MINIMUM COMPENSATION**

3 Sec. 12P.1. Title
4 Sec. 12P.2. Definitions
5 Sec. 12P.3. Minimum Compensation Components
6 Sec. 12P.4. San Francisco International Airport
7 Sec. 12P.5. Contract Requirements
8 Sec. 12P.6. Administration and Enforcement
9 Sec. 12P.7. Waivers by the Agency
10 Sec. 12P.8. Additional Waivers by the Agency—Nonprofit Corporations
11 Sec. 12P.9. Special Waiver by the Public Utilities Commission
12 Sec. 12P.10. Waiver Through Collective Bargaining
13 Sec. 12P.11. City Departments to Cooperate with Agency
14 Sec. 12P.12. Relationship to Other Requirements
15 Sec. 12P.13. Report by Airport Director
16 Sec. 12P.14. Preemption
17 Sec. 12P.15. Effective Date
18 Sec. 12P.16. Severability

19 **SEC. 12P.1. TITLE.** This Chapter shall be known as the " Minimum Compensation
20 Ordinance."

21 **SEC. 12P.2. DEFINITIONS.** As used in this Chapter the following capitalized terms
22 shall have the following meanings:

23 "Agency" shall mean the Department of Administrative Services.

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

25 "Contract" shall mean an agreement or portion of an agreement that provides for
services to be purchased at the expense of the City or out of trust funds established by
Charter, ordinance or MOU. The term "Contract" shall include, without limitation, Included
Subcontracts and agreements such as grant agreements, pursuant to which agreements the
City grants funds to a Contractor for services (including, without limitation, cultural activities,
performances or exhibitions) to be rendered to all or any portion of the public rather than to
City government. Notwithstanding the foregoing, the term "Contract" shall exclude:

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(i) Excluded Subcontracts;

(ii) any agreement with a Contractor that, together with the Employees of any Included Subcontractor and of any entity that is owned or controlled by the Contractor or which owns or controls the Contractor, would have twenty (20) or fewer Employees;

(iii) agreements for the purchase or lease of goods or for guarantees, warranties, shipping, delivery or initial installation of such goods;

(iv) agreements entered into pursuant to settlement of legal proceedings;

(v) agreements for urgent or specialized litigation requirements where the City Attorney's Office finds that it would be in the best interests of the City not to include the requirements of this Chapter;

(vi) agreements with any person or entity in which the cumulative amount of compensation payable to such person or entity under all agreements with a Contracting Department is less than twenty-five thousand dollars (\$25,000), or \$50,000 in the case of Nonprofit Corporations, in any fiscal year, provided that the agreement in question shall be deemed a Contract on and after the effective date of any instrument which causes such cumulative compensation under all agreements with a Contracting Department to exceed twenty-five thousand dollars (\$25,000), or \$50,000 in the case of Nonprofit Corporations;

(vii) agreements for the investment, management or use of trust assets where compliance with this Chapter would violate the fiduciary duties of the trustee;

(viii) agreements entered into prior to the Effective Date (unless and until a Contract Amendment is entered into);

1 (ix) agreements entered into after the Effective Date (unless and until a
2 Contract Amendment is entered into) pursuant to, and within the scope of, bid
3 packages or requests for proposals advertised and made available to the public prior
4 to the Effective Date, which bid packages or requests for proposals were not
5 amended on or after the Effective Date;

6 (x) agreements involving the expenditure by the City of grant or special funds
7 (A) to the extent the application of this Chapter would violate or be inconsistent with
8 the terms or conditions of the applicable grant agreement, or with the rules,
9 regulations or instructions of the public agency administering such grant agreement,
10 which terms or conditions or rules, regulations or instructions provide for
11 compensation lower than the Minimum Compensation and/or (B) to the extent that
12 application of this Chapter would require the City to use General Fund monies to
13 supplement the grants, special funds or other non-General Fund revenues to
14 maintain the current level of services ;

15 (xi) agreements with a Contractor that is a public entity whose jurisdictional
16 boundaries are not coterminous with those of the City;

17 (xii) agreements for employee benefits to be provided to City employees, where
18 the Director of Human Resources finds that no entity is willing to comply with this
19 Chapter and is capable of providing the required employee benefits;

20 (xiii) agreements that require the Contractor to pay no less than the "prevailing
21 rate of wage" in accordance with Section A7.204 of Appendix A to the City's Charter
22 or Chapter 6 of the San Francisco Administrative Code, but only to the extent
23 (A) each Covered Employee is covered by such requirement, and (B) such prevailing
24 rate of wage is not less than the gross hourly compensation required under Section
25 12P.3(a)(i) of this Chapter;

1 (xiv) agreements for the investment of City monies where the Treasurer finds
2 that requiring compliance with this Chapter will violate the Treasurer's fiduciary duties
3 and for the investment of retirement, health or other funds held in trust pursuant to
4 Charter, statute, ordinance or MOU where the official or officials responsible for
5 investing or managing such funds finds that requiring compliance with this Chapter
6 will violate their fiduciary duties;

7 (xv) agreements made in connection with loans or grants under which the City,
8 as creditor or grantor, is providing funds to be used by the debtor or grantee to: (A)
9 acquire an interest in real property on which residential improvements for low- or
10 moderate-income households will be constructed; (B) construct improvements owned
11 or leased by the debtor or grantee, on condition that residents of the improvements
12 qualify as low- or moderate-income households; or (C) rehabilitate improvements
13 owned or leased by the debtor or grantee; and

14 (xvi) agreements (including, without limitation, any lease, concession, franchise
15 or easement agreement) for the exclusive use of real property owned by the City or
16 of which the City has exclusive use, other than agreements for the use of airport
17 property as set forth in Section 12P.4.

18 "Contract Amendment" shall mean an agreement entered into on or after the Effective
19 Date, pursuant to which a Contract entered into prior to the Effective Date is modified or
20 supplemented in order to: (i) extend the term; (ii) modify the total amount of payments due
21 from the City under a Contract; or (iii) modify the scope of services to be performed by a
22 Contractor; or (iv) expand or relocate the premises covered under an airport property
23 contract. The term does not include construction change orders.

24 "Contracting Department" shall mean the City department, office, commission or other
25 City entity which enters into the applicable Contract on behalf of the City.

1 "Contractor" shall mean either: (i) the person or entity that enters into a Services
2 Contract with the City; or (ii) in the case of an Included Subcontract, the subcontractor who
3 enters into the Included Subcontract with the Contractor.

4 "Covered Employee" shall mean:

5 (a) An Employee of a Contractor who, during the applicable Pay Period, performs
6 at least four (4) hours per week during the Pay Period work funded (in whole or in part) under
7 the applicable Contract or to the project funded under the applicable Contract: (i) within the
8 geographic boundaries of the City; (ii) on real property owned or controlled by the City, but
9 outside the geographic boundaries of the City; or (iii) elsewhere in the United States, but only
10 if such related work performed elsewhere within the United States consists of at least ten (10)
11 hours per each work week during the Pay Period in question.

12 (b) Notwithstanding the foregoing, the term "Covered Employee" shall exclude the
13 following Employees of a Contractor that is a Nonprofit Corporation:

14 (i) Any Employee who is: (A) under the age of eighteen (18) and is claimed
15 as a dependent for federal income tax purposes and is employed as an after-school or
16 summer Employee; or (B) employed as a trainee in a bona fide training program
17 consistent with Federal law, which training program enables the Employee to advance
18 into a permanent position; provided, however, these exemptions only apply when the
19 Employee does not replace, displace or lower the wage or benefits of any existing
20 position or Employee; and,

21 (ii) Any disabled Employee of a Contractor, which disabled Employee: (A) is
22 covered by a current sub-minimum wage certificate issued to the Contractor by the
23 U.S. Department of Labor; or (B) would be covered by such a certificate but for the fact
24 that the Contractor is paying a wage equal to or higher than the minimum wage.

1 "Effective Date" shall mean the applicable effective date specified in Section 12P.12 of
2 this Chapter.

3 "Employee" shall mean any person who is employed by a Contractor, including part-
4 time and temporary employees.

5 "Excluded Subcontract" shall mean any agreement or portion of an agreement
6 between a Contractor and a person or entity who is not an Employee of such Contractor,
7 which agreement or portion of an agreement relates to a Contract but is not an Included
8 Subcontract. The term "Excluded Contract" shall include, without limitation, an agreement
9 pursuant to which a Contractor obtains from such a person or entity goods to be used in the
10 fulfillment of the Contractor's duties under the applicable Contract. The term shall also
11 include agreements (including, without limitation, any lease, concession, franchise or
12 easement agreement) for the exclusive use of real property owned by the City or of which the
13 City has exclusive use, other than agreements for the use of airport property as set forth in
14 Section 12P.4.

15 "Included Subcontract" shall mean an agreement or portion of an agreement between
16 a Contractor and a person or entity who is not an Employee of such Contractor, pursuant to
17 which such person or entity: (i) agrees to assist a Contractor in performing a Contract; or
18 (ii) agrees to assist a Contractor with a project funded by grant monies conveyed to the
19 Contractor under the applicable Contract. An agreement to assist a Contractor shall mean
20 an agreement to perform all or a portion of a component of the services covered by the
21 Contract with the City.

22 "Minimum Compensation" shall mean each of the components required under
23 Section 12P.3. of this Chapter.

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25
MAYOR WILLIE L. BROWN, JR.
SUPERVISORS AMMIANO, BECERRIL, BIERMAN, BROWN,
KATZ, KAUFMAN, LENO, NEWSOM, TENG, YAKI, YEE

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

7 "Pay Period" shall mean the applicable Contractor's regular pay period.
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9 **SEC. 12P.3. MINIMUM COMPENSATION COMPONENTS.** Minimum Compensation
10 shall consist of each of the following:

11 (a) (i) Hourly gross compensation in the amount of nine dollars (\$9.00) per hour.

12 (ii) In no less than twelve (12) nor more than eighteen (18) months from the Effective
13 Date, the City shall increase the hourly gross compensation to ten dollars (\$10.00) per hour;
14 provided, however, that in the case of Nonprofit Corporations and public entities, this
15 adjustment shall only be made if the Joint Report issued by the Controller, Mayor's Budget
16 Office, and Budget Analyst, pursuant to San Francisco Administrative Code Section 3.6, finds
17 that the City has sufficient funds to pay the anticipated costs of the adjustment. A finding of
18 "sufficient funds" shall mean that the City will not be required to reduce services in order to
19 pay the anticipated costs of the adjustment.

20 (iii) For each of the next three (3) years after the adjustment provided in Subsection
21 (a)(ii) is made, at annual intervals, the City shall make an additional adjustment of 2.5%.

22 (b) Compensated time off (at the compensation rates specified in subsection (a) of
23 this Section) in an hourly amount that, on an annualized basis for a full-time employee,
24 equals twelve (12) days per year. Such time off shall vest with the Covered Employee at the
25 end of the applicable Pay Period and may be used, for sick leave, vacation or personal

1 necessity. Notwithstanding the foregoing, if a Contractor reasonably determines, in good
2 faith, that the Contractor cannot comply with this requirement for compensated time off, the
3 Contractor shall provide the Covered Employee with a cash equivalent of such compensated
4 time off.

5 (c) Uncompensated time off in an hourly amount that, on an annualized basis for a
6 full-time employee, equals ten (10) days per year. Such time off shall vest with the Covered
7 Employee at the end of the applicable Pay Period and may be used, at the option of the
8 Covered Employee, for sick leave for the illness of the Covered Employee or such Covered
9 Employee's spouse, domestic partner, child, parent, sibling, grandparent or grandchild.

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11 **SEC. 12P.4. SAN FRANCISCO INTERNATIONAL AIRPORT.** The requirements of
12 this Chapter shall apply to a written agreement (including, without limitation, any lease,
13 concession, franchise or easement agreement) for the exclusive use of real property that is
14 owned by the City or of which the City has exclusive use, if such property is under the
15 jurisdiction of the San Francisco Airport Commission and the term of the agreement exceeds
16 twenty-nine (29) days in any calendar year, whether by single or cumulative instruments. If
17 cumulative instruments cause the term of the agreement to exceed twenty-nine (29) days, the
18 agreement in question shall be subject to this Article only on and after the effective date of
19 the instrument which causes the term to exceed twenty-nine (29) days. The requirements of
20 this Chapter shall also apply to (i) any sublease or other agreement allowing other parties the
21 exclusive right to occupy or use all or any portion of the property covered by the agreement
22 and (ii) any agreement between a tenant or subtenant and any other person or entity to
23 perform services on the airport property. Contractors who have agreements covered by this
24 Section shall comply with the requirements of this Chapter insofar as they have "Covered
25 Employees." For purposes of this Section, "Covered Employee" shall mean an employee

1 who provides at least ten (10) hours of work on the property that is the subject of the
2 agreement in a two-week Pay Period, adjusted proportionately if the Pay Period is other than
3 two weeks. Notwithstanding the provisions of this Section, all exemptions and waivers from
4 the requirements of this Chapter that apply to Contracts shall also apply to agreements for
5 the use of airport property described in this Section, except for the exemption in Subsection
6 (xvii) relating to property contracts). Except as otherwise specifically provided, all
7 requirements of this Chapter, and the monitoring and enforcement mechanisms provided in
8 this Chapter, shall apply to agreements covered by this Section.

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10 **SEC. 12P.5. CONTRACT REQUIREMENTS.** Every Contract or Contract
11 Amendment entered into on or after the Effective Date shall provide as follows:

12 (a) For each hour worked by a Covered Employee during each Pay Period during
13 the term of the Contract (as such term may be extended from time to time), Contractor shall
14 provide to such Covered Employee no less than the Minimum Compensation as required in
15 this Chapter.

16 (b) Failure to comply with the foregoing requirement shall constitute a material
17 breach by Contractor of the terms of the Contract. Such failure shall be determined by the
18 City in its sole discretion.

19 (c) If, within thirty (30) days after the Contractor receives written notice of such a
20 breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured
21 within such period of thirty (30) days, Contractor fails to commence efforts to cure within such
22 period, or thereafter fails diligently to pursue such cure to completion, the City shall have the
23 right to pursue any rights or remedies available under the terms of the Contract or under
24 applicable law.

1 (d) The Contractor shall not discharge, reduce in compensation, or otherwise
2 discriminate against any Employee for complaining to the City with regard to the employer's
3 compliance or anticipated compliance with this Chapter, for opposing any practice proscribed
4 by this Chapter, for participating in proceedings related to this Chapter, or for seeking to
5 assert or enforce any rights under this Chapter by any lawful means.

6 (e) The Contractor represents and warrants that it is not an entity that was set up,
7 or is being used, for the purpose of evading the intent of this Chapter.

8 (f) The Contractor shall keep itself informed of the current Minimum
9 Compensation, and shall provide prompt written notice to all Covered Employees of annual
10 adjustments to the Minimum Compensation, as well as any written communications received
11 by the Contractor from the City, which communications are marked to indicate that they are to
12 be distributed to Covered Employees.

13 (g) The Contractor shall provide reports to the City in accordance with any
14 reporting standards promulgated by the Agency.

15 (h) The Contractor shall provide the City with access to pertinent records after
16 receiving a written request to do so and being provided at least five (5) business days to
17 respond.

18 (i) The Agency may conduct random audits of Contractors. Random audits shall
19 be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees
20 are paid at least the minimum compensation required by this Article; (iii) accomplished
21 through an examination of pertinent records at a mutually agreed upon time and location
22 within ten (10) days of the written notice; and (iv) limited to one audit per Contractor every
23 two years for the duration of the Contract. Nothing in this Section shall be deemed to
24 interfere with the authority of the Agency to investigate any report of an alleged breach of
25 contract as provided in Section 12P.6.

1 (j) Any Contractor subject to the provisions of this Chapter shall promptly notify the
2 Agency of any subcontractors performing services covered by this Chapter and shall certify to
3 the Agency that it has notified the subcontractors of their obligations under this Chapter.
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5 **SEC. 12P.6. ADMINISTRATION AND ENFORCEMENT.**

6 (a) The Agency shall promulgate guidelines or rules for the administration of this
7 Chapter. Such guidelines and rules shall not be adopted finally by the Agency until the
8 Agency has held a public hearing. The guidelines and rules shall establish procedures for
9 providing administrative hearings requested by Covered Employees to determine whether a
10 Contractor has breached a Contract based on the Minimum Compensation requirements of
11 this Chapter. The guidelines and rules shall also establish procedures permitting Contractors
12 to provide payroll information in confidence to the City for purposes of monitoring compliance
13 under this Chapter and authorizing disclosure of the information by the City only when
14 necessary for enforcement purposes. Upon the request of a Contracting Department, the
15 Agency shall also issue a determination as to whether a particular instrument constitutes a
16 Contract or agreement is subject to the requirements of this Chapter. The Agency shall
17 report annually on compliance with this Chapter to the Board of Supervisors. Such report
18 shall include cumulative information regarding the number of waivers granted by the Agency
19 pursuant to Sections 12P.7 and 12P.8 of this Chapter and statistical data regarding such
20 waivers.

21 (b) A Covered Employee may report to the Agency in writing any alleged breach by
22 a Contractor of the terms required to be contained in the applicable Contract under this
23 Chapter. The Agency shall investigate any such report. If the Agency determines that a
24 Contractor is in breach of any such term, the Agency shall notify the Contracting Department
25 of its findings and of any action that the Agency requests the Contracting Department to take

1 with respect to such breach. In order to ensure compliance with this Chapter and to enhance
2 the monitoring activities of the Agency, the City desires to encourage reporting by Covered
3 Employees pursuant to this subsection. The Agency shall keep confidential, to the maximum
4 extent permitted by applicable laws, the Covered Employee's name and other identifying
5 information.

6 (c) In addition to any other rights or remedies available to the City under the terms
7 of the Contract or under applicable law, the City shall have the following rights, in the event of
8 such failure by the Contractor: (i) the right to charge the Contractor an amount equal to the
9 difference between the Minimum Compensation levels required by this Chapter and any
10 compensation actually provided to each Covered Employee who was not paid in accordance
11 with the terms of this Chapter, together with interest on such amount from the date payment
12 was due at the maximum rate then permitted by law; (ii) the right to set off all or any portion of
13 the amount described in the preceding clause (i) of this Subsection against amounts due to
14 Contractor under the Contract; (iii) the right to terminate the Contract in whole or in part; (iv) in
15 the event of a breach by Contractor of the covenant referred to in Section 12P.5(d), the right
16 to seek reinstatement of the affected Covered Employee or to obtain other appropriate
17 equitable relief; and (iv) the right to bar a Contractor from entering into future contracts with
18 the City for three (3) years. Each of these rights shall be exercisable individually or in
19 combination with any other rights or remedies available to the City. Any amounts realized by
20 the City pursuant to this subsection shall be paid to each applicable Covered Employee.

21 (d) Each Covered Employee shall be a third-party beneficiary under the Contract as
22 set forth in this subsection and in subsection (e) of this Section, and may pursue the following
23 remedies in the event of a breach by the Contractor of any contractual covenant described in
24 Section 12P.5(a) or Section 12P.5(d), but only after the Covered Employee has provided the
25 notice and participated in the administrative review hearing provided in this subsection. The

1 Covered Employee shall give written notice of a breach to the Contractor and to the Agency.
2 If the Agency and the Contracting Department determine that no breach has occurred, or if
3 the Contracting Department fails to obtain the cure of a breach by the Contractor within sixty
4 (60) days after receipt of notice by the Covered Employee, the Covered Employee may
5 request an administrative review hearing. The Covered Employee must request such a
6 hearing within ninety (90) days after giving written notice of the breach. Unless the Covered
7 Employee withdraws the request for a hearing, the Agency shall conduct, or arrange to have
8 conducted, a hearing. The Employee shall have the right to attend the hearing personally or
9 through a designated representative. The Agency shall notify the Contractor of the hearing so
10 that the Contractor may attend and present evidence. After the hearing is completed, the
11 person conducting the hearing shall determine whether the Contractor has breached the
12 Contract. Upon the issuance of a written decision finding a breach, and after a waiting period
13 of twenty-one (21) days, the Covered Employee may bring an action against the Contractor
14 for such breach in the Superior Court of the State of California, as appropriate, unless the City
15 has commenced an action against the Contractor based on the breach, or obtained
16 compliance, within the 21-day waiting period and provided notice to the Covered Employee of
17 that action. If the Covered Employee prevails in such action, the Covered Employee may be
18 awarded: (A) an amount equal to the difference between the Minimum Compensation and
19 any compensation actually provided to the Covered Employee, together with interest on such
20 amount from the date payment was due at the maximum rate then permitted by law; and
21 (B) in the event of a breach by Contractor of the covenant referred to in Section 12P.5(d), the
22 right to seek reinstatement or to obtain other appropriate equitable relief.

23 (e) In the event of any legal action or proceeding between Contractor and a
24 Covered Employee arising from this Agreement, the unsuccessful party to such action or
25 proceeding shall pay to the prevailing party all costs and expenses, including reasonable

1 attorney's fees and disbursements, incurred by such prevailing party in such action or
2 proceeding and in any appeal in connection with such action or proceeding; provided,
3 however, that a Contractor shall be entitled to such costs and expenses only if the court
4 determines that the Covered Employee's action or proceeding was frivolous, vexatious or
5 otherwise an act of bad faith. If such prevailing party recovers a judgment in any such action,
6 proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be
7 included in and as a part of such judgment. This Article does not authorize any award of
8 costs, expenses, or attorney's fees in favor of or against the City.

9 (f) The City shall maintain the confidentiality of payroll information obtained in the
10 course of monitoring compliance with this Chapter and shall disclose such information only as
11 necessary for enforcement purposes.

12 (g) The Agency shall develop a procedure for obtaining an assurance from
13 Contractors when they sign an agreement subject to this Chapter that they comply with the
14 requirements of this Chapter, such as the signing of an affidavit of compliance.

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16 **SEC. 12P.7. WAIVERS BY THE AGENCY.** The Agency shall waive the requirements
17 of this Chapter under the following circumstances:

18 (a) The Contracting Department has certified in writing to the Agency, and the
19 Agency has found that: (i) either (A) there is only one prospective Contractor willing to enter
20 into the applicable Contract on the terms and conditions established by the City (other than
21 the requirements of this Chapter); or (B) the needed services under the applicable Services
22 Contract are available only from a sole source; and (ii) the prospective Contractor is not
23 currently disqualified from doing business with the City or any other governmental agency.

1 (b) The Contracting Department has certified in writing to the Agency (prior to the
2 Controller's contract certification), and the Agency has found that: (i) pursuant to Chapters 6
3 and 21 of the Administrative Code, the Contract is necessary to respond to an emergency
4 which endangers the public health or safety; and (ii) no entity that complies with the
5 requirements of this Chapter and is capable of responding to the emergency is immediately
6 available to perform the required services.

7 (c) The Contracting Department has certified in writing to the Agency, and the
8 Agency has found that: (i) there are no qualified responsive bidders or prospective vendors
9 that comply with the requirements of this Chapter; and (ii) the Contract is for a service, project,
10 or property that is essential to the City or the public.

11 (d) The Contracting Department has certified in writing to the Agency, and the
12 Agency has found that: (i) the Services to be purchased are available under a bulk purchasing
13 arrangement with a federal, state or local governmental entity; (ii) purchase under such
14 arrangement will substantially reduce the City's cost of purchasing such Services; and
15 (iii) purchase under such an arrangement is in the best interest of the City or the public.
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17 **SEC. 12P.8. ADDITIONAL WAIVERS BY THE AGENCY—NONPROFIT**
18 **CORPORATIONS.** A Nonprofit Corporation may seek a waiver from the requirements of the
19 adjustments provided in 12P.3(a)(ii) and (iii) if the highest paid managerial position in the
20 organization earns a salary which, when calculated on an hourly basis, is not more than six
21 times the lowest wage paid by the organization to a Covered Employee. The Nonprofit
22 Corporation shall provide to the Contracting Department a written statement, prepared and
23 signed by the Nonprofit Corporation, setting forth an explanation of the economic hardship to
24 the Nonprofit Corporation or the negative impact on services that would result from
25 compliance with this Chapter. If the Contracting Department determines that the written

MAYOR WILLIE L. BROWN, JR.
SUPERVISORS AMMIANO, BECERRIL, BIERMAN, BROWN,
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1 explanation is adequate to justify the waiver and that substantial evidence supports the written
2 explanation, it shall recommend the requested waiver to the Agency. The Agency may grant
3 the requested waiver. Each waiver shall be effective for a period of up to one year, and
4 subsequent waivers may be requested and granted.

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6 **SEC. 12P.9. SPECIAL WAIVER BY THE PUBLIC UTILITIES COMMISSION.** The
7 General Manager of the Public Utilities Commission may waive the requirements of this
8 Chapter where the Contractor is providing to or on behalf of the San Francisco Public Utilities
9 Commission services relating to: (a) the provision, conveyance or transmission of wholesale
10 or bulk water, electricity or natural gas; or (b) ancillary requirements such as spinning reserve,
11 voltage control, or loading scheduling, as required for ensuring reliable services in accordance
12 with good utility practice; provided, however, that: (i) the purchase of such services may not
13 practically be accomplished through the City's standard competitive bidding procedures; and
14 (ii) the Contractor is not providing direct, retail services to end users within the geographic
15 boundaries of the City.

16
17 **SEC. 12P.10. WAIVER THROUGH COLLECTIVE BARGAINING.** All or any portion
18 of the applicable requirements of this Chapter may be waived in a bona fide collective
19 bargaining agreement, provided that such waiver is explicitly set forth in such agreement in
20 clear and unambiguous terms.

21
22 **SEC. 12P.11. CITY DEPARTMENTS TO COOPERATE WITH AGENCY.** All City
23 departments shall cooperate with the Agency by providing such information and assistance as
24 the Agency shall request with respect to implementation of this Chapter.

25
MAYOR WILLIE L. BROWN, JR.
SUPERVISORS AMMIANO, BECERRIL, BIERMAN, BROWN,
KATZ, KAUFMAN, LENO, NEWSOM, TENG, YAKI, YEE

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1 **SEC. 12P.12. RELATIONSHIP TO OTHER REQUIREMENTS.** This Chapter provides
2 a minimum level of compensation and shall not be construed to preempt or otherwise affect
3 any other law, regulation or requirement providing a higher level of compensation.
4

5 **SEC. 12P.13. REPORT BY AIRPORT DIRECTOR.** One year after the Effective Date,
6 the Airport Director shall prepare a written report assessing the impact of this Chapter on
7 Airport property contracts, including any economic impact, benefits, and recommended
8 changes. The Airport Director shall submit the report to the Clerk of the Board, who shall
9 schedule a hearing before the appropriate committee to consider the report.
10

11 **SEC. . 12.P14. PREEMPTION.** Nothing in this Chapter shall be interpreted or applied
12 so as to create any power or duty in conflict with any federal or state law.
13

14 **SEC. . 12P.15 EFFECTIVE DATE.** This Chapter shall become effective 30 days after
15 it is adopted This Chapter is intended to have prospective effect only.
16

17 **SEC. 12P.16. SEVERABILITY.** If any part or provision of this Chapter, or the
18 application of this Chapter to any person or circumstance, is held invalid, the remainder of this
19 Chapter, including the application of such part or provisions to other persons or
20 circumstances, shall not be affected by such a holding and shall continue in full force and
21 effect. To this end, the provisions of this Chapter are severable.
22

23 Section 3. Amending Section 70 of the San Francisco Administrative Code.
24 Chapter 70 of the San Francisco Administrative Code is hereby amended by adding
25 Section 70.11 to read as follows:

MAYOR WILLIE L. BROWN, JR.
SUPERVISORS AMMIANO, BECERRIL, BIERMAN, BROWN,
KATZ, KAUFMAN, LENO, NEWSOM, TENG, YAKI, YEE

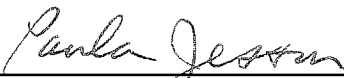
1 **SEC. 70.11. MINIMUM COMPENSATION.** (a) All Employees of the In-Home
2 Supportive Services Public Authority, including, without limitation, IHSS personnel referred to
3 consumers, or referred by consumers for inclusion in the Authority, shall be deemed to be
4 "Covered Employees" and shall be paid the "Minimum Compensation", as such terms are
5 defined in Chapter 12P.2 of the San Francisco Administrative Code. This Section shall be
6 implemented in a manner that does not conflict with applicable federal or state laws.
7

8 Section 4. CITY UNDERTAKING LIMITED TO PROMOTION OF THE GENERAL
9 WELFARE. In undertaking the adoption and enforcement of this ordinance, the City is
10 assuming an undertaking to promote and protect its proprietary interests and to promote the
11 general welfare. It is not assuming, nor is it imposing on its officers and employees, an
12 obligation for the breach of which it is liable in money damages to any person who claims
13 such breach proximately caused injury.
14
15

16 APPROVED AS TO FORM:

17 LOUISE H. RENNE, City Attorney
18

19
20 By:



Paula Jesson
Deputy City Attorney
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22
23
24
25

MAYOR WILLIE L. BROWN, JR.
SUPERVISORS AMMIANO, BECERRIL, BIERMAN, BROWN,
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City and County of San Francisco

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

Tails

Ordinance

File Number: 001272

Date Passed:

Ordinance amending the San Francisco Administrative Code by adding Chapter 12P, encompassing Sections 12P.1 to 12P.16, to provide that a prescribed minimum level of compensation be paid to employees of contractors providing services to the City and County, to employees of their subcontractors, and to employees of tenants and subtenants on Airport property and their contractors; and amending Chapter 70 of the San Francisco Administrative Code by adding Section 70.11 to provide that employees of the in-home supportive services public authority be paid the specified minimum compensation.

August 21, 2000 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

August 21, 2000 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

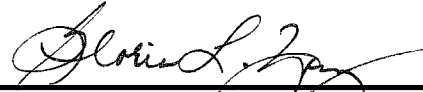
August 28, 2000 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Becerril, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

Absent: 1 - Bierman

File No. 001272

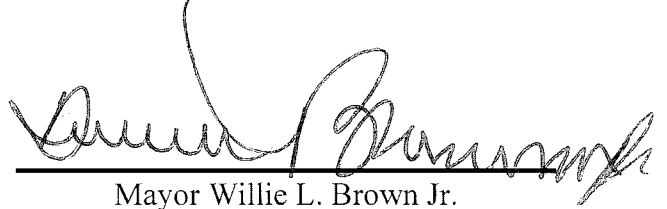
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on August 28, 2000
by the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
Clerk of the Board

SEP - 8 2000

Date Approved



Mayor Willie L. Brown Jr.