

FILE NO. 140151

ORDINANCE NO.

1 [Administrative Code - Local Hire and Prevailing Wages for Construction Projects on  
2 City-Owned Property and Prevailing Wages Pursuant to California Law]

3 **Ordinance amending the Administrative Code to provide that the City's Local Hiring**  
4 **Policy and Payment of Prevailing Wages apply to construction projects on property**  
5 **owned by the City and payment of Prevailing Wages pursuant to California law.**

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

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

14 Section 1. The Administrative Code is hereby amended by revising Section 6.22(G), to  
15 read as follows:

16 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**  
17 **CONDITIONS.**

18 \* \* \* \*

19 (G) **Short Title.** This subsection 6.22(G) shall be known as and may be cited as the  
20 San Francisco Local Hiring Policy for Construction ("Policy").

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

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

25 (b) In 2010, the San Francisco Redevelopment Agency and the City's Office of  
Economic and Workforce Development commissioned a study of the labor market in the  
construction industry in San Francisco (the "Labor Market Analysis"), including review of

1 comparative demographic data regarding workers on public and private projects, scope of  
2 past and future public and private construction work in San Francisco, comparative  
3 compensation on public and private projects, demographic data regarding apprenticeship  
4 programs operating in San Francisco, and income and residency data regarding construction  
5 workers in San Francisco.

6 (c) In 2010, the Walter and Elise Haas Fund and the San Francisco Foundation, with  
7 assistance of the City's Office of Economic and Workforce Development, convened a local  
8 hiring stakeholder process to discuss possible revision of subsection 6.22(G), at which  
9 community, labor, contractor, and City stakeholders participated.

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

13 (e) The Budget & Finance and Land Use & Economic Development Committees of the  
14 Board of Supervisors held public hearings regarding local hiring and proposed revisions to  
15 subsection 6.22(G).

16 (f) The San Francisco Public Utilities Commission, Redevelopment Agency, Human  
17 Rights Commission, and other City departments and agencies held public hearings regarding  
18 local hiring.

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

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

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

5 (j) City spending on public work and improvement projects over the next 10 years will  
6 generate tens of thousands of construction work hours.

7 (k) The Board desires to ensure that employment and training opportunities created by  
8 such public work and improvement projects provide consistent and high-quality opportunities  
9 to the San Francisco labor pool, especially low-income residents of San Francisco and other  
10 disadvantaged residents.

11 (l) Although approximately 40% of construction workers employed in San Francisco are  
12 San Francisco residents, from 2002 to 2010 San Francisco residents worked only  
13 approximately 24% of the work-hours on publicly-funded construction projects in the City, and  
14 only 20% of work-hours since July 2009.

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

22 (n) The 2010-2014 Consolidated Plan for the City and County of San Francisco  
23 indicates that several San Francisco neighborhoods face concentrated poverty and San  
24 Francisco's slow job growth rate and changing job base has had major impacts on patterns of  
25

1 income inequality and disparity in the City, with distinctive, adverse, neighborhood-specific  
2 effects.

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

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

16 (q) City-funded construction projects provide a crucial opportunity to connect  
17 participants in these City-funded or City-operated workforce development programs with  
18 employment and training opportunities, and to direct employment and training opportunities  
19 created by the City's public expenditures.

20 (r) The City and the San Francisco Redevelopment Agency have made substantial  
21 public investments toward creating and facilitating growth in economic opportunities for  
22 low-income individuals and neighborhoods in San Francisco.

23 (s) CityBuild, San Francisco's construction training workforce program, was initiated in  
24 2005 to serve as a training vehicle for ushering disadvantaged workers into the construction  
25 skilled trades. The program is a multi-craft pre-apprenticeship training program, and has

1 assisted over 450 graduates, into union-sponsored apprentice programs. CityBuild, in  
2 2009-2010, contributed approximately 44 percent of all new San Francisco resident  
3 apprentice intakes based on data provided by the California Department of Industrial  
4 Relations, Division of Apprenticeship Standards. San Francisco's workforce construction  
5 training infrastructure has the capacity to meet future demand for high quality and well trained  
6 workers in the construction trades.

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

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

18 (v) A local hiring policy is necessary to counteract these grave economic and social ills.

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

23 (x) The 2012-2013 Annual Report is evidence that a true partnership between the City,  
24 CityBuild and its community-based partners, contractors, labor organizations, and state-certified  
25

1 apprenticeship programs has increased local hiring on projects covered by the Policy by an average of  
2 35% as of 2013. This compares to an average of 20% under the "good faith efforts" policy it replaced.

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

6 (z) Expanding the Policy to include construction projects on City-owned property promotes an  
7 equitable share of job opportunities for San Francisco residents to pursue a career in construction; and  
8 provides the opportunity for the use of state-certified apprenticeships that expands the local  
9 construction workforce pipeline to support the continued success of local hiring on public works  
10 projects.

11 \* \* \* \*

12 **(3) Coverage.**

13 **(a) Threshold for Public Work and Improvement Projects and Projects Constructed**  
14 **On Property Owned by the City.** For purposes of subsection 6.22(G) only, this This Policy  
15 applies to ~~(i)~~ contracts issued by the City with prime contractors for public works or  
16 improvements estimated to cost in excess of the Threshold Amount set forth in Section 6.1 of  
17 this Chapter, as that amount may be amended.

18 **(b) Threshold for Projects Constructed on Property Owned by the City. For**  
19 **purposes of subsection 6.22(G) only, this Policy applies and/or (ii) to all construction projects**  
20 **on property owned by the City that are estimated to cost in excess of the Threshold Amount set forth in**  
21 **Section 6.1 of this Chapter, as that amount may be amended, including construction contracts that are**  
22 **issued by an entity or individual other than the City. The following construction projects are**  
23 **exempt from this subsection 6.22(G)(3)(b): (i) tenant improvement projects estimated to cost**  
24 **less than \$750,000 per building permit, where the project is undertaken and contracted for by**  
25 **the tenant; (ii) projects for special events where the special event is three (3) or fewer**

1 consecutive or non-consecutive days within a two (2) week period; (iii) construction projects  
2 for which the construction work is fully funded and performed by a donor or donor's agent as a  
3 gift-in-place donation, where the gift agreement does not require City funds to be used for the  
4 construction and where the gift agreement includes a requirement that workers be paid the  
5 same prevailing rate of wages as would be required a public work project; and (iv) projects  
6 that as of the effective date of this subsection 6.22(G)(3)(b) have a term sheet that has been  
7 endorsed by the Board of Supervisors and have findings of fiscal feasibility, to the extent that  
8 such projects agree to be bound by a legally enforceable document, enforceable by OEWD,  
9 committing the project to Local Hire mandatory participation level of 30% per trade. *All grant*  
10 *agreements, leases, development agreements and other contracts that the City enters that allow for*  
11 *such non-exempt construction projects on property owned by the City must contain a provision that*  
12 *such construction shall comply with this Policy.*

13 (c)(b) **Projects Constructed Outside the City.** Covered ~~City projects~~ Projects  
14 constructed within 70 miles from the jurisdictional boundary of the City and County of San  
15 Francisco shall be governed by the terms of this Policy, except that percentage requirements  
16 shall apply in proportion to the City's actual cost after reimbursement from non-City sources  
17 compared to the total cost of the project. Covered City projects constructed 70 miles or more  
18 beyond the jurisdictional boundary of the City and County of San Francisco shall be subject to  
19 this Policy, except the "local" requirement shall include San Francisco residents, workers local  
20 to the area where the work is located, and workers residing within the region where the work  
21 is located. Awarding departments shall work with OEWD and regional local hiring programs to  
22 comply.

23 (d)(e) **Projects Utilizing Federal or State Funds.**

24 (i) **Segregation of Funds and Contract Awards.** Where the application of this Policy  
25 would violate federal or state law, or would be inconsistent with the terms or conditions of a

1 grant or a contract with an agency of the United States or the State of California, the City  
2 department or agency receiving the grant or contract shall, where administratively feasible,  
3 segregate federal or state funds from City funds, and/or segregate project administration and  
4 contracts, so as to maximize application of this Policy to City-funded construction work.

5 (ii) **Alternative Terms in Case of Conflict.** Where the provisions of this Policy would  
6 be prohibited by Federal or State law, or where the application of this Policy would violate or  
7 be inconsistent with the terms or conditions of a grant or a contract with an agency of the  
8 United States or the State of California, and where segregation of funds pursuant to  
9 subsection ~~6.22(G)(3)(d)(i)~~ ~~6.22(G)(3)(e)(i)~~ is not administratively feasible with regard to some  
10 or all of the project in question, then OEWD, in consultation with the awarding department,  
11 shall adapt requirements of this Policy into a set of contract provisions that advance the  
12 purposes of this Policy to the maximum extent feasible without conflicting with federal or state  
13 law or with terms or conditions of the State or Federal grant or contract in question. The  
14 awarding department shall include this set of contract provisions in the public works or  
15 improvement contract with regard to the project or portions of the project for which this Policy  
16 would conflict with Federal or State requirements.

17 ~~(e)(d)~~ **Out-of-State Workers.** Project work hours performed by residents of states  
18 other than California shall not be considered in calculation of the number of project work hours  
19 to which the local hiring requirements apply. Contractors and subcontractors shall report to  
20 awarding departments and OEWD the number of project work hours performed by residents  
21 of states other than California.

22 \* \* \* \*

23 **(8) Miscellaneous**

24 (a) **Regulations and Administrative Guidance.** OEWD shall be the primary  
25 department authorized to implement and enforce this Policy. OEWD shall issue regulations



1 and/or administrative guidance regarding implementation of the Policy, including (i)  
2 documentation and recordkeeping requirements, (ii) incentive payments, (iii) monitoring and  
3 compliance activities, (iv) project and/or contract coverage determinations, (v) designated  
4 referral sources, (vi) bid and contract documents implementing the Policy, (vii) procedures for  
5 application of the Policy to alternative competitive bidding processes set forth in Article IV of  
6 this Chapter, ~~and~~ (viii) procedures for monitoring and enforcement of the Policy where the  
7 construction contract is issued by an entity or individual other than the City, and (ix) other  
8 matters related to implementation of this Policy. Awarding departments shall cooperate with  
9 and assist in implementation of OEWD actions and determinations regarding this Policy. For  
10 projects where the construction contract is issued by an entity or individual other than the City,  
11 OEWD may grant conditional waivers on a project specific basis if it finds that the contractor  
12 has participated to the extent feasible in available pipeline and retention mechanisms, the  
13 contractor has undertaken all corrective actions issued by OEWD, and considering all referral  
14 sources and estimates of workers residing in the City, there will be insufficient numbers of  
15 qualified and available local residents and/or disadvantaged workers to enable the contractor  
16 or subcontractor to satisfy the local hiring requirements.

17 \* \* \* \*

18 (d) **Effective Date, Operative Date, and Prospective Application.** This Policy shall become  
19 effective upon the date of its enactment and shall apply to covered projects first advertised for  
20 bids by awarding departments more than sixty (60) days after such date. The amendment to the  
21 Policy in subsection 6.22(G)(3)(b)6.22(G)(3)(a)(ii) shall become operative sixty (60) days after the  
22 effective date of the ordinance enacting the amendment. The amendment in subsection  
23 6.22.(G)(3)(b)6.22(G)(3)(a)(ii) to include construction projects on property owned by the City is  
24 intended to have prospective effect only, and shall not be interpreted to impair the obligations of any  
25 pre-existing grant agreement, lease, development agreement or other contract entered into by the City.

1 Notwithstanding the prior sentence, the amendment in subsection 6.22.(G)(3)(b)6.22(G)(3)(a)(ii) to  
2 the Policy shall apply to newly included work in pre-existing grant agreements, leases, development  
3 agreements, or other contracts amended on or after the operative date. The amendment in subsection  
4 6.22.(G)(3)(b)6.22(G)(3)(a)(ii) to include construction projects on property owned by the City  
5 shall apply grant agreements, leases, development agreements and other contracts entered into by the  
6 City on or after the operative date.

7 \* \* \* \*

8 Section 2. The Administrative Code is hereby amended by revising Section 6.22(E),  
9 to read as follows:

10 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**  
11 **CONDITIONS.**

12 \* \* \* \*

13 **(E) Prevailing Wages.**

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

22 (2) Additional Projects Included Within Definition of "Public Work or Improvement" for  
23 Purposes of Prevailing Wages.

1           ~~(2) (a) Leased Property Leased By the City~~Included. For the limited purposes of this  
2 subsection 6.22(E), a "public work or improvement" also means and includes any construction  
3 work done under private contract when all of the following conditions exist:

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

5           ~~(b) (ii)~~ The property subject to the construction contract is privately owned, but upon  
6 completion of the construction work will be leased to the City and County of San Francisco for  
7 its use; and

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

14           ~~(b) Public Works Under California Labor Code.~~ *For the limited purposes of this*  
15 *subsection 6.22(E), a "public work or improvement" also means and includes all projects for which*  
16 *prevailing wages are required to be paid on "public works" pursuant to California Labor Code*  
17 *section 1782. ~~any construction work on property owned by the City that is estimated to cost in~~*  
18 *~~excess of the Threshold Amount set forth in Section 6.1 of this Chapter, as that amount may~~*  
19 *~~be amended, including construction contracts that are issued by an entity or individual other~~*  
20 *~~than the City.~~ This subsection 6.22(E)(2)(b) is intended to have prospective effect only, and shall not*  
21 *be interpreted to impair the obligations of any pre-existing grant agreement, lease, development*  
22 *agreement or other contract entered into by the City. Notwithstanding the prior sentence, this*  
23 *subsection shall apply to newly included work in pre-existing grant agreements, leases, development*  
24 *agreements, or other contracts amended on or after the operative date. The subsection shall apply to*  
25 *grant agreements, leases, development agreements and other contracts entered into by the City on or*

1 after the operative date. All grant agreements, leases, development agreements and other contracts  
2 which allow for such construction on property owned by the City that the City enters after the operative  
3 date of the subsection must contain a provision that such construction shall comply with this  
4 subsection.

5 \* \* \* \*

6 Section 3. **Effective Date and Operative Date.** This ordinance shall become effective  
7 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor  
8 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,  
9 or the Board of Supervisors overrides the Mayor’s veto of the ordinance. Section 1 of this The  
10 ordinance shall become operative sixty (60) days after the effective date. Section 2 of this  
11 ordinance shall become operative on the compliance date listed in California Labor Code  
12 section 1782 subsection (f).

13  
14 Section 4. **Scope of Ordinance.** In enacting this ordinance, the Board of Supervisors  
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
18 additions, and Board amendment deletions in accordance with the “Note” that appears under  
19 the official title of the ordinance.

20 APPROVED AS TO FORM:  
21 DENNIS J. HERRERA, City Attorney

22  
23 By: \_\_\_\_\_  
24 RONALD P. FLYNN  
Deputy City Attorney

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