

MOTION

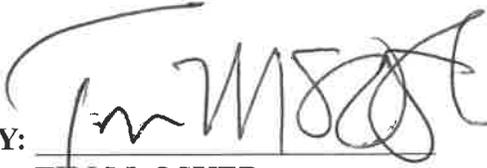
TRADE, TRAVEL AND TOURISM

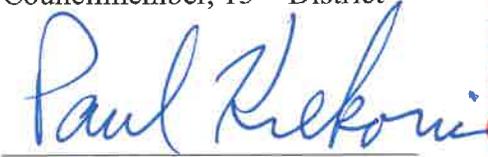
The Living Wage Ordinance (LWO) was first adopted by the City in 1997. The purpose of the LWO was to improve the quality of the services provided by employees of employers that contract with the City. By contractually requiring City contractors to pay their employees a higher wage and benefits than required under federal, state, or local minimum wage laws, the City sought to improve high turnover, absenteeism, and poor performance among the workers providing services for, and on behalf of, the City.

On August 29, 2023, the Ninth Circuit Court of Appeals issued its decision in the case of *Airlines for America v. City and County of San Francisco*, 78 F.4th 1146 (2023). In that case, the Court evaluated a San Francisco ordinance and determined San Francisco was acting as a regulator because of the ordinance’s penalty provisions.

Section 10.37.6(g)(3) of the City’s LWO does contain a \$100/day fine provision. However, the \$100/day fine provision in section 10.37.6(g)(3) was never intended to be punitive. Rather, \$100/day fine is meant to serve as liquidated damages to cover the losses incurred by the City for the harm caused when an employer breaches its contract and fails to cure a LWO violation. Because the City endeavors to mitigate its own damages, the Bureau of Contract Administration (BCA) has never actually exercised its right to recover any fines under Section 10.37.6(g)(3) since it became the designated administrative agency for the LWO in 2008. Nevertheless, out of an abundance of caution in consideration of the Ninth Circuit’s opinion, reconsideration of the need for this unused provision is in the best interest of the City.

I THEREFORE MOVE that the City Council request the Office of the City Attorney amend the LWO to ensure that section 10.37. 6 (g) (3) is in compliance with the court’s decision.

PRESENTED BY: 
TIM McOSKER
Councilmember, 15TH District

SECONDED BY: 

ORIGINAL

OCT 11 2023

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