

BOARD of SUPERVISORS



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MEMORANDUM

TO: Donna Levitt, Office of Labor Standards Enforcement
Todd Ruffo, Director, Office of Economic & Workforce Development
Ben Rosenfield, City Controller

FROM: Derek Evans, Assistant Clerk, Board of Supervisors

DATE: August 3, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors Budget and Finance Committee has received the following legislation, introduced by Supervisor Malia Cohen on July 28, 2015, which is being referred to your department.

File No. 150817

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.

If you wish to submit any comments or reports, please forward those to the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

cc: Ken Rich, Office of Economic & Workforce Development
Lisa Pagan, Office of Economic & Workforce Development
Todd Rydstrom, Deputy City Controller
Linda Wong, Office of the Clerk of the Board of Supervisors

[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.

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 ~~strikethrough 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 Prevailing Rate of Wages as applicable, 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.

24 (2) Employment of Apprentices. Each Contracting Party shall require its Contractors
25 and Subcontractors to employ Apprentices in compliance with the requirements of the State

1 Apprenticeship Program as set forth in the California Labor Code, Division 3, Chapter 4 commencing
2 at Section 3070, and Section 1777.5 of the Labor Code, as amended from time to time.

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

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

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

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

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

23 (A) Any Appeal from a Determination of Violation (referred to in this
24 subsection 23.61(d)(3) as the "Appeal") shall be filed in writing by the Contractor and/or
25 Subcontractor (referred to in this subsection 23.61(d)(3), whether singular or plural, as the

1 "Appellant") within 15 days of the date of service of the Determination of Violation. Appellant shall
2 serve the Appeal on the Labor Standards Enforcement Officer. Failure by the Contractor or
3 Subcontractor to serve a timely, written Appeal shall constitute concession to the Determination of
4 Violation, and that determination shall be deemed final upon expiration of the 15-day period.

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

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

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

22 _____ (E) The hearing officer shall promptly set a date for a hearing. The hearing
23 must commence within 45 days of the date of the notification of the hearing officer appointment, and
24 conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial
25 evidentiary hearing in conformance with the time limitations set forth in this subsection 23.61(d)(3) and

1 in the rules and regulations, so as to avoid undue delay in the resolution of any appeal. The hearing
2 officer shall have the discretion to extend the times under this subsection 23.61(d)(3), and any time
3 requirements under the rules and regulations, only upon a showing of good cause.

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

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

11 _____ (H) Appellant may appeal a final determination under this subsection
12 23.61(d)(3) only by filing in the San Francisco Superior Court a petition for a writ of mandate under
13 California Code of Civil Procedure Section 1084 et seq., as applicable and as amended from time to
14 time.

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

23 _____ (A) The City may bring a civil action in a court of competent jurisdiction against
24 the non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as
25 may be appropriate to remedy the violation including, without limitation: (i) damages in the amount of

1 back wages and any penalty amounts due to workers for violation of the prevailing wage and/or
2 apprenticeship requirements, which amounts the City shall, on receipt, distribute to workers following
3 the procedures in subsection 23.61(d)(5); and (ii) an award of reasonable attorney's fees and costs;

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

14 (5) Distribution of Damages. Upon payment of back wages and/or penalties, as provided in
15 the foregoing paragraphs, the City shall distribute the amounts in the following order: (A) the Labor
16 Standards Enforcement Officer shall make reasonable best efforts to distribute back wages withheld to
17 the individual workers identified as not having been paid the proper wage rate; (B) the assessed
18 penalties shall inure to the benefit of the general fund of the City; (C) the Controller shall hold the
19 balance of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,
20 despite his or her reasonable best efforts, cannot locate. In the event back wages are unclaimed for a
21 period of three years, the Controller shall undertake administrative procedures for unclaimed funds in
22 conformance with California Government Code Section 50050 et seq., as may be amended from time to
23 time. This subsection 23.61(d)(5) also shall be applicable to damages obtained as a result of an
24 enforcement action pursuant to subsection 23.61(d)(4), as applicable.

1 **SEC. 23.62. LOCAL HIRE REQUIREMENTS.**

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

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

14 (c) City as Third Party Beneficiary. Each applicable construction contract for a Covered
15 Project will (1) require compliance with the local hiring policy, with reference to this Section 23.62;
16 (2) name the City and County of San Francisco as a third party beneficiary for the limited purpose of
17 having the right to enforce the local hiring policy, including the right to file charges and seek penalties
18 against any Contractor or Subcontractor; and (3) require the purchaser or tenant to reasonably
19 cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to
20 comply with the requirements of this Section 23.62. A purchaser or tenant that requires compliance
21 with this Section in the construction contract for the Covered Project and reasonably cooperates with
22 the City in any enforcement action shall not be in breach of the applicable sales contract or lease with
23 the City due to a Contractor's or Subcontractor's failure to comply or to meet the mandatory
24 participation levels. So long as the purchaser or tenant complies with the requirements of the previous
25 sentence, any enforcement action by the City, through the Office of Economic and Workforce

1 Development ("OEWD") or otherwise, shall be directly against the Contractor or Subcontractor that
2 failed to meet the mandatory participation levels. Nothing in this Section shall limit the remedies
3 available to a City department, as set forth in the applicable sales contract or lease, for a purchaser's
4 or tenant's failure to require compliance with this Section in a construction contract for the Covered
5 Project or to reasonably cooperate with the City in any enforcement action as set forth above.

6 (d) Enforcement.

7 (1) Assessment of Penalties. OEWD shall have the authority to enforce this Section
8 23.62 against a Contractor or Subcontractor as set forth in Administrative Code subsection 6.22(g)(7).
9 OEWD shall determine whether a Contractor or Subcontractor has failed to comply with the local
10 hiring requirements. If after conducting an investigation, OEWD determines that a violation has
11 occurred, it shall issue and serve an assessment of penalties that sets forth the basis of the assessment
12 and orders payment of penalties under subsection 6.22(g)(7)(F) of this Code.

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

21 **SEC. 23.63. APPLICATION.**

22 The requirements of this Article VII are intended to have prospective effect only, and shall not
23 be interpreted to impair the obligations of any existing sales contract, lease, or amendment thereto
24 entered into by the City before the operative date of this Article VII. Where the Covered Construction
25 or Covered Project involves Housing Development on real property sold by the City, the requirements

1 of this Article VII shall terminate upon issuance of a final certificate of occupancy for the Covered
2 Construction or Covered Project.

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

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

6 **SEC. 23.65. PREEMPTION.**

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

12 **SEC. 23.66. SEVERABILITY.**

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

17
18 Section 2. The Administrative Code is hereby amended by revising Section 6.22(e)
19 and 6.22(g), to read as follows:

20
21 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**
22 **CONDITIONS.**

23 * * * *

24 **(e) Prevailing Wages.**

25 * * * *

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

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

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

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

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

18 * * * *

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

20 * * * *

21 (B) **Enforcement.**

22 (i) For a public work or improvement undertaken through a contract with the
23 City and under which the City has the ability to withhold funds, it shall be the duty of the officer,
24 board or commission under whose jurisdiction said public work or improvement is being
25 carried on, made or constructed, when certifying to the Controller any payment which may

1 become due under said contract, to deduct from said payment or payments the total amount
2 of said forfeiture provided for in this subsection. In doing so, the Department Head must also
3 notify in writing the Labor Standards Enforcement Officer of his/her action. The Labor
4 Standards Enforcement Officer may also upon written notice to the Department Head who is
5 responsible for the project, certify to the Controller any forfeiture(s) to deduct from any
6 payment as provided for in this ~~§~~subsection 6.22(e)(8). Certification of forfeitures under this
7 subsection shall be made only upon an investigation and audit by the responsible Department
8 Head or the Labor Standards Enforcement Officer and upon service of written notice to the
9 contractor that includes identification of the grounds for the forfeiture or forfeitures
10 ("Certification of Forfeiture"). The audit supporting the forfeiture shall be appended to the
11 Certification of Forfeiture, but failure to append such documentation shall not invalidate the
12 Certification. Service of the Certification of Forfeiture shall be made by United States mail and
13 the date of service shall be the date of mailing. The Controller, in issuing any warrant for any
14 such payment, shall deduct from the amount which would otherwise be due on said payment
15 or payments the amount of said forfeiture or forfeitures as so certified.

16 (ii) For any contract in which the City has required a third party to pay
17 prevailing wages and for which the City does not have the ability to withhold funds, the Labor
18 Standards Enforcement Officer shall determine whether a contractor and/or any subcontractor has
19 failed to comply with the prevailing wage requirement. If after conducting an investigation, the Labor
20 Standards Enforcement Officer determines that a violation has occurred, it shall issue to and serve a
21 Determination of Violation on the contractor and/or any subcontractor, which sets forth the basis of the
22 determination and orders payment of back wages due plus the penalty of at least \$50 per day for each
23 laborer, workman, or mechanic employed for each calendar day or portion thereof. Service of the
24 Determination of Violation shall be made by United States mail and the date of service shall be the date
25 of mailing.

1 (C) **Recourse Procedure.** A contractor and/or a subcontractor may appeal
2 from a Certification of Forfeiture under subsection 6.22(e)(8)(B)(i) or Determination of Violation
3 under subsection 6.22(e)(8)(B)(ii). The Controller and the Labor Standards Enforcement Officer shall
4 adopt and maintain rules and regulations for any appeal under this subsection 6.22(e)(8)(C),
5 which rules shall ~~generally include~~ be consistent with the following parameters ~~for efficient and~~
6 ~~effective due process.~~

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

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

21 (iii) After the expiration of 30 days following the date the Appeal ~~from~~
22 ~~Certification of Forfeiture~~ is filed, any party may request in writing, with concurrent notice to all
23 other parties, that the Controller appoint a hearing officer to hear and decide the ~~appeal~~
24 Appeal. If no party requests appointment of a hearing officer, the Certification of Forfeiture or
25

1 Determination of Violation shall be deemed final on the 60th day after the date the Appeal ~~from~~
2 Certification of Forfeiture is filed.

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

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

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

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

1 (viii) Appellant may appeal a final determination under this subsection
2 6.22(e)(8) only by filing in the San Francisco Superior Court a petition for a writ of mandate
3 under California Code of Civil Procedure Section 1084 et seq., as applicable and as may be
4 amended from time to time.

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

19 (E) Remedies for Non-Compliance with Determination of Violation. No later than 30
20 days after receipt of a Notice of Determination or, in the case of an Appeal, after an adverse final
21 determination by a hearing officer, the contractor and/or subcontractor shall comply with the Notice of
22 Determination of Violation by paying the amounts due for back wages and any penalty amount as set
23 forth in the Determination of Violation or final determination. The contractor and/or subcontractor
24 shall, in addition, be subject to the penalties set forth in Article V of this Chapter 6, including
25 debarment. If any contractor and/or subcontractor fails to pay the amounts required under this

1 subsection 6.22(e)(8)(E) within the required 30 days, the City may bring a civil action in a court of
2 competent jurisdiction against the non-complying party and, upon prevailing, shall be entitled to such
3 legal and equitable relief as may be appropriate to remedy the violation including, without limitation:
4 (i) damages in the amount of back wages and any penalty amounts due to workers for violation of the
5 prevailing wage requirement, which amounts the City shall, on receipt, distribute to workers following
6 the procedures in subsection 6.22(e)(8)(D); and (ii) an award of reasonable attorney's fees and costs.

7 * * * *

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

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

11 (A) The Board of Supervisors passed Ordinance 286-94 on August 4,
12 1994, to establish local hiring requirements for City public work or improvement projects
13 performed within the boundaries of the City.

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

22 (C) In 2010, the Walter and Elise Haas Fund and the San Francisco
23 Foundation, with assistance of the City's Office of Economic and Workforce Development,
24 convened a local hiring stakeholder process to discuss possible revision of subsection
25 6.22(g), at which community, labor, contractor, and City stakeholders participated.

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

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

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

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

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

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

21 (J) City spending on public work and improvement projects over the next
22 10 years will generate tens of thousands of construction work hours.

23 (K) The Board desires to ensure that employment and training
24 opportunities created by such public work and improvement projects provide consistent and
25

1 high-quality opportunities to the San Francisco labor pool, especially low-income residents of
2 San Francisco and other disadvantaged residents.

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

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

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

19 (O) The loss of middle-income jobs has been associated with a
20 diminishing middle class in San Francisco, as indicated by rising income inequality. San
21 Francisco's unequal income distribution threatens the City's future competitiveness and
22 overall economic stability, and the City's anti-poverty strategy aims to ensure that the City and
23 its partners are marshaling its limited resources in an effective and coordinated way to create
24 economic opportunities in San Francisco's low-income communities.
25

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

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

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

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

24 (T) Employment of workers that reside close to job sites has
25 environmental benefits, including reducing the distance of commutes and resulting vehicle

1 emissions. These environmental benefits are consistent with the mandates, policies and goals
2 of the California Global Warming Solutions Act (AB 32), the Sustainable Communities and
3 Climate Protection Act (SB 375), and the Climate Action Plan for San Francisco.

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

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

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

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

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

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

7 * * * *

8 (3) Coverage.

9 * * * *

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

12 _____ (i) For purposes of subsection 6.22(g) only, this Policy applies to
13 a. all construction projects on *real* property owned by the City; and
14 b. all construction projects on City-owned real property located within
15 the jurisdictional boundaries of the City and County of San Francisco that is sold to private parties for
16 the purpose of Housing Development, as defined in Section 23.61(a) of the Administrative Code;
17 provided that, under either subsection (g)(3)(B)(i)a or subsection (g)(3)(B)(i)b, the project is ~~that are~~
18 estimated to cost in excess of the Threshold Amount set forth in Section 6.1, as that amount
19 may be amended, including construction contracts that are issued by an entity or individual
20 other than the City.

21 _____ (ii) The following construction projects are exempt from this subsection
22 6.22(g)(3)(~~b~~B): (~~+~~)

23 _____ a. tenant improvement projects estimated to cost less than
24 \$750,000 per building permit, where the project is undertaken and contracted for by the
25 tenant;

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

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

8 ~~(iv)~~ d. projects that as of the effective date of this subsection
9 6.22(g)(3)(B) have a term sheet that has been endorsed by the Board of Supervisors and
10 have findings of fiscal feasibility, to the extent that such projects agree to be bound by a
11 legally enforceable document, enforceable by OEWD, committing the project to Local Hire
12 mandatory participation level of 30% per trade. All grant agreements, leases, development
13 agreements and other contracts that the City enters that allow for such non-exempt
14 construction projects on property owned by the City must contain a provision that such
15 construction shall comply with this Policy.

16 * * * *

17 **(7) Enforcement.**

18 * * * *

19 **(F) Compliance Procedures.**

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

1 (ii) **Penalties Amount.** Any contractor or subcontractor who fails to satisfy
2 local hiring requirements of this Policy applicable to project work hours performed by local
3 residents shall forfeit; and, in the case of any subcontractor so failing, the contractor and
4 subcontractor shall jointly and severally forfeit to the City an amount equal to the journeyman
5 or apprentice prevailing wage rate, as applicable, with such wage as established by the Board
6 of Supervisors or the California Department of Industrial Relations under subsection
7 6.22(e)(3), for the primary trade used by the contractor or subcontractor on the covered
8 project for each hour by which the contractor or subcontractor fell short of the local hiring
9 requirement. The assessment of penalties under this subsection shall not preclude the City
10 from exercising any other rights or remedies to which it is entitled.

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

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

1 to cover contract performance that may become due to contractor under subsection 6.22(j)
2 may be withheld by the City pending a determination by the awarding department or OEWD
3 as to whether a contractor or subcontractor must pay a penalty or penalties.

4 b. For any other Covered project for which local hiring requirements are
5 required under this subsection 6.22(g), OEWD shall determine whether a contractor and/or any
6 subcontractor has failed to comply with the local hire requirement. If after conducting an
7 investigation, OEWD determines that a violation has occurred, it shall issue and serve an assessment of
8 penalties to the contractor and/or any subcontractor that sets forth the basis of the assessment and
9 orders payment of penalties in the amounts equal to the journeyman or apprentice prevailing wage
10 rates, as applicable, for the primary trade used by the contractor or subcontractor on the Covered
11 project for each hour by which the contractor or subcontractor fell short of the local hiring
12 requirement. Assessment of penalties under this subsection 6.22(g)(7)(F)(iii)b shall be made only upon
13 an investigation by OEWD and upon written notice to the contractors or subcontractor identifying the
14 grounds for the penalty and providing the Contractor or Subcontractor with the opportunity to respond
15 pursuant to the procedures prescribed in subsection 6.22(g)(7)(F)(iv).

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

1 compliance with this Section 6.22(g) in a construction contract for a Covered project or to reasonably
2 cooperate with the City in any enforcement action as set forth above.

3 * * * *

4 (v) Remedies for Non-Compliance with Penalty Assessments. No later than 30 days
5 after receipt of a final assessment of penalties by OEWD or, in the case of an appeal, after an adverse
6 final determination by a hearing officer, the contractor and/or subcontractor shall comply with the
7 assessment by paying the amounts due. The contractor and/or subcontractor shall, in addition, be
8 subject to the penalties set forth in Article V of this Chapter 6, including debarment. If any contractor
9 and/or subcontractor fails to pay the amounts required under this subsection 6.22(g)(7)(F)(v) within
10 the required 30 days, the City may bring a civil action in a court of competent jurisdiction against the
11 non-complying party and, upon prevailing, shall be entitled to such legal and equitable relief as may be
12 appropriate to remedy the violation including, without limitation:

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

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

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

1 * * * *

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

7
8 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
9 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
10 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
11 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
12 additions, and Board amendment deletions in accordance with the "Note" that appears under
13 the official title of the ordinance.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By: 
18 JULIA H. VEIT
19 Deputy City Attorney

20 n:\legana\as2015\1500641\01034398.doc