

1 [Revision of the recourse hearing procedures for public work prevailing wage violations.]

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3 **Ordinance amending San Francisco Administrative Code Section 6.22, at subsection**  
4 **6.22(E)(8)(c), to revise the recourse hearing procedures for contractors challenging**  
5 **forfeitures for prevailing wage violations on public work projects.**

6 Note: Additions are *single-underline italics Times New Roman*;  
7 deletions are ~~*strikethrough italics Times New Roman*~~.  
8 Board amendment additions are double underlined.  
9 Board amendment deletions are ~~strikethrough-normal~~.

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

10 Section 1. The San Francisco Administrative Code is hereby amended by amending  
11 Section 6.22, at subsection 6.22(E)(8)(c), to read as follows:

12 **SEC 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING**  
13 **CONDITIONS.**

14 All construction contracts awarded by the City and County of San Francisco shall contain  
15 the following minimum terms and conditions:

16 **(A) Bonds.** Before the execution of any contract for public works or improvements, the  
17 department head authorized to execute such contracts shall require the successful bidder to  
18 file corporate surety bonds for the faithful performance thereof and to guarantee the payment  
19 of wages for services engaged and of bills contracted for material, supplies and equipment  
20 used in the performance of the contract. The bond shall be for a sum not less than 100  
21 percent of the award.

22 The City and County of San Francisco, acting through its Human Rights Commission  
23 ("HRC"), intends to provide guarantees to private bonding assistance companies and financial  
24 institutions in order to induce those entities to provide required bonding and financing to  
25 eligible contractors bidding on and performing City public work contracts. This bonding and

1 financial assistance program is subject to the provisions of Administrative Code Section  
2 12D.A.9.

3 **(B) Insurance.** All construction contracts awarded under this Chapter must conform to  
4 the insurance requirements established by the Risk Manager. The Risk Manager shall  
5 develop uniform insurance requirements for City contracts subject to this Chapter and shall  
6 publish such requirements in the Risk Manager's Manual. The Risk Manager shall review and  
7 update such insurance requirements on an annual basis.

8 Every contractor and subcontractor shall comply with the provisions of California Labor  
9 Code section 3700. Prior to commencing the performance of work under any public work  
10 contract, the contractor and all of its subcontractors file with the awarding department a  
11 certificate of insurance against liability for workers compensation or proof of self-insurance in  
12 accordance with the provisions of the California Labor Code.

13 **(C) Indemnification.** All construction contracts awarded under this Chapter shall  
14 require that the contractor fully indemnify the City and County to the maximum extent provided  
15 by law, such that each contractor must save, keep, bear harmless and fully indemnify the City  
16 and County and any of its officers or agents from any and all liability, damages, claims,  
17 judgments or demands for damages, costs or expenses in law or equity that may at any time  
18 arise.

19 This indemnification requirement may not be waived or abrogated in any way for any  
20 contract without the recommendation of the City's Risk Manager and the express permission  
21 and approval of the Board of Supervisors.

22 **(D) Assignment.** No contract shall be assigned except upon the recommendation of  
23 the department head concerned and with the approval of the Mayor or the Mayor's designee,  
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1 relative to the department under the Mayor's jurisdiction, or the approval of the board or  
2 commission concerned for departments not under the Mayor.

3 **(E) Prevailing Wages.**

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

12 **(2) Leased Property Included.** For the limited purposes of this subsection, a "public  
13 work or improvement" also means and includes any construction work done under private  
14 contract when all of the following conditions exist:

15 (a) The construction contract is between private persons; and

16 (b) The property subject to the construction contract is privately owned, but upon  
17 completion of the construction work will be leased to the City and County of San Francisco for  
18 its use; and

19 (c) Either of the following conditions exist: (1) The lease agreement between the lessor  
20 and the City and County of San Francisco, as lessee, is entered into prior to the construction  
21 contract, or (2) The construction work is performed according to the plans, specifications, or  
22 criteria furnished by the City and County of San Francisco, and the lease agreement between  
23 the lessor and the City and County of San Francisco as lessee, is entered into during, or upon  
24 completion, of the construction work.

1       **(3) Determination of the Prevailing Wage.** It shall be the duty of the Board of  
2 Supervisors, from time to time and at least once during each calendar year, to fix and  
3 determine the prevailing rate of wages as follows:

4       On or before the first Monday in November of each year, the Civil Service Commission  
5 shall furnish to the Board of Supervisors data as to the highest general prevailing rate of  
6 wages of the various crafts and kinds of labor as paid in private employment in the City and  
7 County of San Francisco, plus "per diem wages" and wages for overtime and holiday work.  
8 The Civil Service Commission shall provide the Board of Supervisors data for "per diem  
9 wages" pursuant to California Labor Code sections 1773.1 and 1773.9, as amended from time  
10 to time. The Board of Supervisors shall, upon receipt of such data, fix and determine the  
11 prevailing rate of wages. The prevailing rate of wages as so fixed and determined by the  
12 Board of Supervisors shall remain in force and shall be deemed to be the highest general  
13 prevailing rate of wages paid in private employment for similar work, until the same is  
14 changed by the Board of Supervisors. In determining the highest general prevailing rate of  
15 wages per diem wages and wages for overtime and holiday work, as provided for in this  
16 section, the Board of Supervisors shall not be limited to the consideration of data furnished by  
17 the Civil Service Commission, but may consider such other evidence upon the subject as the  
18 Board shall deem proper and thereupon base its determination upon any or all of the data or  
19 evidence considered.

20       In the event that the Board of Supervisors does not fix or determine the highest general  
21 prevailing rate of wages in any calendar year, the rates established by the California  
22 Department of Industrial Relations for such year shall be deemed adopted.

23       **(4) Specifications to Include Wage Rate.** The department head authorized to execute  
24 a construction contract under this Chapter shall include in the contract specifications, or make  
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1 available in the offices of the department or at the job site, a detailed statement of the  
2 prevailing rate of wages as fixed and determined by the Board of Supervisors at the time the  
3 department issued the Advertisement For Bids on the contract. The contractor shall agree to  
4 pay to all persons performing labor in and about the public work or improvement the highest  
5 general prevailing rate of wages as determined pursuant to this Chapter, including wages for  
6 holiday and overtime work. If the specifications do not include the prevailing rate of wages,  
7 the specifications shall include a statement that copies of the prevailing rate of wages as fixed  
8 and determined by the Board of Supervisors are on file at the department's principal office or  
9 at the job site and shall be made available to any interested party on request.

10 **(5) Subcontractors Bound by Wage Provisions.** Every contract for any public work or  
11 improvement shall also contain a provision that the contractor shall insert in every subcontract  
12 or other arrangement which he or she may make for the performance of any work or labor on  
13 a public work or improvement. This provision shall be that the subcontractor shall pay to all  
14 persons performing labor or rendering service under said subcontract or other arrangement  
15 the highest general prevailing rate of wages as fixed and determined by the Board of  
16 Supervisors for such labor or services.

17 **(6) Records to be Kept by Contractors and Subcontractors.** Every public works  
18 contract or subcontract awarded under this Chapter shall contain a provision that the  
19 contractor shall keep, or cause to be kept, for a period of four years from the date of  
20 substantial completion of a public work, payrolls and basic records including time cards, trust  
21 fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent  
22 and foreman daily logs for all trades workers performing work at or for a City and County of  
23 San Francisco public work or improvement. Such records shall include the name, address  
24 and social security number of each worker who worked on the project, including apprentices,  
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1 his or her classification, a general description of the work each worker performed each day,  
2 the rate of pay (including rates of contributions for, or costs assumed to provide fringe  
3 benefits), daily and weekly number of hours worked, deductions made and actual wages  
4 paid. Every subcontractor who shall undertake the performance of any part of a public work  
5 or improvement shall keep a like record of each person engaged in the execution of the  
6 subcontract.

7 The contractor shall maintain weekly certified payroll records for submission to the  
8 awarding department as required. The contractor shall be responsible for the submission of  
9 payroll records of its subcontractors. All certified payroll records shall be accompanied by a  
10 statement of compliance signed by the contractor indicating that the payroll records are  
11 correct and complete, that the wage rates contained therein are not less than those  
12 determined by the San Francisco Board of Supervisors and that the classifications set forth for  
13 each employee conform with the work performed.

14 All such records as described in this section shall at all times be open to inspection and  
15 examination of the duly authorized officers and agents of the City and County of San  
16 Francisco, including representatives of the Office of Labor Standards Enforcement.

17 Should the department head responsible for the public work or the Labor Standards  
18 Enforcement Officer determine that a contractor or subcontractor is not in compliance with the  
19 requirements of this subsection, the department head or the Labor Standards Enforcement  
20 Officer shall issue written notification to the contractor or subcontractor mandating compliance  
21 within not fewer than ten calendar days from the date of the notification. Should the  
22 contractor or subcontractor fail to comply as required in the notification, the department head  
23 who executed the contract or the Labor Standards Enforcement Officer may impose a penalty  
24 of \$25.00 for each calendar day of noncompliance, or portion thereof, for each worker. Upon  
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1 the request of the responsible department head or the Labor Standards Enforcement Officer,  
2 the Controller shall withhold these penalties from progress payments then due or to become  
3 due.

4 **(7) Additional Required Contract Provisions.** Every public works contract shall  
5 contain provisions stating that (1) the contractor will cooperate fully with the Labor Standards  
6 Enforcement Officer and other City employees and agents authorized to assist in the  
7 administration and enforcement of the prevailing wage requirements and other labor  
8 standards imposed on public works contractors by the Charter and Chapter 6 of the San  
9 Francisco Administrative Code; (2) the contractor agrees that the Labor Standards  
10 Enforcement Officer and his or her designees, in the performance of their duties, shall have  
11 the right to engage in random inspections of job sites and to have access to the employees of  
12 the contractor, employee time sheets, inspection logs, payroll records and employee  
13 paychecks; (3) the contractor shall maintain a sign-in and sign-out sheet showing which  
14 employees are present on the job site; (4) the contractor shall prominently post at each job-  
15 site a sign informing employees that the project is subject to the City's prevailing wage  
16 requirements and that these requirements are enforced by the Labor Standards Enforcement  
17 Officer; and (5) that the Labor Standards Enforcement Officer may audit such records of the  
18 contractor as he or she reasonably deems necessary to determine compliance with the  
19 prevailing wage and other labor standards imposed by the Charter and this Chapter on public  
20 works contractors. Failure to comply with these requirements may result in penalties and  
21 forfeitures consistent with California Labor Code section 1776(g), as amended from time to  
22 time.

23 **(8) Non-compliance with Wage Provisions - Penalties.**  
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1       **(a) Penalty and Forfeiture.** Any contractor or subcontractor who shall fail or neglect to  
2 pay to the several persons who shall perform labor under any contract, subcontract or other  
3 arrangement on any public work or improvement as defined in this Chapter the highest  
4 general prevailing rate of wages as fixed by the Board of Supervisors under authority of this  
5 Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said  
6 wage, the original contractor and the subcontractor shall jointly and severally forfeit to the City  
7 and County of San Francisco back wages due plus the penal sum of \$50 per day for each  
8 laborer, workman or mechanic employed for each calendar day or portion thereof, while they  
9 shall be so employed and not paid said highest general prevailing rate of wages, and in  
10 addition shall be subject to the penalties set forth in Article V of this Chapter, including  
11 debarment.

12       **(b) Enforcement.** It shall be the duty of the officer, board or commission under whose  
13 jurisdiction said public work or improvement is being carried on, made or constructed, when  
14 certifying to the Controller any payment which may become due under said contract, to deduct  
15 from said payment or payments the total amount of said forfeiture provided for in this  
16 subsection. In doing so, the department head must also notify in writing the Labor Standards  
17 Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also,  
18 upon written notice to the department head who is responsible for the project, certify to the  
19 Controller any forfeiture(s) to deduct from any payment as provided for in this subsection.  
20 Certification of forfeitures under this subsection shall be made only upon an investigation by  
21 the responsible department head or the Labor Standards Enforcement Officer and upon  
22 written notice to the contractor identifying the grounds for the forfeiture or forfeitures. The  
23 Controller, in issuing any warrant for any such payment, shall deduct from the amount which  
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1 would otherwise be due on said payment or payments the amount of said forfeiture or  
2 forfeitures as so certified.

3 **(c) Recourse Procedure.** If the contractor or subcontractor disagrees with the forfeiture as  
4 so provided in the foregoing subparagraph (b), then ~~within fifteen working days of the date of the~~  
5 ~~notification as provided for above, the contractor or subcontractor may request a hearing before the~~  
6 ~~City Administrator. the following procedure applies: The City Administrator, or his/her/designee, shall~~  
7 ~~consider the evidence provided by the contractor or subcontractor and the responsible department~~  
8 ~~head and/or the Labor Standards Enforcement Officer. The hearing shall occur within forty five days~~  
9 ~~of the request, unless all parties agree to an extended period. The determination of the City~~  
10 ~~Administrator, or his/her designee, shall be final. The contractor or subcontractor may appeal such~~  
11 ~~determination only by action at law for breach of contract. (i) The contractor or subcontractor may~~  
12 ~~request a hearing in writing within 15 days of the date of the notification of forfeiture. The request~~  
13 ~~shall be directed to the City Controller. Failure by the contractor or subcontractor to submit a timely,~~  
14 ~~written request for a hearing shall constitute concession to the assessment and the forfeiture shall be~~  
15 ~~deemed final upon expiration of the 15-day period; (ii) Within 15 days of receiving a proper request,~~  
16 ~~the Controller shall appoint a hearing officer with knowledge and not less than five years' experience~~  
17 ~~in labor law, prevailing wage, and/or wage and hour issues, and shall so advise the enforcing official~~  
18 ~~and the contractor or subcontractor, and/or their respective counsel or authorized representative; (iv)~~  
19 ~~The hearing officer shall be responsible for all communications between the parties; (v) (iii)~~  
20 ~~The hearing officer shall promptly set a date for a hearing. The hearing must occur commence~~  
21 ~~within 45 days of the notification of the appointment of the hearing officer and conclude within 75~~  
22 ~~days of such notification unless all parties agree to an extended period; (v)(iv) The contractor or~~  
23 ~~subcontractor shall have the burden of proving that the basis for the backwage and penalty assessment~~  
24 ~~is incorrect; (vi) If the hearing officer seeks to resolve a preliminary or procedural matter prior~~  
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1 to the hearing, the hearing officer shall do so expeditiously and shall issue a decision on such  
2 matter not later than ten days from the date the preliminary issue is raised; (vii) (v) Within 30  
3 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming,  
4 modifying, or dismissing the assessment. The decision of the hearing officer shall consist of findings  
5 and a determination. The hearing officer's findings and determination shall be final. If the hearing  
6 officer does not issue findings and a determination within the 30-day period, then the original  
7 certification of forfeiture by the enforcing official under the foregoing section 6.22(E)(8)(b) shall  
8 become the final determination, effective 30 days after the date of the hearing; (viii) (vi) The  
9 contractor or subcontractor may appeal the a final determination under this section only by filing in  
10 the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil  
11 Procedure, section 1084, et seq., section 1094.5, as it may be amended as applicable and as  
12 may be amended from time to time.

13 **(d) Distribution of Forfeiture.** The Controller shall withhold any forfeiture as provided  
14 in the foregoing paragraphs until such time as either the contractor or subcontractor has  
15 conceded to the forfeiture or, in the event of an objection, there is a determination no longer  
16 subject to judicial review. The Controller shall then distribute the amounts withheld in the  
17 following order: (1) the Labor Standards Enforcement Officer shall make its best efforts to  
18 distribute back wages withheld to the individual workers identified as not having been paid the  
19 proper wage rate; (2) the penal sums provided for above shall inure to the benefit of the  
20 general fund of the City and County of San Francisco; (3) the Controller shall hold the balance  
21 of any back wages in escrow for workers whom the Labor Standards Enforcement Officer,  
22 despite his/her best efforts, cannot locate; funds so held for two years or more shall be  
23 dedicated to the enforcement of the prevailing wage requirements.

24 **(F) Hours and Days of Labor.**  
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1       **(1) Generally.** For the purpose of meeting prevailing conditions and enabling employers  
2 to secure a sufficient number of satisfactory workers and artisans, no person performing labor  
3 or rendering service in the performance of any contract or subcontract for any public work or  
4 improvement as defined in this Chapter shall perform labor for a longer period than five days  
5 (Monday through Friday) of eight hours each, with two 10-minute breaks per eight-hour day,  
6 except in those crafts in which a different work day or week now prevails by agreement in  
7 private employment. Any person working hours in addition to the above shall be  
8 compensated in accordance with the prevailing overtime standards and rates.

9       **(2) Noncompliance - Penalties and Forfeiture.** Any contractor or subcontractor who  
10 shall violate any of the provisions of this subsection shall be liable for the same penalties and  
11 forfeits as those specified in Subsection 6.22(E) of this Chapter; penalties and forfeits shall be  
12 applicable for each laborer, mechanic or artisan employed for each calendar day or portion  
13 thereof whereon such laborer, mechanic or artisan is compelled or permitted to work more  
14 than the days and hours specified herein. The provisions of this subsection shall be made a  
15 part of all contracts and subcontracts for the construction of any public work or improvement.

16       **(3) Contracts Outside City and County.** In the event that any public work or  
17 improvement is to be constructed outside of the City and County of San Francisco and at such  
18 a distance therefrom that those engaged in performing labor on said public work or  
19 improvement must under ordinary conditions remain at or near the site of said work or  
20 improvement when not actually engaged in the performance of labor thereon, then the officer,  
21 board or commission responsible for the construction of said public work or improvement may,  
22 in making specifications or letting contracts therefor, make provision therein for days and  
23 hours of labor beyond the limitations provided for in Section 6.22(F) of this Chapter; but not to  
24 exceed eight hours in any one calendar day, or six days in any calendar week. In the event  
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1 that emergency conditions shall arise, making a change advisable during the performance of  
2 any such contract, or any portion thereof, the hours and days of labor may be extended  
3 beyond the limits hereinabove expressed; but not to exceed eight hours per day, upon the  
4 written authority of the officer, board or commission awarding such contract. Failure of the  
5 contractor to perform such contract within the time provided shall not constitute an  
6 emergency.

7 **(G) Local Hiring.**

8 **(1) Contract Requirements.** All construction contracts for public works or  
9 improvements to be performed within the boundaries of the City and County of San Francisco  
10 shall contain the following provisions:

11 Contractor agrees to make a good-faith effort, with the assistance of community organizations  
12 designated by the City or local labor union hiring halls, to hire qualified individuals who are  
13 residents of the City and County of San Francisco to comprise not less than 50% of each  
14 contractor's total construction work force, measured in labor work hours, and contractor  
15 promises to give special preference to minorities, women and economically disadvantaged  
16 individuals.

17 Contractor shall keep, and provide to the City, an accurate record showing the name, place of  
18 residence, hours employed and per diem pay of each person employed by the contractor,  
19 including full-time, part-time, permanent and temporary employees.

20 Contractor shall keep, and provide to the City, an accurate record describing in detail  
21 contractor's good-faith efforts to secure employment of residents of the City and County of  
22 San Francisco.

23 A failure to abide by these contract provisions may result in the imposition of sanctions and  
24 penalties, including those provided for in San Francisco Administrative Code Section 6.80.

1           **(2) Definitions.**

2           "Qualified individual" shall mean an individual who (A) is eligible for a certified  
3 apprenticeship program in an applicable trade; (B) has completed a certified apprenticeship  
4 program in an applicable trade; or (C) has completed comparable time in an applicable trade.

5           "Resident of the City and County of San Francisco" shall mean an individual who is  
6 domiciled, as defined by Section 200(b) of the California Election Code, within the boundaries  
7 of the City and County during the entire time of the performance of the contract and who can  
8 verify his or her domicile, upon request of the contractor or City, by producing documentation  
9 such as a rent/lease agreement, telephone and utility bills or payment receipts, a valid  
10 California driver's license or identification card, and/or any other similar, reliable evidence that  
11 verifies that the individual is domiciled within the City and County of San Francisco.

12           "Economically disadvantaged" shall mean an individual who has been unable to secure  
13 employment in his or her trade for more than 20 working days in the past six months, or  
14 whose annual maximum income falls within the income limits established by the Mayor's  
15 Office of Community Development for the Community Development Block Grant (CDBG)  
16 programs.

17           **(3) Enforcement.** The Human Rights Commission shall be the City agency charged  
18 with the monitoring and enforcement of the provisions of this subsection.

19           **(H) Modifications—General Requirements.** If it becomes necessary in the  
20 prosecution of any public work or improvement under contract to make alterations or  
21 modifications or to provide for extras, such alterations, modifications or extras shall be made  
22 only on written recommendation of the department head responsible for the supervision of the  
23 contract, together with the approval of the Mayor or the Mayor's designee or the board or  
24 commission, as appropriate to the department, and also the approval of the Controller, except  
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1 as hereafter provided. The Mayor or the board or commission, as appropriate to the  
2 department, may delegate in writing the authority to approve such alterations, modifications or  
3 extras to the department head, except as provided below. The Controller may delegate in  
4 writing the authority to encumber funds from prior appropriations for such alterations,  
5 modifications or extras to the department head prior to the certification for payment. Such  
6 authority, when granted, will clearly state the limitations of the changes to be encompassed.

7 **(1) Increasing or Decreasing Price.** Alterations, modifications or extras in any  
8 contract, which will increase or decrease the contract cost or scope, may be made or allowed  
9 only on the written recommendation of the department head responsible for the supervision of  
10 the contract stating the amount and basis for such increase or decrease. For any cumulative  
11 increase or decrease in price in excess of ten percent of the original contract price or scope,  
12 the department head shall obtain the approval of the Mayor or Mayor's designee or the board  
13 or commission as appropriate and also the approval of the Controller notwithstanding any  
14 delegation provided for above.

15 **(2) Extensions of Time.** Upon finding that work under a construction contract cannot  
16 be completed within the specified time because of an unavoidable delay as defined in the  
17 contract, the department head may extend the time for completion of the work. If the  
18 cumulative extensions of time exceeds ten percent of the original contract duration, the  
19 department head shall first obtain the approval of the Mayor, the Mayor's Designee, board or  
20 commission, as appropriate to the department notwithstanding any delegation provided for  
21 above. All time extensions shall be in writing, but in no event shall any extension be granted  
22 subsequent to the issuance of a certificate of final completion.

23 **(a) Time Extension Not Waiver of City's Rights.** The granting of an extension of time  
24 because of unavoidable delays shall in no way operate as a waiver on the part of the City and  
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1 County or the department head, Mayor, board or commission of the right to collect liquidated  
2 damages for other delays or of the right to collect other damages or of any other rights to  
3 which the City and County is entitled.

4 **(b) No Extension Granted When Contract Based on Time Estimates.** When any  
5 award of contract has been made in consideration, in whole or in part, of the relative time  
6 estimates of bidders for the completion of the work, no extension of time may be granted on  
7 such contract beyond the time specified for completion, unless the liquidated damages for  
8 each day the work is uncompleted beyond the specified time shall be collected; provided,  
9 however, that this shall not apply to unavoidable delays due to acts of God.

10 **(c) Avoidable and Unavoidable Delay; Limitation of Damages for Delay.** The  
11 department head administering the public work shall have the authority to specify in the  
12 contract the delays that shall be deemed avoidable or unavoidable. The City and County shall  
13 not pay damages or compensation of any kind to a contractor because of delays in the  
14 progress of the work, whether such delays be avoidable or unavoidable; provided, however,  
15 the City and County may pay for (1) delays caused to the contractor by the City and County;  
16 and (2) such unavoidable delays as may be specifically stated in the contract. Such latter  
17 delays will be compensated for only under the conditions specified in the contract.

18 **(d) Notice of Delay Required.** The contractor shall promptly notify the department  
19 head in writing, of all anticipated delays in the prosecution of the work and, in any event,  
20 promptly upon the occurrence of a delay, the notice shall constitute an application for an  
21 extension of time only if the notice requests such extension and sets forth the contractor's  
22 estimate of the additional time required together with a full recital of the causes of unavoidable  
23 delays relied upon. The department head may take steps to prevent the occurrence or  
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1 continuance of the delay, may classify the delay as avoidable or unavoidable and may  
2 determine to what extent the completion of the work is delayed thereby.

3 **(I) Liquidated Damages.** Any contract may provide a time within which the contract  
4 work, or portions thereof, shall be completed and may provide for the payment of agreed  
5 liquidated damages to the City and County for every calendar or working day thereafter during  
6 which such work shall be uncompleted.

7 **(J) Retention of Progressive Payments.** Any contract may provide for progressive  
8 payments, if the Advertisement For Bids shall so specify. No progressive payments under  
9 any contract shall be made which, with prior payments, shall exceed in amount 90 percent of  
10 the value of the work and labor and materials furnished. However, if the department head  
11 responsible for the public work determines that the contract is 50 percent or more complete,  
12 that the contractor is making satisfactory progress and that there is no specific cause for  
13 greater withholding, progressive payments may be made not to exceed in amount the lesser  
14 of either 95 percent of the value of the work and labor and material furnished or 95 percent of  
15 the contract price. When the department head responsible for the public work determines that  
16 the contract is 95 percent complete, funds withheld may be reduced to an amount equal to  
17 200 percent of the estimated value of the work yet to be completed as determined by the  
18 department head.

19 **(K) Inspection and Acceptance of Completed Work; Final Payment.** The  
20 department head authorized to execute any contract for public works or improvements shall  
21 be responsible for the inspection and acceptance of such work on completion. Such  
22 acceptance shall be in writing and shall include the certificate of the department head  
23 concerned that the work covered by the contract has been fully and satisfactorily completed in  
24 accordance with the plans and specifications therefor. Receipt of copy of such acceptance in  
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1 writing shall constitute the Controller's authority to complete any payments due the contractor  
2 under the contract; provided that the Controller may make such additional investigation or  
3 inspection as is provided by Administrative Code Section 10.07.

4 **(L) Termination for Convenience.** In all contracts for the construction of any public  
5 work or improvement, the department head authorized to execute any contract for any public  
6 work or improvement may include in the specifications setting forth the terms and conditions  
7 for the performance of the contract a provision that the City and County may terminate the  
8 performance of work under the contract whenever the department head shall determine, with  
9 the approval of the Mayor, the Mayor's designee or the board or commission concerned, that  
10 such termination is in the best interest of the City and County. Any such termination shall be  
11 effected by delivery to the contractor of a notice of termination specifying the extent to which  
12 performance of work under the contract is terminated and the date upon which such  
13 termination becomes effective. The department head is hereby authorized to include within  
14 such construction contract the appropriate language to implement this subsection.

15 **(M) Violations of Chapter 6; False Claims.** Every public work contract performed at  
16 the expense of the City and County of San Francisco, or the cost of which is paid for out of  
17 monies deposited in the treasury of the City and County, whether directly awarded or  
18 indirectly by or under subcontract, subpartnership, day labor, station work, piece work or any  
19 other arrangement whatsoever, shall incorporate the provisions of Article V (commencing at  
20 Section 6.80) of this Chapter, relating to administrative debarments and false claims. The  
21 failure to include such reference or incorporation shall not in any way abrogate the rights of  
22 the City and County under Article V of this Chapter.

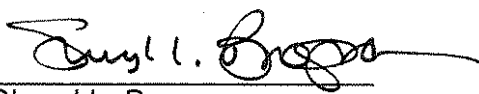
23 **(N) Articles Not to be Prison Made.** No article furnished under any contract awarded  
24 under the provisions of this Chapter shall have been made in a prison or by convict labor  
25

1 except for articles made in prisons or by convicts under the supervision and control of the  
2 California Department of Corrections and limited to articles for use by the City and County's  
3 detention facilities.

4 **(O) Employment of Apprentices.** All construction contracts awarded under this  
5 Chapter shall require the Contractor to comply with the requirements of the State  
6 Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4  
7 [commencing at Section 3070] and Section 1777.5), as it may be amended from time to time,  
8 and shall require the Contractor to include in its subcontracts the obligation for subcontractors  
9 to comply with the requirements of the State Apprenticeship Program.

10 **(P) Safety.** All construction contracts awarded under this Chapter shall require the  
11 Contractor and all of its subcontractors to abide by the applicable Occupational Safety and  
12 Health statutes and regulations.

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17  
18 APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

19 By:   
20 Sheryl L. Bregman  
21 Deputy City Attorney  
22  
23  
24  
25



# City and County of San Francisco

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

## Tails Ordinance

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**File Number:** 050215

**Date Passed:**

Ordinance amending San Francisco Administrative Code Section 6.22, at subsection 6.22(E)(8)(c), to revise the recourse hearing procedures for contractors challenging forfeitures for prevailing wage violations on public work projects.

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May 24, 2005 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell,  
McGoldrick, Mirkarimi, Peskin, Sandoval

June 7, 2005 Board of Supervisors — FINALLY PASSED


Ayes: 11 - Alioto-Pier, Ammiano, Daly, Dufty, Elsbernd, Ma, Maxwell,  
McGoldrick, Mirkarimi, Peskin, Sandoval

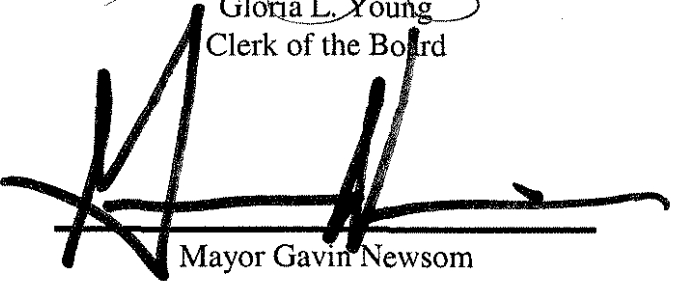
File No. 050215

I hereby certify that the foregoing Ordinance  
was FINALLY PASSED on June 7, 2005 by  
the Board of Supervisors of the City and  
County of San Francisco.

JUN 10 2005

~~\_\_\_\_\_~~  
Date-Approved

  
\_\_\_\_\_  
Gloria L. Young  
Clerk of the Board

  
\_\_\_\_\_  
Mayor Gavin Newsom