

1 [Administrative Code – Determination of Prevailing Wage Rate]

2

3 **Ordinance amending the San Francisco Administrative Code, Section 6.22(E) to**
4 **authorize departments to petition the State Director of Industrial Relations in the event**
5 **the department concludes that there is no prevailing wage rate set, or that a prevailing**
6 **wage has not been properly set, for a particular craft, classification or type of worker**
7 **needed for a prospective public works contract.**

8

NOTE: Additions are *single-underline italics Times New Roman*;
9 deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;
10 Board amendment deletions are ~~strike-through normal~~.

9

10

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

11

12

Section 1. The San Francisco Administrative Code is hereby amended by amending

13

Section 6.22(E) to read as follows:

14

SEC. 6.22 (E). PREVAILING WAGES.

15

(1) **Generally.** All contractors and subcontractors performing a public work or
16 improvement for the City and County of San Francisco shall pay its workers on such projects
17 the prevailing rate of wages as provided below. For the purpose of prevailing wage
18 requirements only, the definition of a public work shall include those public works or
19 improvements defined in the foregoing section 6.1 of this Chapter and shall also include (a)
20 any trade work performed at any stage of construction (including preconstruction work) and
21 (b) any public work paid for by the City and County of San Francisco with "the equivalent of
22 money" under the meaning of Labor Code section 1720(b).

23

(2) **Leased Property Included.** For the limited purposes of this subsection, a "public
24 work or improvement" also means and includes any construction work done under private
25 contract when all of the following conditions exist:

1 (a) The construction contract is between private persons; and

2 (b) The property subject to the construction contract is privately owned, but
3 upon completion of the construction work will be leased to the City and County of San
4 Francisco for its use; and

5 (c) Either of the following conditions exist: (1) The lease agreement between the
6 lessor and the City and County of San Francisco, as lessee, is entered into prior to the
7 construction contract, or (2) The construction work is performed according to the plans,
8 specifications, or criteria furnished by the City and County of San Francisco, and the lease
9 agreement between the lessor and the City and County of San Francisco as lessee, is
10 entered into during, or upon completion, of the construction work.

11 (3) **Determination of the Prevailing Wage.** It shall be the duty of the Board of
12 Supervisors, from time to time and at least once during each calendar year, to fix and
13 determine the prevailing rate of wages as follows:

14 On or before the first Monday in November of each year, the Civil Service Commission
15 shall furnish to the Board of Supervisors data as to the highest general prevailing rate of
16 wages of the various crafts and kinds of labor as paid in private employment in the City and
17 County of San Francisco, plus "per diem wages" and wages for overtime and holiday work.
18 The Civil Service Commission shall provide the Board of Supervisors data for "per diem
19 wages" pursuant to California Labor Code sections 1773.1 and 1773.9, as amended from time
20 to time. The Board of Supervisors shall, upon receipt of such data, fix and determine the
21 prevailing rate of wages. The prevailing rate of wages as so fixed and determined by the
22 Board of Supervisors shall remain in force and shall be deemed to be the highest general
23 prevailing rate of wages paid in private employment for similar work, until the same is
24 changed by the Board of Supervisors. In determining the highest general prevailing rate of
25 wages per diem wages and wages for overtime and holiday work, as provided for in this

1 section, the Board of Supervisors shall not be limited to the consideration of data furnished by
2 the Civil Service Commission, but may consider such other evidence upon the subject as the
3 Board shall deem proper and thereupon base its determination upon any or all of the data or
4 evidence considered.

5 In the event that the Board of Supervisors does not fix or determine the highest general
6 prevailing rate of wages in any calendar year, the rates established by the California
7 Department of Industrial Relations for such year shall be deemed adopted.

8 In the event a department head concludes, in connection with a call for bids for a public work
9 or improvement, that there is no prevailing rate of wages set for a particular craft, classification or
10 type of work, or that any rate set by the Department of Industrial Relations was not determined in
11 accordance with the provisions of Section 1773 of the Labor Code, the department may file a verified
12 petition with the California Director of Industrial Relations under California Labor Code Section
13 1773.4, to determine the general prevailing rates of per diem wages. The petition shall be filed in
14 accordance with the filing deadlines and other requirements set forth in Labor Code Section 1773.4. If
15 the Director of Industrial Relations does not make a determination within the time period established in
16 Section 1773.4, the department shall proceed with the call for bids based on the department's judgment
17 as to the prevailing rate of per diem wages. The decision to file or not file a verified petition shall not
18 be grounds for challenging the award of a contract.

19 (4) **Specifications to Include Wage Rate.** The department head authorized to
20 execute a construction contract under this Chapter shall include in the contract specifications,
21 or make available in the offices of the department or at the job site, a detailed statement of the
22 prevailing rate of wages as fixed and determined by the Board of Supervisors at the time the
23 department issued the Advertisement For Bids on the contract. The contractor shall agree to
24 pay to all persons performing labor in and about the public work or improvement the highest
25 general prevailing rate of wages as determined pursuant to this Chapter, including wages for

1 holiday and overtime work. If the specifications do not include the prevailing rate of wages,
2 the specifications shall include a statement that copies of the prevailing rate of wages as fixed
3 and determined by the Board of Supervisors are on file at the department's principal office or
4 at the job site and shall be made available to any interested party on request.

5 (5) **Subcontractors Bound by Wage Provisions.** Every contract for any public work
6 or improvement shall also contain a provision that the contractor shall insert in every
7 subcontract or other arrangement which he or she may make for the performance of any work
8 or labor on a public work or improvement. This provision shall be that the subcontractor shall
9 pay to all persons performing labor or rendering service under said subcontract or other
10 arrangement the highest general prevailing rate of wages as fixed and determined by the
11 Board of Supervisors for such labor or services.

12 (6) **Records to be Kept by Contractors and Subcontractors.** Every public works
13 contract or subcontract awarded under this Chapter shall contain a provision that the
14 contractor shall keep, or cause to be kept, for a period of four years from the date of
15 substantial completion of a public work, payrolls and basic records including time cards, trust
16 fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent
17 and foreman daily logs for all trades workers performing work at or for a City and County of
18 San Francisco public work or improvement. Such records shall include the name, address
19 and social security number of each worker who worked on the project, including apprentices,
20 his or her classification, a general description of the work each worker performed each day,
21 the rate of pay (including rates of contributions for, or costs assumed to provide fringe
22 benefits), daily and weekly number of hours worked, deductions made and actual wages paid.
23 Every subcontractor who shall undertake the performance of any part of a public work or
24 improvement shall keep a like record of each person engaged in the execution of the
25 subcontract.

1 The contractor shall maintain weekly certified payroll records for submission to the
2 awarding department as required. The contractor shall be responsible for the submission of
3 payroll records of its subcontractors. All certified payroll records shall be accompanied by a
4 statement of compliance signed by the contractor indicating that the payroll records are
5 correct and complete, that the wage rates contained therein are not less than those
6 determined by the San Francisco Board of Supervisors and that the classifications set forth for
7 each employee conform with the work performed.

8 All such records as described in this section shall at all times be open to inspection and
9 examination of the duly authorized officers and agents of the City and County of San
10 Francisco, including representatives of the Office of Labor Standards Enforcement.

11 Should the department head responsible for the public work or the Labor Standards
12 Enforcement Officer determine that a contractor or subcontractor is not in compliance with the
13 requirements of this subsection, the department head or the Labor Standards Enforcement
14 Officer shall issue written notification to the contractor or subcontractor mandating compliance
15 within not fewer than ten calendar days from the date of the notification. Should the
16 contractor or subcontractor fail to comply as required in the notification, the department head
17 who executed the contract or the Labor Standards Enforcement Officer may impose a penalty
18 of \$25.00 for each calendar day of noncompliance, or portion thereof, for each worker. Upon
19 the request of the responsible department head or the Labor Standards Enforcement Officer,
20 the Controller shall withhold these penalties from progress payments then due or to become
21 due.

22 **(7) Additional Required Contract Provisions.** Every public works contract shall
23 contain provisions stating that (1) the contractor will cooperate fully with the Labor Standards
24 Enforcement Officer and other City employees and agents authorized to assist in the
25 administration and enforcement of the prevailing wage requirements and other labor

1 standards imposed on public works contractors by the Charter and Chapter 6 of the San
2 Francisco Administrative Code; (2) the contractor agrees that the Labor Standards
3 Enforcement Officer and his or her designees, in the performance of their duties, shall have
4 the right to engage in random inspections of job sites and to have access to the employees of
5 the contractor, employee time sheets, inspection logs, payroll records and employee
6 paychecks; (3) the contractor shall maintain a sign-in and sign-out sheet showing which
7 employees are present on the job site; (4) the contractor shall prominently post at each job-
8 site a sign informing employees that the project is subject to the City's prevailing wage
9 requirements and that these requirements are enforced by the Labor Standards Enforcement
10 Officer; and (5) that the Labor Standards Enforcement Officer may audit such records of the
11 contractor as he or she reasonably deems necessary to determine compliance with the
12 prevailing wage and other labor standards imposed by the Charter and this Chapter on public
13 works contractors. Failure to comply with these requirements may result in penalties and
14 forfeitures consistent with California Labor Code section 1776(g), as amended from time to
15 time.

16 **(8) Non-compliance with Wage Provisions**

17 (a) **Penalty and Forfeiture.** Any contractor or subcontractor who shall fail or
18 neglect to pay to the several persons who shall perform labor under any contract, subcontract
19 or other arrangement on any public work or improvement as defined in this Chapter the
20 highest general prevailing rate of wages as fixed by the Board of Supervisors under authority
21 of this Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to
22 pay said wage, the original contractor and the subcontractor shall jointly and severally forfeit
23 to the City and County of San Francisco back wages due plus the penal sum of \$50.00 per
24 day for each laborer, workman or mechanic employed for each calendar day or portion
25 thereof, while they shall be so employed and not paid said highest general prevailing rate of

1 wages, and in addition shall be subject to the penalties set forth in Article V of this Chapter,
2 including debarment.

3 (b) **Enforcement.** It shall be the duty of the officer, board or commission under
4 whose jurisdiction said public work or improvement is being carried on, made or constructed,
5 when certifying to the Controller any payment which may become due under said contract, to
6 deduct from said payment or payments the total amount of said forfeiture provided for in this
7 subsection. In doing so, the department head must also notify in writing the Labor Standards
8 Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also
9 upon written notice to the department head who is responsible for the project, certify to the
10 Controller any forfeiture(s) to deduct from any payment as provided for in this subsection.
11 Certification of forfeitures under this subsection shall be made only upon an investigation by
12 the responsible department head or the Labor Standards Enforcement Officer and upon
13 written notice to the contractor identifying the grounds for the forfeiture or forfeitures. The
14 Controller, in issuing any warrant for any such payment, shall deduct from the amount which
15 would otherwise be due on said payment or payments the amount of said forfeiture or
16 forfeitures as so certified.

17 (c) **Recourse Procedure.** If the contractor or subcontractor disagrees with the
18 forfeiture as so provided in the foregoing subparagraph (b), then the following procedure
19 applies:

20 (i) The contractor or subcontractor may request a hearing in writing
21 within 15 days of the date of the notification of forfeiture. The request shall be directed to the
22 City Controller. Failure by the contractor or subcontractor to submit a timely, written request
23 for a hearing shall constitute concession to the assessment and the forfeiture shall be deemed
24 final upon expiration of the 15-day period;

1 (ii) Within 15 days of receiving a proper request, the Controller shall
2 appoint a hearing officer with knowledge and not less than five year's experience in labor law,
3 prevailing wage, and/or wage and hour issues, and shall so advise the enforcing official and
4 the contractor or subcontractor, and/or their respective counsel or authorized representative;

5 (iii) The hearing officer shall promptly set a date for a hearing. The
6 hearing must commence within 45 days of the notification of the appointment of the hearing
7 officer and conclude within 75 days of such notification unless all parties agree to an extended
8 period;

9 (iv) The contractor or subcontractor shall have the burden of proving that
10 the basis for the back wage and penalty assessment is incorrect;

11 (v) Within 30 days of the conclusion of the hearing, the hearing officer
12 shall issue a written decision affirming, modifying, or dismissing the assessment. The decision
13 of the hearing officer shall consist of findings and a determination. The hearing officer's
14 findings and determination shall be final.

15 (vi) The contractor or subcontractor may appeal a final determination
16 under this section only by filing in the San Francisco Superior Court a petition for a writ of
17 mandate under California Code of Civil Procedure, section 1084, et seq., as applicable and as
18 may be amended from time to time.

19 (d) **Distribution of Forfeiture.** The Controller shall withhold any forfeiture as
20 provided in the foregoing paragraphs until such time as either the contractor or subcontractor
21 has conceded to the forfeiture or, in the event of an objection, there is a determination no
22 longer subject to judicial review. The Controller shall then distribute the amounts withheld in
23 the following order: (1) the Labor Standards Enforcement Officer shall make its best efforts to
24 distribute back wages withheld to the individual workers identified as not having been paid the
25 proper wage rate; (2) the penal sums provided for above shall inure to the benefit of the

1 general fund of the City and County of San Francisco; (3) the Controller shall hold the balance
2 of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,
3 despite his/her best efforts, cannot locate; funds so held for two years or more shall be
4 dedicated to the enforcement of the prevailing wage requirements.

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

7 By: _____
8 BUCK DELVENTHAL
9 Deputy City Attorney

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25