

## **LEGISLATIVE DIGEST**

[Administrative Code – Prevailing Wages, 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.**

### Existing Law

#### **Prevailing Wages**

The San Francisco Prevailing Wage law requires that each public works contract issued by the City requires all contractors and subcontractors performing a public work or improvement for the City to pay its workers the prevailing rate of wages. The San Francisco Prevailing Wage law applies to all “public works” for which prevailing wages are required to be paid as defined by California Labor Code Section 1782; trade work performed at any stage of construction (including preconstruction work); construction paid for by the City with "the equivalent of money;" and, certain projects on private property where the City leases the property with the intent to use the property for City purposes.

#### **Apprenticeship**

Currently, the City requires all contractors performing a public work or improvement, as defined by our Administrative Code, to comply with the requirements of the State Apprenticeship Program, as set forth in the California Labor Code, Division 3, Chapter 4 and Section 1777.5, and for the contractor to require its subcontractors to comply with the same requirements. The State’s Department of Industrial Relations (“DIR”) enforces the State Apprenticeship Program requirements.

#### **Local Hire**

The San Francisco Local Hire Policy for Construction (“Policy”) requires that each public works contract issued by the City in excess of the Threshold Amount (increased to \$600,000 on August 1, 2015) requires that the contractor hire local residents at a specific percentage of each trade (currently 30%) to the exclusion of other California residents. The Policy does not affect the ability of a contractor to hire non-California residents, even if the contractor ends up with a workforce consisting entirely of out-of-state workers. The Policy also requires all grants, agreements, leases, development agreements and other contracts entered into by the

City that allow for construction projects that cost in excess of the Threshold Amount on property owned by the City to include a provision that such construction comply with the Policy, and hire the specified percentage of local residents, subject to the following exemptions: (1) tenant improvement projects estimated to cost less than \$750,000 per building permit, where the project is undertaken and contracted for by the tenant; (2) projects for special events where the special event is three or fewer consecutive or non-consecutive days within a two week period; and (3) construction projects for which the construction work is fully funded and performed by a donor or donor's agent as a gift-in-place donation, where the gift agreement does not require City funds to be used for the construction and where the gift agreement includes a requirement that workers be paid the same prevailing rate of wages as would be required a public work project.

### Amendments to Current Law

In general, this ordinance would create a new Article VII in Chapter 23 of the Administrative Code that would require that agreements for the sale of City-owned property for the purpose of developing at least three residential units and lease agreements where the City is a landlord or tenant include requirements that construction contracts for a certain class of projects contain provisions requiring the contractors and subcontractors to comply with prevailing wage, apprenticeship and local hire requirements, as described below. The ordinance would authorize the Office of Labor Standards Enforcement (OLSE) and the Office of Economic and Workforce Development (OEWD) to enforce these requirements and bring a civil action against offending parties if necessary. For purposes of prevailing wage and apprenticeship violations, affected workers and/or the entities formally representing them also would be able to bring a civil action against the offending parties if necessary.

### **Prevailing Wage and Apprentices**

As to prevailing wage and apprenticeships, the ordinance would require that the applicable sales or lease agreement contain provisions requiring contractors and subcontractors performing any construction projects defined as "Covered Construction" to (1) pay prevailing wages in accordance with the San Francisco Prevailing Wage law and (2) comply with the requirements of the State Apprenticeship Program, as set forth in the California Labor Code, Division 3, Chapter 4 and Section 1777.5. The definition of Covered Construction would include all construction projects that are located within the jurisdictional boundaries of the City, where the estimated project cost exceeds the Threshold Amount as defined in Chapter 6 of the San Francisco Administrative Code (\$600,000 as of August 1, 2015); and where the project is to be performed on (1) real property sold to a private party under a City-as-seller contract for a development of at least three residential units; or (2) real property leased by the City as a landlord or tenant.

For public work contracts, the State DIR enforces apprenticeship requirements. This ordinance would create new authority for OLSE to enforce parallel requirements in Article VII by assessing penalties of not less than \$50 a day for each violation. The ordinance also

would expand the enforcement authority of OLSE to assess penalties against offending parties not in contract with the City who violate the prevailing wage requirements, and to bring a civil action to recover penalties and/or back wages for violation of the prevailing wage and/or apprenticeship requirements under this ordinance. Affected workers and employee organizations formally representing affected workers also are entitled to bring a civil action to remedy these violations.

### **Local Hire**

Subject to the exemptions in the existing Local Hire Policy for construction projects issued by entities other than the City, the ordinance would amend the Policy to expand the class of construction projects (“Covered Projects”) to which it applies to include projects on real property sold by the City for the purpose of developing at least three residential units, where the estimated project costs exceed the Threshold Amount and where the real property is located within the jurisdictional boundaries of the City. In addition, because the Policy already applies to construction projects on City-owned property, the ordinance would reiterate that Policy in Article VII and require that applicable lease agreements where the City is a landlord require that contractors comply with the Policy on any construction project over the Threshold Amount within the jurisdictional boundaries of the City.

The ordinance also would clarify that the Policy’s enforcement scheme applies to contractors who are not under contract with the City. OEWD has authority to assess penalties against contractors and subcontractors who violate the Policy, and would have the right to bring a civil action to recover penalties assessed should the offending party fail to pay as required.