

1 [Police Code - Displaced Worker Protections - Certain Employees under City Contracts;
2 Administrative Code - Prevailing Wage Protections for Janitorial Employees Under City
3 Contracts]

4 **Ordinance amending Police Code Sections 3300C.1, 3300C.3, 3300C.5, and 3300C.6 to**
5 **impose a lower (ten-employee) threshold for City contractors subject to the Displaced**
6 **Worker Ordinance, and to provide enforcement and rulemaking powers to the Office of**
7 **Labor Standards Enforcement as to City contractors subject to the Act; and amending**
8 **Administrative Code Section 21.25-1 to expand coverage of the prevailing wage**
9 **ordinance regarding janitors to City contractors regardless of size.**

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

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

15 Section 1. The San Francisco Police Code is hereby amended by amending Sections
16 3300C.1, 3300C.3, 3300C.5, and 3300C.6, to read as follows:

17 SEC. 3300C.1. DEFINITIONS.

18 The following definitions shall apply throughout this Article:

19 (a) "Awarding authority" means any person that awards or otherwise enters into
20 contracts for security and janitorial or building maintenance services performed within the City
21 and County of San Francisco.

22 (b) "Contractor" means any person that enters into a service contract with the
23 awarding authority and who employs 25 or more persons, or, if the awarding authority is the City
24 and County of San Francisco, who employs 10 or more persons.

25 (c) "Employee" means any person employed as a service employee of a contractor or
subcontractor who works at least 15 hours per week and whose primary place of employment

1 is in the City and County of San Francisco under a contract to provide security services,
2 janitorial services, or building maintenance services for the awarding authority. "Employee"
3 does not include a person who is (1) a managerial, supervisory, or confidential employee,
4 including those employees who would be so defined under the Fair Labor Standards Act; or
5 (2) does not possess or has not maintained a required occupational license; or (3) is
6 employed less than 15 hours per week.

7 (d) "Person" means any individual, proprietorship, partnership, joint venture,
8 corporation, limited liability company, trust, association, or other entity that may employ
9 individuals or enter into contracts.

10 (e) "Public sector contractor" means any person or persons, firm, partnership,
11 corporation, or combination thereof, who enters into a contract with officers or employees
12 empowered by law to enter into contracts for the City and County of San Francisco for the
13 services governed by this Article.

14 (f) "Service contract" means a contract let to a contractor by the awarding authority for
15 the furnishing of service (as opposed to the purchase of goods or other property) and that
16 involves an expenditure or receipt in excess of \$25,000 per contract and a contract term of at
17 least three months.

18 (g) "Subcontractor" means any person not an employee who enters into a contract
19 with the contractor to assist the contractor in performing a service contract and that employs
20 employees for such person.

21 (h) "Successor service contract" means a service contract with the awarding authority
22 where the services to be performed have previously been rendered to the awarding authority
23 as part of the same program or at the same facility under another substantially similar service
24 contract that recently has been terminated or has ended.

25 SEC. 3300C.3. - ENFORCEMENT.

1 (a) An employee who has been discharged in violation of this Article by a successor
2 contractor or its subcontractor may bring an action in the Municipal Court or Superior Court of
3 the State of California, as appropriate, against the successor contractor and, where
4 applicable, its subcontractor, and may be awarded back pay, including the value of benefits,
5 for each day during which the violation continues, which shall be calculated at a rate of
6 compensation not less than the higher of:

7 (1) The average regular rate of pay received by the employee during the last three
8 years of the employee's employment in the same occupation classification; or

9 (2) The final regular rate received by the employee.

10 (b) If the employee is the prevailing party in any such legal action, the Court shall
11 award reasonable attorneys' fees and costs as part of the costs recoverable.

12 (c) This Article is not intended to create a private right of action against the awarding
13 authority.

14 (d) The City shall have authority to enforce this Article as it relates to public sector
15 contractors. The City's enforcement powers regarding public sector contractors shall parallel its
16 enforcement powers under the Minimum Compensation Ordinance (Chapter 12P, San Francisco
17 Administrative Code). The procedures governing enforcement of the Minimum Compensation
18 Ordinance shall apply to enforcement of this Article to the extent those procedures are set by
19 ordinance; to the extent those procedures have been set administratively, they shall apply to
20 enforcement of this Article unless the Office of Labor Standards Enforcement sets other procedures
21 administratively for enforcement of this Article.

22 (e) The Office of Labor Standards Enforcement shall have authority to adopt rules and
23 regulations regarding this Article as it relates to public sector contractors. The number of employees
24 employed by a public sector contractor shall be determined by the standard used by the Office of Labor
25 Standards Enforcement for determining an employer's number of employees under the Minimum

1 Compensation Ordinance (Chapter 12P, San Francisco Administrative Code), unless the Office of
2 Labor Standards Enforcement adopts a different rule for purposes of this Article.

3 Sec. 3300C.5. APPLICABILITY TO EXISTING CONTRACTS.

4 This Article shall only apply to contracts entered into on or after the effective date of
5 this Article. Amendments to this Article included in Ordinance No. _____ shall only apply to
6 contracts entered into after the effective date of Ordinance No. _____.

7 SEC. 3300C.6. SEVERABILITY.

8 If any ~~severable provision or~~ of the provisions of this Article or any application thereof to
9 any person or circumstance is held invalid, ~~such invalidity shall not affect any other provisions or~~
10 ~~applications of the Article that can be given effect notwithstanding such invalidity~~ the remainder of
11 those provisions, including the application of such part or provisions to persons or circumstances other
12 than those to which it is held invalid, shall not be affected thereby and shall continue in full force and
13 effect. To this end, the provisions of this Article are severable.

14
15 Section 2. The San Francisco Administrative Code is hereby amended by amending
16 Section 21.25-1, to read as follows:

17 SEC. 21.25-1. - PREVAILING RATE OF WAGES REQUIRED IN CONTRACTS FOR
18 JANITORIAL SERVICES; ~~NONPROFIT ORGANIZATIONS EXCLUSION; SMALL BUSINESS~~
19 ~~EXCLUSION.~~

20 Every Contract issued by the City and County of San Francisco for Janitorial Services
21 to be performed at any facility owned or leased by the City and County of San Francisco,
22 where such work is to be done directly under the contract awarded (a "prime contract") must
23 require that any individual performing Janitorial Services thereunder be paid not less than the
24 Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid
25

1 in private employment for similar work in the area in which the Contract is being performed, as
2 determined by the Civil Service Commission.

3 **(a) Exclusions.** ~~This Section shall not apply to the following:~~

4 ~~(1) **Non-Profit Exclusion.** This Section shall not apply to a Contract where the Janitorial~~
5 ~~Services are to be performed by a non-profit organization that provides job training and work~~
6 ~~experience for disadvantaged individuals in need of such training.~~

7 ~~(2) **Small Business Exclusion.** This Section shall not apply to any contracting party employing~~
8 ~~fewer than 10 employees. For purposes of this exclusion, the term "employees" excludes owner-~~
9 ~~operators and members of an owner-operator's Immediate Family.~~

10 **(b) Definitions.** For purposes of this Section, the following definitions shall apply to
11 the terms used herein:

12 (1) "Contract" shall mean an agreement for Janitorial Services to be performed at the
13 expense of the City and County of San Francisco or to be paid out of moneys deposited in the
14 treasury or out of trust moneys under the control or collected by the City and County of San
15 Francisco, and does not include property contracts, contracts for the sale of goods,
16 subcontracts, contracts issued by the San Francisco Airport Commission or to be performed
17 at any facility owned, leased or otherwise under the jurisdiction of the San Francisco Airport
18 Commission, agreements entered into before the effective date of this Section, or contracts
19 for a cumulative amount of \$10,000 or less per janitorial service provider in each fiscal year.

20 (2) "Contracting Officer" shall mean any officer or employee of the City and County of
21 San Francisco authorized to enter into a Contract on behalf of the City and County of San
22 Francisco.

23 (3) "Contractor" shall mean any Person who submits a bid and/or enters into a
24 Contract with the City and County of San Francisco.

1 ~~(4) "Immediate Family" shall mean grand parents, grandchildren, parents, children, brothers~~
2 ~~and sisters, spouses and domestic partners, nieces and nephews, and aunts and uncles.~~

3 ~~(5)~~(4) "Janitorial Services" shall mean maintenance and cleaning services on property
4 owned or leased by the City and County of San Francisco.

5 ~~(6)~~(5) "Person" shall include any individual, firm, proprietorship, partnership,
6 corporation or combination thereof.

7 ~~(7)~~(6) "Prevailing Rate of Wages" shall mean that rate of compensation being paid to a
8 majority of workers engaged in a specified category of personal services, if a majority of such
9 workers be paid at a single rate; if there be no single rate being paid to a majority, then the
10 prevailing rate shall be that single rate being paid the greatest number of workers.

11 ~~(8)~~(7) "Subcontract" shall mean and include any agreement under or subordinate to a
12 prime contract or lease.

13 **(c) Determination of Prevailing Rate of Wage.** It shall be the duty of the Board of
14 Supervisors, from time to time and at least once during each calendar year, to fix and
15 determine the Prevailing Rate of Wages paid in private employment in the City and County of
16 San Francisco for Janitorial Services, including such rate of wages paid for overtime and
17 holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:

18 The Civil Service Commission shall furnish to the Board of Supervisors, on or before
19 the first Monday in November of each year, data as to the Prevailing Rate of Wages for
20 Janitorial Services as paid in private employment in the City and County of San Francisco,
21 including wages for overtime and holiday work, and the Board of Supervisors shall, upon
22 receipt of such data, fix and determine the Prevailing Rate of Wages for Janitorial Services as
23 paid for similar work in the City and County of San Francisco in private employment. Such
24 Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall
25

1 remain in force and shall be deemed to be the Prevailing Rate of Wages paid in private
2 employment for similar work, until the same is changed by the Board of Supervisors.

3 In determining the Prevailing Rate of Wages, as provided for in this Section, the Board
4 of Supervisors shall not be limited to the consideration of data furnished by the Civil Service
5 Commission, but may consider such other evidence upon the subject as the Board of
6 Supervisors shall deem proper and thereupon base its determination upon any or all of the
7 data or evidence considered.

8 **(d) Noncompliance with Wage Provisions; Termination; Penalty.** Where the
9 Contracting Officer determines that a Contractor for Janitorial Services may have violated the
10 prevailing wage requirements of this Section, the Contracting Officer shall send written notice
11 to the Contractor of the possible violation (a "violation notice"). In addition to and without
12 prejudice to any other remedy available, the Contracting Officer may terminate the contract, in
13 which case the Contractor shall not be entitled to any additional payment thereon unless
14 within 30 days of receipt of the violation notice the Contractor has either (i) cured the violation
15 or (ii) has established by documentary evidence, including but not limited to payroll records,
16 the truth and accuracy of which is attested to by affidavit, proof of compliance with the
17 provisions of this Section. For purposes of this Section, where a Contractor fails to pay at
18 least the Prevailing Rate of Wages to individuals performing Janitorial Services under a
19 Contract for Janitorial Services, the Contractor shall have "cured the violation" once the
20 Contractor reimburses such individuals by paying each individual the balance of what he or
21 she should have earned in accordance with the requirements of this Section. In addition to, or
22 instead of terminating the contract, where the Contracting Officer *or the Labor Standards*
23 *Enforcement Officer* finds that the Contractor has willfully violated the requirements of this
24 Section, the Contracting Officer *or the Labor Standards Enforcement Officer* may assess a
25 penalty (a "willful violation penalty") in an amount not more than 10 percent of the dollar

1 amount of the contract, such sums to be deposited in the fund out of which the Contract is
2 awarded or, if none exists, the General Fund. The Contracting Officer or the Labor Standards
3 Enforcement Officer may impose such willful violation penalty regardless of whether the
4 Contractor has cured the violation.

5 **(e) Collective Bargaining Agreements.** Notwithstanding anything to the contrary in
6 this Section, if a Contract for Janitorial Services conflicts with an existing collective bargaining
7 agreement to which a Contractor is a party, the collective bargaining agreement shall prevail.
8 However, the Contractor will be obligated to make good faith efforts to comply with the
9 requirements of its Contract for Janitorial Services that do not conflict with the collective
10 bargaining agreement.

11 **(f) Preemption.** Nothing in this Section shall be interpreted or applied so as to create
12 any power or duty in conflict with any federal or state law.

13 **(g) Effective Date and Application.** This Section shall become effective 30 days after
14 it is enacted, is intended to have prospective effect only, and shall not be interpreted to impair
15 the obligations of any pre-existing agreement to which the City is a party, unless such pre-
16 existing agreement has been amended after the effective date of this Section. Amendments to
17 this Section included in Ordinance No. _____ shall only apply to contracts entered into after the
18 effective date of Ordinance No. _____.

19 **(h) Severability.** If any part or provision of this Section, or the application thereof to
20 any Person or circumstance, is held invalid, the remainder of this Section, including the
21 application of such part or provisions to other Persons or circumstances, shall not be affected
22 thereby and shall continue in full force and effect. To this end, the provisions of this Section
23 are severable.

24
25 APPROVED AS TO FORM:

Supervisor Chiu
BOARD OF SUPERVISORS

DENNIS J. HERRERA, City Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

By: _____
PAUL ZAREFSKY
Deputy City Attorney