

[Administrative Code - Prevailing Wage, Apprenticeship, and Local Hire for City Property Sold for Housing Development or Leased by the City]

Ordinance amending the Administrative Code to require inclusion of prevailing wage, apprenticeship, and local hiring requirements in the sale of City-owned property for the development of housing or where the City is a landlord, and to require inclusion of prevailing wage and apprenticeship requirements where the City is a tenant; and authorizing the Office of Labor Standards Enforcement and Office of Economic and Workforce Development to enforce such provisions to the extent not already authorized.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font. **Additions to Codes** are in *single-underline italics Times New Roman font*. **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~. **Board amendment additions** are in double-underlined Arial font. **Board amendment deletions** are in ~~Arial font~~. **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The Administrative Code is hereby amended by adding Article VII, consisting of Sections 23.60, 23.61, 23.62, 23.63, 23.64, 23.65, and 23.66, to Chapter 23, to read as follows:

ARTICLE VII: PREVAILING WAGE, APPRENTICESHIP, AND LOCAL HIRE REQUIREMENTS IN CITY REAL PROPERTY SALES CONTRACTS AND LEASES

SEC. 23.60. SCOPE OF ARTICLE.

When the City sells real property for Housing Development or leases real property as a landlord or as a tenant, and the real property in each of these types of transactions is located within the jurisdictional boundaries of the City, the City, in the applicable sales contract or lease and all

1 Construction Contracts thereunder, shall require compliance with the prevailing wage, apprenticeship,
2 and local hiring requirements as set forth in this Article VII.

3 **SEC. 23.61. PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS.**

4 (a) Definitions. The following definitions shall apply to the terms used in this Article VII:

5 Apprentice. Any worker who is indentured in a construction apprenticeship program that
6 maintains current registration with the State of California's Division of Apprenticeship Standards.

7 Construction Contract. The construction agreement entered into by the Contracting Party for
8 Covered Construction.

9 Contracting Party. Any entity or individual, or successor in interest to the rights of any entity
10 or individual, who is (1) the buyer of real property intended for Housing Development under a City-as-
11 seller contract, (2) the landlord under a City-as-tenant lease, or (3) the tenant under a City-as-landlord
12 lease; provided, however, that public entities shall not be considered Contracting Parties.

13 Contractor. Any person, firm, partnership, owner operator, limited liability company,
14 corporation, joint venture, proprietorship, trust, association, or other entity that directly enters into a
15 Construction Contract to perform Covered Construction work. A Contractor may also be referred to
16 as a "Prime Contractor" or "General Contractor."

17 Covered Construction. Any project for any erection, construction, renovation, alteration,
18 improvement, demolition, excavation, installation, or repair, including tenant improvements, that meets
19 the following requirements: (1) the real property on which the project is located is within the
20 jurisdictional boundaries of the City; (2) the estimated project cost exceeds the Threshold Amount; and
21 (3) the project is performed on (A) any real property sold to the Contracting Party under a City-as-
22 seller contract for Housing Development; or (B) real property leased by the City as a landlord or
23 leased to the City as a tenant, where the construction is performed before or during the term of the
24 lease in accordance with plans, specifications, or criteria approved by the City.

1 Housing Development. Any residential or mixed-use project that includes the construction,
2 expansion, or rehabilitation of three or more residential units.

3 Prevailing Rate of Wages. The Prevailing Rate of Wages as defined in Section 6.1, and
4 established under subsections 6.22(e)(3) and 6.22(f), of the Administrative Code.

5 Subcontractor. Any person, firm, partnership, owner operator, limited liability company,
6 corporation, joint venture, proprietorship, trust, association, or other entity that contracts with a Prime
7 Contractor or a subcontractor to provide construction work on Covered Construction.

8 Threshold Amount. The Threshold Amount as defined in Section 6.1 of the Administrative Code.

9 (b) Prevailing Wage and Apprentice Requirements. The City shall include in all real
10 property sales contracts and leases that include or contemplate Covered Construction the requirement
11 that the Contracting Party and each Contractor and Subcontractor performing work on Covered
12 Construction pay prevailing wages and employ Apprentices in accordance with this Section 23.61.
13 Each Contracting Party shall comply with such provisions as if the Covered Construction is a "public
14 work and improvement" under subsection 6.22(e) of this Code and the California Labor Code, and as if
15 the Contractors and Subcontractors are "Contractors" and "subcontractors" under subsection 6.22(e)
16 of this Code.

17 The following requirements are in addition to any applicable requirements under state and
18 federal law:

19 (1) Prevailing Wage Rates. Each Contracting Party shall (A) pay, and shall require
20 its Contractors and Subcontractors to pay, all persons performing work on Covered Construction no
21 less than the applicable Prevailing Rate of Wages, and (B) comply with, and require its Contractors
22 and Subcontractors to comply with, the provisions of subsections 6.22(e)(5), (6), (7) and subsection
23 6.22(f) of this Code. If, under subsection 6.22(e)(6) of this Code, there is no department authorized to
24 award a contract under Chapter 6 of this Code for whom the Contractor or Subcontractor shall
25 maintain weekly certified payroll records for submission, then the Contractor or Subcontractor shall

1 maintain weekly certified payroll records to be submitted to the Office of Labor Standards Enforcement
2 upon request in order to comply with Section 6.22(e)(6) of this Code.

3 (2) Employment of Apprentices. Each Contracting Party shall require its Contractors
4 and Subcontractors to employ Apprentices in compliance with the requirements of the State
5 Apprenticeship Program as set forth in the California Labor Code, Division 3, Chapter 4 commencing
6 at Section 3070, and Section 1777.5 of the Labor Code, as amended from time to time.

7 (c) City as Third Party Beneficiary. Each Construction Contract will (1) require the
8 payment of the Prevailing Rate of Wages and employment of Apprentices in all contracts and
9 subcontracts for the Covered Construction, with specific reference to this Section 23.61, (2) name the
10 City and County of San Francisco, affected workers, and employee organizations formally representing
11 affected workers, as third party beneficiaries for the limited purpose of having the right to enforce the
12 prevailing wage and apprenticeship requirements, including the right to file charges and seek penalties
13 against any Contractor or Subcontractor in accordance with this Article VII, and (3) require the
14 Contracting Party to reasonably cooperate with the City in any action or proceeding against a
15 Contractor or Subcontractor that fails to pay the Prevailing Rate of Wages or employ Apprentices as
16 required. A Contracting Party that requires the payment of prevailing wages and employment of
17 Apprentices in the Construction Contract and reasonably cooperates with the City in any enforcement
18 action shall not be in breach of the applicable sales contract or lease with the City due to a
19 Contractor's or Subcontractor's failure to pay the Prevailing Rate of Wages or employ Apprentices.
20 So long as the Contracting Party satisfies the requirements of the previous sentence, any enforcement
21 action by the City, through the City's Labor Standards Enforcement Officer or otherwise, shall be
22 directly against the Contractor or Subcontractor that failed to pay prevailing wages or employ
23 Apprentices as required. Nothing in this Section 23.61 shall limit the remedies available to a City
24 department, as set forth in the applicable sales contract or lease, for a Contracting Party's failure to
25 require the payment of the Prevailing Rate of Wages or the employment of Apprentices in a

1 Construction Contract, or for a Contracting Party's failure to reasonably cooperate with the City in
2 any enforcement action as set forth above.

3 (d) Enforcement. The City's Labor Standards Enforcement Officer shall have the authority
4 to enforce the prevailing wage and apprenticeship requirements against a Contractor or Subcontractor
5 as set forth in this Section 23.61.

6 (1) Penalty and Forfeiture. Any Contractor or Subcontractor that fails to pay the
7 Prevailing Rate of Wages or fails to employ Apprentices as required under this Section 23.61 shall (A)
8 pay and, in the case of any Subcontractor so failing, the original Contractor and the Subcontractor
9 shall be jointly and severally liable to pay the City back wages due plus penalties in amounts consistent
10 with analogous provisions of the California Labor Code as amended from time to time, including
11 Sections 1775, 1813 and 1777.7, but not less than the sum of \$50 for each day or portion thereof for
12 each violation, and (B) be subject to the penalties set forth in Article V of this Chapter 6, including
13 debarment.

14 (2) The Labor Standards Enforcement Officer shall determine whether a Contractor
15 or Subcontractor has failed to comply with the prevailing wage and apprenticeship requirements of this
16 Section. If after conducting an investigation, the Labor Standards Enforcement Officer determines that
17 a violation has occurred, the Officer shall issue and serve a Determination of Violation on the
18 Contractor or Subcontractor that sets forth the basis of the determination and orders payment of back
19 wages due plus the penalty sum set forth in subsection 23.61(d)(1). Service of the Determination of
20 Violation shall be made by United States mail and the date of service shall be the date of mailing.

21 (3) Recourse Procedure. A Contractor and/or a Subcontractor may appeal from a
22 Determination of Violation. The Controller shall adopt and maintain rules and regulations for any
23 appeal under this subsection 23.61(d)(3), which rules shall be consistent with the following
24 parameters:

1 (A) Any Appeal from a Determination of Violation (referred to in this
2 subsection 23.61(d)(3) as the "Appeal") shall be filed in writing by the Contractor and/or
3 Subcontractor (referred to in this subsection 23.61(d)(3), whether singular or plural, as the
4 "Appellant") within 15 days of the date of service of the Determination of Violation. Appellant shall
5 serve the Appeal on the Controller and the Labor Standards Enforcement Officer. Failure by the
6 Contractor or Subcontractor to serve a timely, written Appeal shall constitute concession to the
7 Determination of Violation, and that determination shall be deemed final upon expiration of the 15-day
8 period.

9 (B) The Office of Labor Standards Enforcement shall promptly afford Appellant
10 an opportunity to meet and confer in good faith regarding possible resolution of the Determination of
11 Violation in advance of further proceedings under this subsection 23.61(d)(3), with the intention that
12 such meeting occur within 30 days of the date the Appeal is filed.

13 (C) After the expiration of 30 days following the date the Appeal is filed, any
14 party may request in writing, with concurrent notice to all other parties, that the Controller appoint a
15 hearing officer to hear and decide the Appeal. If no party requests appointment of a hearing officer, the
16 Determination of Violation shall be deemed final on the 60th day after the date the Appeal is filed.

17 (D) Within 15 days of receiving a written request for appointment of a hearing
18 officer under subsection 23.61(d)(3)(C), the Controller shall appoint an impartial hearing officer and
19 immediately notify the enforcing official and Appellant, and their respective counsel or authorized
20 representative if any, of the appointment. The appointed hearing officer shall be an Administrative Law
21 Judge with at least 10 years' experience with the City and not less than two years' experience in labor
22 law, prevailing wage, and/or wage and hour matters; or shall be an attorney with knowledge of and not
23 less than five years' experience in labor law, prevailing wage, and/or wage and hour matters.

24 (E) The hearing officer shall promptly set a date for a hearing. The hearing
25 must commence within 45 days of the date of the notification of the hearing officer appointment, and

1 conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial
2 evidentiary hearing in conformance with the time limitations set forth in this subsection 23.61(d)(3) and
3 in the rules and regulations, so as to avoid undue delay in the resolution of any appeal. The hearing
4 officer shall have the discretion to extend the times under this subsection 23.61(d)(3), and any time
5 requirements under the rules and regulations, only upon a showing of good cause.

6 (F) Appellant has the burden of proving by a preponderance of the evidence that
7 the basis for the Determination of Violation is incorrect, including any back wage and penalty
8 assessments that are at issue in the Appeal.

9 (G) Within 30 days of the conclusion of the hearing, the hearing officer shall
10 issue a written decision affirming, modifying, or dismissing the Determination of Violation. The
11 decision of the hearing officer shall consist of findings and a determination. The hearing officer's
12 findings and determination shall be the final determination of the City.

13 (H) Appellant may appeal a final determination under this subsection
14 23.61(d)(3) only by filing in the San Francisco Superior Court a petition for a writ of mandate under
15 California Code of Civil Procedure Section 1084 et seq., as applicable and as amended from time to
16 time.

17 (4) Remedies for Non-Compliance with Determination of Violation. No later than 30
18 days after receipt of a Determination of Violation or, in the case of an Appeal, after an adverse final
19 determination by a hearing officer, the Contractor or Subcontractor shall comply with the
20 Determination of Violation by paying the amounts due for back wages and any penalty amount as set
21 forth therein. The Contractor or Subcontractor shall, in addition, be subject to the penalties set forth in
22 Article V of Chapter 6 of this Code, including debarment. If any Contractor or Subcontractor fails to
23 pay the amounts required under this Section 23.61 within the required 30 days, it shall be subject to
24 enforcement actions, including the following:

1 (A) The City may bring a civil action in a court of competent jurisdiction against
2 the non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as
3 may be appropriate to remedy the violation including, without limitation: (i) damages in the amount of
4 back wages and any penalty amounts due to workers for violation of the prevailing wage and/or
5 apprenticeship requirements, which amounts the City shall, on receipt, distribute to workers following
6 the procedures in subsection 23.61(d)(5); and (ii) an award of reasonable attorney's fees and costs;

7 (B) Each worker entitled to back pay as set forth in the Determination of
8 Violation or, where a hearing officer has decided the matter, as set forth in the decision of the hearing
9 officer, may bring a civil action in a court of competent jurisdiction against the non-complying party
10 and, upon prevailing, shall be entitled to such legal and equitable relief as may be appropriate to
11 remedy the violation including, without limitation: (i) damages in the amount of back wages due to
12 such workers for violation of the prevailing wage and/or penalties due for violation of the
13 apprenticeship requirements; and (ii) an award of reasonable attorney's fees and costs. An employee
14 organization that formally represents a worker or workers entitled to bring a civil action under this
15 subsection 23.61(d)(4)(B) may do so on behalf of the worker or workers, with the same range of
16 possible legal and equitable relief as would be available in an action brought by the worker or
17 workers.

18 (5) Distribution of Damages. Upon payment of back wages and/or penalties, as provided in
19 the foregoing paragraphs, the City shall distribute the amounts in the following order: (A) the Labor
20 Standards Enforcement Officer shall make reasonable best efforts to distribute back wages withheld to
21 the individual workers identified as not having been paid the proper wage rate; (B) the assessed
22 penalties shall inure to the benefit of the general fund of the City; (C) the Controller shall hold the
23 balance of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,
24 despite his or her reasonable best efforts, cannot locate. In the event back wages are unclaimed for a
25 period of three years, the Controller shall undertake administrative procedures for unclaimed funds in

1 conformance with California Government Code Section 50050 et seq., as may be amended from time to
2 time. This subsection 23.61(d)(5) also shall be applicable to damages obtained as a result of an
3 enforcement action pursuant to subsection 23.61(d)(4), as applicable.

4
5 **SEC. 23.62. LOCAL HIRE REQUIREMENTS.**

6 (a) Local Hire Requirement. The City shall include in all real property sales contracts for
7 Housing Development, as that term is defined in Section 23.61(a), and in all City-as-landlord leases
8 that include or contemplate construction of a Covered Project, the requirement that the purchaser or
9 tenant of the real property comply with the requirements of the City's Local Hiring Policy, as set forth
10 in Administrative Code subsection 6.22(g) and under the standards set forth in subsection
11 6.22(g)(3)(B). For purposes of this Section 23.62, the terms "Covered Project" and, notwithstanding
12 Section 23.61, "Contractor" and "Subcontractor," shall have the same meaning as the definitions set
13 forth in subsection 6.22(g)(2).

14 (b) Mandatory Participation Levels. In the performance of work or labor on a Covered
15 Project, each purchaser or tenant shall comply, and shall require its Contractors and Subcontractors
16 to comply, with the mandatory participation levels set forth in subsection 6.22(g)(4) of the
17 Administrative Code.

18 (c) City as Third Party Beneficiary. Each applicable construction contract for a Covered
19 Project will (1) require compliance with the local hiring policy, with reference to this Section 23.62;
20 (2) name the City and County of San Francisco as a third party beneficiary for the limited purpose of
21 having the right to enforce the local hiring policy, including the right to file charges and seek penalties
22 against any Contractor or Subcontractor; and (3) require the purchaser or tenant to reasonably
23 cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to
24 comply with the requirements of this Section 23.62. A purchaser or tenant that requires compliance
25 with this Section in the construction contract for the Covered Project and reasonably cooperates with

1 the City in any enforcement action shall not be in breach of the applicable sales contract or lease with
2 the City due to a Contractor's or Subcontractor's failure to comply or to meet the mandatory
3 participation levels. So long as the purchaser or tenant complies with the requirements of the previous
4 sentence, any enforcement action by the City, through the Office of Economic and Workforce
5 Development ("OEWD") or otherwise, shall be directly against the Contractor or Subcontractor that
6 failed to meet the mandatory participation levels. Nothing in this Section shall limit the remedies
7 available to a City department, as set forth in the applicable sales contract or lease, for a purchaser's
8 or tenant's failure to require compliance with this Section in a construction contract for the Covered
9 Project or to reasonably cooperate with the City in any enforcement action as set forth above.

10 (d) Enforcement.

11 (1) Assessment of Penalties. OEWD shall have the authority to enforce this Section
12 23.62 against a Contractor or Subcontractor as set forth in Administrative Code subsection 6.22(g)(7).
13 OEWD shall determine whether a Contractor or Subcontractor has failed to comply with the local
14 hiring requirements. If after conducting an investigation, OEWD determines that a violation has
15 occurred, it shall issue and serve an assessment of penalties that sets forth the basis of the assessment
16 and orders payment of penalties under subsection 6.22(g)(7)(F) of this Code.

17 (2) Remedies for Non-Compliance with Assessment of Penalties. Each Contractor and
18 Subcontractor shall comply with the final assessment of penalties by paying the amounts due for wages
19 as set forth in Administrative Code subsection 6.22(g)(7)(F)(iii) no later than 30 days after the
20 determination or decision of the hearing officer is final. The Contractor or Subcontractor shall, in
21 addition, be subject to the penalties set forth in Article V of Chapter 6 of the Administrative Code,
22 including debarment. If any Contractor or Subcontractor fails to pay the amounts required under
23 subsection 6.22(g)(7)(F) of this Code within the required 30 days, the non-complying party shall be
24 subject to the enforcement actions set forth in subsection 6.22(g)(7)(F)(v).

1 **SEC. 23.63. APPLICATION.**

2 The requirements of this Article VII are intended to have prospective effect only, and shall not
3 be interpreted to impair the obligations of any existing sales contract, lease, or amendment thereto
4 entered into by the City before the operative date of this Article VII. Where the Covered Construction
5 or Covered Project involves Housing Development on real property sold by the City, the requirements
6 of this Article VII shall terminate upon issuance of a final certificate of occupancy for the Covered
7 Construction or Covered Project.

8 **SEC. 23.64. NO CAUSE OF ACTION AGAINST THE CITY.**

9 In no event shall any person or entity have the right to bring an action against the City based on
10 any alleged failure to enforce or negligent enforcement of the requirements of this Article VII.

11 **SEC. 23.65. PREEMPTION.**

12 In contracts that involve the use of any funds furnished, given, or loaned by the Government of
13 the United States or the State of California, all laws, rules and regulations of the Government of the
14 United States or the State of California or of any federal or State departments relative to the
15 performance of such work and the conditions under which the work is to be performed, shall prevail
16 over the requirements of this Article VII when such laws, rules or regulations are in conflict.

17 **SEC. 23.66. SEVERABILITY.**

18 If any part or provision of this Article VII, or the application thereof to any person or
19 circumstance, is held invalid, the remainder of this Article, including the application of such part or
20 provisions to other persons or circumstances, shall not be affected thereby and shall continue in full
21 force and effect. To this end, the provisions of this Article are severable.

22
23 Section 2. The Administrative Code is hereby amended by revising Section 6.22(e)
24 and 6.22(g), to read as follows:
25

1 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
2 **CONDITIONS.**

3 * * * *

4 **(e) Prevailing Wages.**

5 * * * *

6 **(2) Additional Projects ~~Included~~ Considered As Within Definition of "Public**
7 **Works or Improvements" for Purposes of Prevailing Wages.**

8 **(A) Property Leased or Sold by the City.** For construction work performed on real
9 property leased by the City or sold by the City for Housing Development, as that term is defined in
10 Administrative Code subsection 23.61(a), Contractors and subcontractors must pay prevailing wages
11 in accordance with Article VII of Chapter 23 of the Administrative Code and this subsection 6.22(e) as
12 applicable. ~~the limited purposes of this subsection 6.22(e), a "public work or improvement" also means~~
13 and includes any construction work done under private contract when all of the following conditions
14 exist:

15 ~~(i) The construction contract is between private persons; and~~

16 ~~(ii) The property subject to the construction contract is privately owned, but upon~~
17 ~~completion of the construction work will be leased to the City for its use; and~~

18 ~~(iii) Either of the following conditions exist: (1) The lease agreement between the~~
19 ~~lessor and the City, as lessee, is entered into prior to the construction contract, or (2) The construction~~
20 ~~work is performed according to the plans, specifications, or criteria furnished by the City, and the lease~~
21 ~~agreement between the lessor and the City as lessee, is entered into during, or upon completion, of the~~
22 ~~construction work.~~

23 * * * *

24 **(8) Non-compliance with Wage Provisions – Penalties.**

25 * * * *

1 (B) **Enforcement.**

2 (i) For a public work or improvement undertaken through a contract with the
3 City and under which the City has the ability to withhold funds, it shall be the duty of the officer,
4 board or commission under whose jurisdiction said public work or improvement is being
5 carried on, made or constructed, when certifying to the Controller any payment which may
6 become due under said contract, to deduct from said payment or payments the total amount
7 of said forfeiture provided for in this subsection. In doing so, the Department Head must also
8 notify in writing the Labor Standards Enforcement Officer of his/her action. The Labor
9 Standards Enforcement Officer may also upon written notice to the Department Head who is
10 responsible for the project, certify to the Controller any forfeiture(s) to deduct from any
11 payment as provided for in this subsection 6.22(e)(8). Certification of forfeitures under this
12 subsection shall be made only upon an investigation and audit by the responsible Department
13 Head or the Labor Standards Enforcement Officer and upon service of written notice to the
14 contractor that includes identification of the grounds for the forfeiture or forfeitures
15 ("Certification of Forfeiture"). The audit supporting the forfeiture shall be appended to the
16 Certification of Forfeiture, but failure to append such documentation shall not invalidate the
17 Certification. Service of the Certification of Forfeiture shall be made by United States mail and
18 the date of service shall be the date of mailing. The Controller, in issuing any warrant for any
19 such payment, shall deduct from the amount which would otherwise be due on said payment
20 or payments the amount of said forfeiture or forfeitures as so certified.

21 (ii) For any contract in which the City has required a third party to pay
22 prevailing wages and for which the City does not have the ability to withhold funds, the Labor
23 Standards Enforcement Officer shall determine whether a contractor and/or any subcontractor has
24 failed to comply with the prevailing wage requirement. If after conducting an investigation, the Labor
25 Standards Enforcement Officer determines that a violation has occurred, it shall issue to and serve a

1 Determination of Violation on the contractor and/or any subcontractor, which sets forth the basis of the
2 determination and orders payment of back wages due plus the penalty of at least \$50 per day for each
3 laborer, workman, or mechanic employed for each calendar day or portion thereof. Service of the
4 Determination of Violation shall be made by United States mail and the date of service shall be the date
5 of mailing.

6 (C) **Recourse Procedure.** A contractor and/or a subcontractor may appeal
7 from a Certification of Forfeiture under subsection 6.22(e)(8)(B)(i) or Determination of Violation
8 under subsection 6.22(e)(8)(B)(ii). The Controller shall adopt and maintain rules and regulations
9 for any appeal under this subsection 6.22(e)(8)(C), which rules shall generally include be
10 consistent with the following parameters for efficient and effective due process:

11 (i) Any Appeal from Certification of Forfeiture or Determination of Violation
12 (referred to in this subsection 6.22(e)(8)(C) as the "Appeal") shall be filed in writing by the
13 contractor and/or subcontractor (referred to in this subsection 6.22(e)(8)(C), whether singular
14 or plural, as the "Appellant") within 15 days of the date of service of the Certification of
15 Forfeiture or Determination of Violation. Appellant shall file the Appeal from Certification of
16 Forfeiture with the City Controller and serve a copy on the Labor Standards Enforcement
17 Officer. Failure by the contractor or subcontractor to submit a timely, written Appeal from
18 Certification of Forfeiture shall constitute concession to the forfeiture or determination, and the
19 forfeiture or determination shall be deemed final upon expiration of the 15-day period.

20 (ii) The Office of Labor Standards Enforcement shall promptly afford
21 Appellant an opportunity to meet and confer in good faith regarding possible resolution of the
22 Certification of Forfeiture or Determination of Violation in advance of further proceedings under
23 this subsection 6.22(e)(8)(C), with the intention that such meeting occur within 30 days of the
24 date the Appeal from Certification of Forfeiture is filed.

1 (iii) After the expiration of 30 days following the date the Appeal ~~from~~
2 ~~Certification of Forfeiture~~ is filed, any party may request in writing, with concurrent notice to all
3 other parties, that the Controller appoint a hearing officer to hear and decide the ~~appeal~~
4 Appeal. If no party requests appointment of a hearing officer, the Certification of Forfeiture or
5 Determination of Violation shall be deemed final on the 60th day after the date the Appeal ~~from~~
6 ~~Certification of Forfeiture~~ is filed.

7 (iv) Within 15 days of receiving a written request for appointment of a
8 hearing officer under subsection 6.22(e)(8)(C)(iii), the Controller shall appoint an impartial
9 hearing officer and immediately notify the enforcing official and Appellant, and their respective
10 counsel or authorized representative if any, of the appointment. The appointed hearing officer
11 shall be an Administrative Law Judge with at least 10 years' experience with the City and not
12 less than two years' experience in labor law, prevailing wage, and/or wage and hour matters;
13 or shall be an attorney with knowledge and not less than five years' experience in labor law,
14 prevailing wage, and/or wage and hour matters.

15 (v) The hearing officer shall promptly set a date for a hearing. The
16 hearing must commence within 45 days of the date ~~the Controller of the notification notice~~ of the
17 hearing officer appointment, and conclude within 75 days of such notice. The hearing officer
18 shall conduct a fair and impartial evidentiary hearing in conformance with the time limitations
19 set forth in this subsection 6.22(e)(8)(C) and in the rules and regulations, so as to avoid undue
20 delay in the resolution of any appeal. The hearing officer shall have the discretion to extend
21 the times under this subsection 6.22(e)(8)(C), and any time requirements under the rules and
22 regulations, only upon a showing of good cause.

23 (vi) Appellant has the burden of proving by a preponderance of the
24 evidence that the basis for the Certification of Forfeiture or Determination of Violation is
25 incorrect, including any back wage and penalty assessments that are at issue in the appeal.

1 (vii) Within 30 days of the conclusion of the hearing, the hearing officer
2 shall issue a written decision affirming, modifying, or dismissing the Certificate of Forfeiture or
3 Determination of Violation. The decision of the hearing officer shall consist of findings and a
4 determination. The hearing officer's findings and determination shall be the final determination.

5 (viii) Appellant may appeal a final determination under this subsection
6 6.22(e)(8) only by filing in the San Francisco Superior Court a petition for a writ of mandate
7 under California Code of Civil Procedure Section 1084 et seq., as applicable and as may be
8 amended from time to time.

9 (D) **Distribution of Forfeiture and Damages.** The Controller shall withhold any
10 forfeiture as provided in the foregoing paragraphs until such time as either the Contractor or
11 subcontractor has conceded to the forfeiture or, in the event of an ~~a~~Appeal, there is a
12 determination no longer subject to judicial review. The Controller shall then distribute the
13 amounts withheld in the following order: (1) the Labor Standards Enforcement Officer shall
14 make best efforts to distribute back wages withheld to the individual workers identified as not
15 having been paid the proper wage rate; (2) the penal sums provided for above shall inure to
16 the benefit of the general fund of the City; (3) the Controller shall hold the balance of any back
17 wages in escrow for workers who the Labor Standards Enforcement Officer, despite his or her
18 best efforts, cannot locate. In the event back wages are unclaimed for a period of three years,
19 the Controller shall undertake administrative procedures for unclaimed funds in conformance
20 with California Government Code Section 50050 et seq., as may be amended from time to
21 time. This subsection 6.22(e)(8)(D) also shall be applicable to damages obtained as a result of an
22 enforcement action pursuant to subsection 6.22(e)(8)(E), as applicable.

23 (E) Remedies for Non-Compliance with Determination of Violation. No later than 30
24 days after receipt of a Notice of Determination or, in the case of an Appeal, after an adverse final
25 determination by a hearing officer, the contractor and/or subcontractor shall comply with the Notice of

1 Determination of Violation by paying the amounts due for back wages and any penalty amount as set
2 forth in the Determination of Violation or final determination. The contractor and/or subcontractor
3 shall, in addition, be subject to the penalties set forth in Article V of this Chapter 6, including
4 debarment. If any contractor and/or subcontractor fails to pay the amounts required under this
5 subsection 6.22(e)(8)(E) within the required 30 days, the City may bring a civil action in a court of
6 competent jurisdiction against the non-complying party and, upon prevailing, shall be entitled to such
7 legal and equitable relief as may be appropriate to remedy the violation including, without limitation:
8 (i) damages in the amount of back wages and any penalty amounts due to workers for violation of the
9 prevailing wage requirement, which amounts the City shall, on receipt, distribute to workers following
10 the procedures in subsection 6.22(e)(8)(D); and (ii) an award of reasonable attorney's fees and costs.

11 * * * *

12 (g) **Local Hiring.** This subsection 6.22(g) shall be known as and may be cited as the
13 San Francisco Local Hiring Policy for Construction ("Policy").

14 (1) **Findings and Purpose.**

15 (A) The Board of Supervisors passed Ordinance 286-94 on August 4,
16 1994, to establish local hiring requirements for City public work or improvement projects
17 performed within the boundaries of the City.

18 (B) In 2010, the San Francisco Redevelopment Agency and the City's
19 Office of Economic and Workforce Development commissioned a study of the labor market in
20 the construction industry in San Francisco (the "Labor Market Analysis"), including review of
21 comparative demographic data regarding workers on public and private projects, scope of
22 past and future public and private construction work in San Francisco, comparative
23 compensation on public and private projects, demographic data regarding apprenticeship
24 programs operating in San Francisco, and income and residency data regarding construction
25 workers in San Francisco.

1 (C) In 2010, the Walter and Elise Haas Fund and the San Francisco
2 Foundation, with assistance of the City's Office of Economic and Workforce Development,
3 convened a local hiring stakeholder process to discuss possible revision of subsection
4 6.22(g), at which community, labor, contractor, and City stakeholders participated.

5 (D) In August 2010, a report from Chinese for Affirmative Action and
6 Brightline Defense Project entitled, "The Failure of Good Faith," found that the City has
7 historically failed to meet its local hiring goals.

8 (E) The Budget & Finance and Land Use & Economic Development
9 Committees of the Board of Supervisors held public hearings regarding local hiring and
10 proposed revisions to subsection 6.22(g).

11 (F) The San Francisco Public Utilities Commission, Redevelopment
12 Agency, Human Rights Commission, and other City departments and agencies held public
13 hearings regarding local hiring.

14 (G) The construction industry is one of the few industries providing a path
15 to middle-class careers for individuals without advanced degrees or facing barriers to quality
16 employment, and is therefore a crucial component of the effort to build economic opportunities
17 for targeted residents of San Francisco, with a particular emphasis on low-income and
18 underrepresented workers in various building and construction trades, in order to elevate
19 historically disadvantaged populations and create more sustainable communities throughout
20 San Francisco.

21 (H) The City has awarded more than \$8 billion in public work and
22 improvement contracts during the last 10 years.

23 (I) The City anticipates that it will award approximately \$27 billion in public
24 work and improvement contracts in the next 10 years.

1 (J) City spending on public work and improvement projects over the next
2 10 years will generate tens of thousands of construction work hours.

3 (K) The Board desires to ensure that employment and training
4 opportunities created by such public work and improvement projects provide consistent and
5 high-quality opportunities to the San Francisco labor pool, especially low-income residents of
6 San Francisco and other disadvantaged residents.

7 (L) Although approximately 40% of construction workers employed in San
8 Francisco are San Francisco residents, from 2002 to 2010 San Francisco residents worked
9 only approximately 24% of the work-hours on publicly-funded construction projects in the City,
10 and only 20% of work-hours since July 2009.

11 (M) The City faces unemployment levels that have risen dramatically over
12 the past four years, climbing from a low of 3.7% in December 2006 to an average of 9.8% for
13 each month of 2010 through July, leaving at least 44,500 San Franciscans out of work
14 according to the California Employment Development Department, with disproportionate
15 concentrations of high unemployment in neighborhoods such as Bayview-Hunters Point,
16 Chinatown, the Mission, Western Addition, Visitacion Valley, the Excelsior, South of Market,
17 Ocean View, Merced Heights and Ingleside.

18 (N) The 2010-2014 Consolidated Plan for the City and County of San
19 Francisco indicates that several San Francisco neighborhoods face concentrated poverty and
20 San Francisco's slow job growth rate and changing job base has had major impacts on
21 patterns of income inequality and disparity in the City, with distinctive, adverse, neighborhood-
22 specific effects.

23 (O) The loss of middle-income jobs has been associated with a
24 diminishing middle class in San Francisco, as indicated by rising income inequality. San
25 Francisco's unequal income distribution threatens the City's future competitiveness and

1 overall economic stability, and the City's anti-poverty strategy aims to ensure that the City and
2 its partners are marshaling its limited resources in an effective and coordinated way to create
3 economic opportunities in San Francisco's low-income communities.

4 (P) The City has made substantial public investments in its workforce
5 development system, including CityBuild and the City's community-based partners, to create
6 job opportunities in industries such as construction, which are vital to the economic health of
7 the local economy, have a capacity to generate a significant number of jobs, are accessible to
8 low- and middle-skilled individuals, have career ladder opportunities where workers can move
9 up with additional training and skill development, and provide access to living wage and
10 family-sustaining jobs.

11 (Q) City-funded construction projects provide a crucial opportunity to
12 connect participants in these City-funded or City-operated workforce development programs
13 with employment and training opportunities, and to direct employment and training
14 opportunities created by the City's public expenditures.

15 (R) The City and the San Francisco Redevelopment Agency have made
16 substantial public investments toward creating and facilitating growth in economic
17 opportunities for low-income individuals and neighborhoods in San Francisco.

18 (S) CityBuild, San Francisco's construction training workforce program,
19 was initiated in 2005 to serve as a training vehicle for ushering disadvantaged workers into
20 the construction skilled trades. The program is a multi-craft pre-apprenticeship training
21 program, and has assisted over 450 graduates, into union-sponsored apprentice programs.
22 CityBuild, in 2009-2010, contributed approximately 44% ~~percent~~ of all new San Francisco
23 resident apprentice intakes based on data provided by the California Department of Industrial
24 Relations, Division of Apprenticeship Standards. San Francisco's workforce construction
25

1 training infrastructure has the capacity to meet future demand for high quality and well trained
2 workers in the construction trades.

3 (T) Employment of workers that reside close to job sites has
4 environmental benefits, including reducing the distance of commutes and resulting vehicle
5 emissions. These environmental benefits are consistent with the mandates, policies and goals
6 of the California Global Warming Solutions Act (AB 32), the Sustainable Communities and
7 Climate Protection Act (SB 375), and the Climate Action Plan for San Francisco.

8 (U) The Board seeks terms and conditions that advance the City's
9 workforce and community development goals, removing obstacles that may have historically
10 limited the full employment of local residents on the wide array of opportunities created by
11 public works projects, curbing spiraling unemployment, population decline, and reduction in
12 the number of local businesses located in the City, eroding property values and depleting San
13 Francisco's tax base.

14 (V) A local hiring policy is necessary to counteract these grave economic
15 and social ills.

16 (W) The San Francisco Local Hiring Policy for Construction 2012-2013
17 Annual Report *and the San Francisco Local Hiring Policy for Construction 2013-2014 Annual Report*
18 shows that the Policy has proven to be a highly effective tool in guaranteeing good-paying
19 jobs for Local Residents on Covered Projects, which includes public work construction
20 projects completed under City contracts.

21 (X) The 2012-2013 *and 2013-2014 Annual Reports* ~~is~~ *are* evidence that a
22 true partnership between the City, CityBuild and its community-based partners, contractors,
23 labor organizations, and state-certified apprenticeship programs has increased local hiring on
24 projects covered by the Policy by an average of 35% as of ~~2013-2014~~. This compares to an
25 average of 20% under the "good faith efforts" policy it replaced.

1 (Y) The City has a proprietary interest in the construction contracts it
2 issues, and also has a proprietary interest in the leases and development agreements that it
3 enters that all allow for construction on city-owned property.

4 (Z) Expanding the Policy to include construction projects on City-owned
5 property *and on City-owned property sold for Housing Development as defined in Section 23.61 of the*
6 *Administrative Code* promotes an equitable share of job opportunities for San Francisco
7 residents to pursue a career in construction; and provides the opportunity for the use of state-
8 certified apprenticeships that expands the local construction workforce pipeline to support the
9 continued success of local hiring on public works projects.

10 * * * *

11 (2) **Definitions.** For purposes of this subsection 6.22(g), the following terms shall
12 have the following meanings:

13 * * * *

14 "Contractor" means any person, firm, partnership, owner operator, limited
15 liability company, corporation, joint venture, proprietorship, trust, association, or other entity
16 that contracts directly ~~with the City~~ to perform construction work on a covered project. A
17 contractor may also be referred to as a "prime contractor" or "general contractor."

18 * * * *

19 (3) **Coverage.**

20 * * * *

21 (B) **Threshold for Projects Constructed on Property Owned or Sold by**
22 **the City.**

23 _____ (i) For purposes of subsection 6.22(g) only, this Policy applies to
24 a. all construction projects on real property owned by the City; and

1 b. all construction projects on City-owned real property located
2 within the jurisdictional boundaries of the City and County of San Francisco that is sold to private
3 parties, or their successor in interest, for the purpose of Housing Development, as defined in Section
4 23.61(a) of the Administrative Code;

5 provided that, under either subsection (g)(3)(B)(i)a or subsection (g)(3)(B)(i)b, the project is ~~that are~~
6 estimated to cost in excess of the Threshold Amount set forth in Section 6.1, as that amount
7 may be amended, including construction contracts that are issued by an entity or individual
8 other than the City.

9 _____ (ii) The following construction projects are exempt from this subsection
10 6.22(g)(3)(~~b~~B): ~~(i)~~

11 _____ a. tenant improvement projects estimated to cost less than
12 \$750,000 per building permit, where the project is undertaken and contracted for by the
13 tenant;

14 ~~(ii)~~ b. projects for special events where the special event is three
15 or fewer consecutive or non-consecutive days within a two week period;

16 ~~(iii)~~ c. construction projects for which the construction work is fully
17 funded and performed by a donor or donor's agent as a gift-in-place donation, where the gift
18 agreement does not require City funds to be used for the construction and where the gift
19 agreement includes a requirement that workers be paid the same Prevailing Rate of Wages
20 as would be required on a public work project; and

21 ~~(iv)~~ d. projects that as of the effective date of this subsection
22 6.22(g)(3)(B) have a term sheet that has been endorsed by the Board of Supervisors and
23 have findings of fiscal feasibility, to the extent that such projects agree to be bound by a
24 legally enforceable document, enforceable by OEWD, committing the project to Local Hire
25 mandatory participation level of 30% per trade. All grant agreements, leases, development

1 agreements and other contracts that the City enters that allow for such non-exempt
2 construction projects on property owned by the City must contain a provision that such
3 construction shall comply with this Policy.

4 * * * *

5 (7) **Enforcement.**

6 * * * *

7 (F) **Compliance Procedures.**

8 (i) **Consequences of Noncompliance.** Awarding departments and OEWD
9 have the authority to seek for violations of this Policy all of the consequences imposed by or
10 described in this Policy, in the contract for a Ccovered project, or by statute, including the
11 authority to assess penalties as described herein, assess damages for other violations of
12 terms of this Policy, and/or seek penalties set forth in Article V of this Chapter 6, including
13 debarment.

14 (ii) **Penalties Amount.** Any contractor or subcontractor who fails to satisfy
15 local hiring requirements of this Policy applicable to project work hours performed by local
16 residents shall forfeit; and, in the case of any subcontractor so failing, the contractor and
17 subcontractor shall jointly and severally forfeit to the City an amount equal to the journeyman
18 or apprentice prevailing wage rate, as applicable, with such wage as established by the Board
19 of Supervisors or the California Department of Industrial Relations under subsection
20 6.22(e)(3), for the primary trade used by the contractor or subcontractor on the covered
21 project for each hour by which the contractor or subcontractor fell short of the local hiring
22 requirement. The assessment of penalties under this subsection shall not preclude the City
23 from exercising any other rights or remedies to which it is entitled.

1 (iii) **Assessment of Penalties.**

2 a. For a covered project undertaken by a contractor with the City where the City
3 makes payments directly to the contractor(s) using City funds, it shall be the duty of the awarding
4 department, when certifying to the Controller any payment which may become due under a
5 contract, to deduct from said payment or payments the total amount of penalties due under
6 this subsection 6.22(g)(7)(F). In doing so, the Department Head must also notify the OEWD
7 of his or her action. OEWD may also upon written notice to the awarding department, certify to
8 the Controller any forfeiture to deduct from any payment as provided for in this subsection
9 6.22(g)(7)(F). Certification of forfeitures under this subsection 6.22(g)(7)(F) shall be made only
10 upon an investigation by the awarding department or OEWD and upon written notice to the
11 contractor or subcontractor identifying the grounds for the forfeiture or forfeitures, and
12 providing the contractor or subcontractor with the opportunity to respond according to the
13 procedures prescribed in subsection 6.22(g)(7)(F)(iv). The Controller, in issuing any warrant for
14 any such payment, shall deduct from the amount which would otherwise be due on said
15 payment or payments the amount of said forfeiture or forfeitures as so certified. Any retainage
16 to cover contract performance that may become due to contractor under subsection 6.22(j)
17 may be withheld by the City pending a determination by the awarding department or OEWD
18 as to whether a contractor or subcontractor must pay a penalty or penalties.

19 b. For any other Covered project for which local hiring requirements are
20 required under this subsection 6.22(g), OEWD shall determine whether a contractor and/or any
21 subcontractor has failed to comply with the local hire requirement. If after conducting an
22 investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of
23 penalties to the contractor and/or any subcontractor that sets forth the basis of the assessment and
24 orders payment of penalties in the amounts equal to the journeyman or apprentice prevailing wage
25 rates, as applicable, for the primary trade used by the contractor or subcontractor on the Covered

1 project for each hour by which the contractor or subcontractor fell short of the local hiring
2 requirement. Assessment of penalties under this subsection 6.22(g)(7)(F)(iii)b shall be made only upon
3 an investigation by OEWD and upon written notice to the contractor or subcontractor identifying the
4 grounds for the penalty and providing the contractor or subcontractor with the opportunity to respond
5 pursuant to the procedures prescribed in subsection 6.22(g)(7)(F)(iv).

6 c. For Covered projects under subsection 6.22(g)(3)(B) where the
7 construction contract is issued by an entity or individual other than the City, and that entity or
8 individual includes such requirements in a construction contract for a Covered project and reasonably
9 cooperates with the City in any enforcement action of such requirements, the entity or individual shall
10 not be in breach of its contract with the City due to the failure of a contractor or subcontractor to
11 comply. Provided that the entity or individual who issues the construction contract complies with the
12 provisions in the previous sentence, any enforcement action by the City, through OEWD or otherwise,
13 shall be directly against the contractor or subcontractor that failed to apply the local hire
14 requirements. Nothing in this Section 6.22(g) shall limit the remedies available to a City department, as
15 set forth in the applicable sales contract or lease, for a purchaser's or tenant's failure to require
16 compliance with this Section 6.22(g) in a construction contract for a Covered project or to reasonably
17 cooperate with the City in any enforcement action as set forth above.

18 * * * *

19 (v) Remedies for Non-Compliance with Penalty Assessments. No later than 30 days
20 after receipt of a final assessment of penalties by OEWD or, in the case of an appeal, after an adverse
21 final determination by a hearing officer, the contractor and/or subcontractor shall comply with the
22 assessment by paying the amounts due. The contractor and/or subcontractor shall, in addition, be
23 subject to the penalties set forth in Article V of this Chapter 6, including debarment. If any contractor
24 and/or subcontractor fails to pay the amounts required under this subsection 6.22(g)(7)(F)(v) within
25 the required 30 days, the City may bring a civil action in a court of competent jurisdiction against the

1 non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be
2 appropriate to remedy the violation including, without limitation:

3 a. damages in the amount of wages due for violation of the local hiring
4 requirement as calculated under subsection 6.22(g)(7)(F)(iii), and

5 b. an award of reasonable attorney's fees and costs.

6 (vi) **Distribution of Penalties.** The Controller shall withhold any penalties
7 assessed as provided in the foregoing subparagraphs until such time as either the contractor
8 or subcontractor has conceded to the penalties or, in the event of an objection, there is a
9 determination no longer subject to judicial review. The Controller shall then deposit the
10 amounts withheld into a special account which shall be created for the sole purpose ~~of~~
11 receiving said funds. The funds deposited into this account shall be used to support the
12 enforcement of this Policy and the further development of workforce development initiatives to
13 train and prepare local residents for careers in construction. This subsection 6.22(g)(7)(F)(vi)
14 also shall be applicable to damages obtained as a result of an enforcement action pursuant to
15 subsection 6.22(g)(7)(F)(v).

16 * * * *

17 Section 3. Effective Date and Operative Date. This ordinance shall become effective
18 30 days after enactment and shall become operative 90 days after the effective date of the
19 ordinance. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
20 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
21 of Supervisors overrides the Mayor's veto of the ordinance.

22
23 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2 additions, and Board amendment deletions in accordance with the "Note" that appears under
3 the official title of the ordinance.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: 
8 JULIA H. VEIT
9 Deputy City Attorney

10 n:\legana\as2015\1500641\01056949.doc



City and County of San Francisco

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

Tails
Ordinance

File Number: 150817

Date Passed: December 15, 2015

Ordinance amending the Administrative Code to require inclusion of prevailing wage, apprenticeship, and local hiring requirements in the sale of City-owned property for the development of housing or where the City is a landlord, and to require inclusion of prevailing wage and apprenticeship requirements where the City is a tenant; and authorizing the Office of Labor Standards Enforcement and Office of Economic and Workforce Development to enforce such provisions to the extent not already authorized.

December 02, 2015 Budget and Finance Committee - RECOMMENDED

December 08, 2015 Board of Supervisors - PASSED, ON FIRST READING


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

December 15, 2015 Board of Supervisors - FINALLY PASSED


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

File No. 150817

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/15/2015 by the Board of Supervisors of the City and County of San Francisco.


Angela Calvillo
Clerk of the Board


Mayor


Date Approved