

LEGISLATIVE DIGEST

[San Francisco Local Hiring Policy For Construction]

Ordinance amending Administrative Code Chapter 6, Public Works Contracting Policies and Procedures, Subsection 6.22(G), to establish a local hiring policy for City public work or improvement projects requiring contractors and their subcontractors to perform certain percentages of project work hours using San Francisco residents and disadvantaged San Francisco residents, making findings in support of the policy, authorizing incentives for contractors and subcontractors who exceed local hiring requirements, mandating assessment of liquidated damages against contractors and subcontractors who fail to meet minimum local hiring requirements, and establishing monitoring, enforcement and administrative procedures in support of the policy.

Existing Law

Administrative Code Chapter 6 addresses contracting policies and procedures for City public work or improvement projects.

Section 6.22 sets forth required contract terms and working conditions for City public work or improvement contracts. Subsection 6.22(G) requires contractors performing public work or improvement contracts within the boundaries of the City to make good faith efforts to hire qualified individuals who are residents of the City to comprise not less than 50% of each contractor's construction work force, and establishes various recordkeeping and enforcement procedures.

Amendments to Current Law

Subsection 6.22(G) is amended to:

- Rename the subsection the San Francisco Local Hiring Policy for Construction (the "Policy"). (New subsection 6.22(G).)
- Make findings in support of the Policy. (New subsection 6.22(G)(1).)
- Define various terms used in the Policy, including covered project, disadvantaged worker, local resident, and project work hours. (New subsection 6.22(G)(2).)
- Require application of the Policy to public work or improvement contracts with prime contractors estimated to cost more than the Threshold Amount set forth in Section 6.1 of Chapter 6, as that amount may be amended. The current Threshold Amount is \$400,000. (New subsection 6.22(G)(3)(a).)

- Require application of the Policy to City projects constructed within 70 miles of the jurisdictional boundary of the City and County of San Francisco, except that local hiring percentage requirements shall apply in proportion to the City's actual cost after reimbursement from non-City sources compared to the total cost of the project. Require application of the Policy to covered City projects constructed 70 miles or more beyond the jurisdictional boundary of the City and County, except that the "local" requirement shall include San Francisco residents and workers local to the area and region where the work is located. (New subsection 6.22(G)(3)(b).)
- Establish required procedures for projects using federal or state funds if application of the Policy would violate federal or state law, or would be inconsistent with the terms or conditions of a grant or contract with an agency of the United States or the State of California. (New subsection 6.22(G)(3)(c).)
- Exempt project work hours performed by residents of states other than California from local hiring requirements of the Policy, and require the Office of Economic and Workforce Development ("OEWD") to track work hours performed by non-California residents and report such statistics to the Board on an annual basis. (New subsections 6.22(G)(3)(d) and 6.22(G)(8)(f).)
- Apply local hiring requirements to each prime contractor and subcontractor that performs project work in excess of the Threshold Amount set forth in Section 6.1, with regard to project work actually performed by the prime contractor and work included under any subcontract, including all work performed by a subcontractor and all lower-tier subcontractors under the subcontract. (New subsection 6.22(G)(4)(a).)
- Require an initial local hiring requirement with a mandatory participation level of 25% of all project work hours within each trade performed by local residents, with no less than 12.5% of all project work hours within each trade performed by disadvantaged workers. Subject to the periodic review process set forth in subsection 6.22(G)(4)(b), require the mandatory participation level for project work hours to increase annually over six years at increments of five percent (5%), up to a mandatory participation level of 50% of project work hours within each trade performed by local residents, with no less than 25% of all project work hours within each trade performed by disadvantaged workers by the sixth year. (New subsection 6.22(G)(4)(a)(i).)
- Require at least 50% of project work hours performed by apprentices on covered projects be performed by local residents, with no less than 25% of apprentice project work hours performed by disadvantaged workers. (New subsection 6.22(G)(4)(a)(ii).)
- Authorize OEWD to publish a list of "specialized trades" for which the local hiring requirements shall not apply based on a determination by OEWD regarding limited availability and demand for such trades. (New subsection 6.22(G)(4)(a)(iii).)

- Require OEWD, in coordination with the Controller's Office, every three years from the effective date of the Policy to (i) review and evaluate the impact of the existing mandatory participation levels and (ii) report on the financial incentive program. Upon completion of such periodic reviews, require OEWD and the Controller's Office to report to the Board on their findings, determinations and proposed amendments to the mandatory participation levels and/or the financial incentive program, if any. Authorize the Board by resolution to fix and determine the mandatory participation levels by trade and available financial incentives, if any. (New subsection 6.22(G)(4)(b).)
- Authorize contractors and subcontractors to accumulate credit hours for hiring San Francisco residents on non-City funded projects and apply those credit hours to contracts for covered projects to meet the applicable mandatory local hiring requirements, and direct OEWD to develop criteria for applying such credit hours. (New subsection 6.22(G)(4)(c).)
- Authorize financial and non-financial incentives for contractors and subcontractors who exceed local hiring requirements, including financial incentives that comply with applicable law and that do not exceed one percent of the estimated cost of the contract and non-financial incentives developed by OEWD through regulation. (New subsection 6.22(G)(5).)
- Require prime contractors for projects estimated to cost in excess of \$1,000,000 to prepare and submit a local hiring plan to the awarding department and OEWD. (New subsection 6.22(G)(6)(a).)
- Require a contractor or subcontractor to use the CityBuild referral program if contractor's or subcontractor's preferred or preexisting method of hiring does not enable contractor or subcontractor to meet the local hiring requirements of the Policy. (New subsection 6.22(G)(6)(b).)
- Clarify that the Policy does not limit a contractor's or subcontractor's ability to assess qualifications of prospective workers or to make final hiring and retention decisions. (New subsection 6.22(G)(6)(c).)
- Require that the City have third party beneficiary rights under subcontracts to enforce the requirements of the Policy directly against subcontractors. (New subsection 6.22(G)(6)(d).)
- Authorize OEWD to enforce the Policy and require awarding departments to work cooperatively with OEWD. (New subsection 6.22(G)(7)(a).)

- Authorize OEWD to engage its community-based partners to assist with recruitment and retention of targeted workers and direct OEWD, through the existing Workforce Investment Board, to provide a forum for community members, community-based organizations, and representatives of all stakeholders affected by or interested in the Policy to exchange information and ideas concerning the operation and results of the Policy. (New subsection 6.22(G)(7)(b).)
- Establish recordkeeping requirements relating to the Policy. (New subsection 6.22(G)(7)(c).)
- Establish various reporting and monitoring requirements relating to the Policy. (New subsections 6.22(G)(7)(d) – (e).)
- Establish various consequences of noncompliance with the Policy, including assessment of liquidated damages against contractors and subcontractors who fail to satisfy local hiring requirements in an amount equal to the journeyman prevailing wage rate for the primary trade used by the contractor or subcontractor on the project for each hour by which contractor or subcontractor fell short of the local hiring requirement. (New subsection 6.22(G)(7)(f)(ii).)
- Establish a process for assessment of liquidated damages, including a hearing procedure for contractors or subcontractors who wish to contest an assessment. (New subsections 6.22(G)(7)(f)(iii), (v).)
- Authorize a contractor or subcontractor to avoid an assessment of liquidated damages if the contractor or subcontractor agrees to sponsor an OEWD-specified number of new apprentices in trades in which noncompliance is likely and retains those apprentices throughout the duration of the project, subject to certain verification requirements. (New subsection 6.22(G)(7)(f)(iv).)
- Require liquidated damages collected for violations of the Policy be distributed to a special account, and the funds deposited into that account be used to support enforcement of the Policy and workforce development initiatives. (New subsection 6.22(G)(7)(f)(vi).)
- Authorize and require OEWD to issue regulations and administrative guidance implementing the Policy. (New subsection 6.22(G)(8)(a).)
- Authorize OEWD and awarding departments to enter into contracts for investigative or monitoring services to further the purposes of the Policy. (New subsection 6.22(G)(8)(b).)

- Subject to the fiscal and budgetary provisions of the Charter and applicable federal and state laws and regulations, authorize OEWD to receive funds from awarding departments to support monitoring and enforcement of the Policy. (New subsection 6.22(G)(8)(c).)
- Require application of the Policy to covered projects first advertised for bids more than 60 days after the effective date of the ordinance. (New subsection 6.22(G)(8)(d).)
- Clarify application of the Policy to existing project labor agreements. (New subsection 6.22(G)(8)(e).)
- Require the Director of OEWD to submit an annual written report to the Board documenting the compliance of each awarding department's contractors and subcontractors with the requirements of the Policy, any significant challenges experienced by OEWD or awarding departments in implementing or enforcing the Policy, and proposed remedies to address any such challenges. Require the annual report to document overall percentages of project work hours performed by local residents and residents of states other than California. (New subsection 6.22(G)(8)(f).)
- Require that all contracts for performance of project work include compliance with the Policy as a material term. (New subsection 6.22(G)(8)(g).)
- Authorize awarding departments and OEWD to negotiate reciprocity agreements with other jurisdictions that maintain local hiring programs, subject to approval of the Board by resolution. (New subsection 6.22 (G)(8)(j).)

Background Information

Recent studies indicate that the City has historically failed to meet its local hiring goals for public work or improvement projects. These studies also indicate that the City faces unemployment levels that have risen dramatically in recent years, and that several San Francisco neighborhoods face concentrated poverty. Studies further indicate that the loss of middle-class jobs in San Francisco threatens the City's future competitiveness and overall economic stability.

The construction industry is one of the few industries providing a path to middle-class careers for individuals without advanced degrees or facing barriers to quality employment, and is therefore a crucial component of the effort to build economic opportunities for San Francisco residents, with particular emphasis on low-income and other underrepresented workers in various building and construction trades. The local hiring requirements of this ordinance will help ensure that employment and training opportunities created by City public work or improvement projects provide consistent and high-quality employment opportunities to the

FILE NO. 101311

San Francisco labor pool, especially low income residents and other disadvantaged workers, and therefore will help curb spiraling unemployment and population decline and create more sustainable communities throughout San Francisco.