

LEGISLATIVE DIGEST
(Duplicated, 12/8/2024)

[Administrative, Labor and Employment Codes - Prevailing Wage and Other Labor Requirements]

Ordinance amending the Administrative Code and Labor and Employment Code to move certain employment-related provisions, including, among others, certain Prevailing Wage requirements, apprenticeship requirements, and hours and days of labor requirements, from the Administrative Code to the Labor and Employment Code; establish new defined terms encompassing the projects and contracts subject to Prevailing Wage requirements; revise penalty and enforcement requirements and procedures for Prevailing Wage and certain other labor requirements; change the process for fixing and determining Prevailing Wage rates; move and revise the Transition Employment requirements and create new enforcement procedures for those requirements; apply Notice of Forfeiture/Certification of Forfeiture procedures for violations of Prevailing Wage requirements on Covered Real Estate Projects; renumber certain Municipal Code sections or provisions; and make other substantive or technical amendments to the Administrative Code and Labor and Employment Code, including, among others; and eliminating certain exemptions from Prevailing Wage requirements for Broadcast Services work and the work of loading and unloading Commercial Vehicles on City property, while creating an exemption from Prevailing Wage requirements for work covered by the Modular Furniture Installers (Carpenters) classification.

Existing Law

The San Francisco Municipal Code has prevailing wage and other labor requirements located in the Labor and Employment Code (“LEC”), as well as Chapters 6 and 23 of the Administrative Code. Examples of these provisions include the following: Article 102 of the LEC requires the payment of prevailing wages for certain service work performed under, or arising from, City contracts, permits, or other types of agreement. Article 102 further requires successor contractors on certain City contracts comply with worker retention requirements. Chapter 6 of the Administrative Code requires contractors on Public Works or Improvements pay workers Prevailing Wages and comply with standards for hours and days of labor. Chapter 6 creates a definition of Public Work or Improvement for Prevailing Wage purposes alone, and this definition encompasses both Section 6.1 of the Administrative Code’s definition of Public Works or Improvements and projects qualifying as “public works” under Section 1720 of the State Labor Code. Chapter 23 of the Administrative Code requires certain construction work related to real estate transactions with the City comply with Prevailing Wage requirements and certain State requirements for the employment of apprentices. Each of LEC Article 102, Administrative Code Chapter 6, and Administrative Code Chapter 23 contains enforcement provisions.

Amendments to Current Law

This ordinance reorganizes the San Francisco Municipal Code to move labor provisions from Administrative Code Chapter 6 and Chapter 23 to the LEC, and makes substantive revisions to the labor provisions of the Administrative Code and the LEC. The ordinance creates LEC Articles 101, 103, 104, 105, 106, 107, 108, and 109, and amends LEC Article 102.

I. Reorganization

The following table provides a high-level summary of the ordinance’s reorganization of some Municipal Code labor provisions. The table does not identify every change, or for each provision relocated, provide all details on the reorganization. For instance, where the ordinance takes language from a single provision and relocates the majority of that language to one location, but relocates other language to another location, the table may identify the primary relocation only.

General Description of Provision	Location of Provision in Existing Code	Location of Corresponding Provision in Amended Code
Administrative Code Chapter 6		
Definition of Prevailing Wage or Prevailing Rate of Wages	Admin. Code § 6.1	LEC § 101.1
Requirement to Pay Prevailing Wages	Admin. Code §§ 6.22(e)(1), (2)	LEC §§ 101.1, 103.1
Fixing and Determining the Prevailing Rate of Wages	Admin. Code § 6.22(e)(3)	LEC § 103.2
Contract Documents to Include Wage Rate	Admin. Code § 6.22(e)(4)	LEC § 103.3(d)
Subcontractors Bound by Wage Provisions	Admin. Code § 6.22(e)(5)	LEC § 103.3(b)
Records to be Kept by Contractors and Subcontractors	Admin. Code § 6.22(e)(6)	LEC § 103.3(e)
Additional Required Contract Provisions	Admin. Code § 6.22(e)(7)	LEC § 103.3(c)
Enforcement	Admin. Code § 6.22(e)(8)	LEC Art. 106
Hours and Days of Labor	Admin. Code § 6.22(f)	LEC Art. 105
Office of Labor Standards Enforcement	Admin. Code § 6.24	LEC Art. 107

Administrative Code Chapter 23		
Real Property Prevailing Wage and Apprenticeship Requirements	Admin. Code §§ 23.61(a), (b)	LEC Arts. 101, 103, 104
City as Third Party Beneficiary	Admin. Code § 23.61(c)	LEC § 103.3(f)
Enforcement for Real Property Prevailing Wage and Apprenticeship Requirements	Admin. Code § 23.61(d)	LEC Art. 106
Real Property Local Hire Requirements	Admin. Code § 23.62	LEC Art. 108
Labor and Employment Code Article 102		
Requirement to Pay Prevailing Wages for Covered Contracts	LEC § 102.1(a)	LEC Art. 103
Definitions for Prevailing Wage Requirements for Covered Contracts	LEC § 102.1(b)	LEC §§ 101.1, 102.1
Fixing and Determining the Prevailing Rate of Wages for Covered Contracts	LEC § 102.1(c)(1)	LEC § 103.2
Enforcement of Prevailing Wage Requirements for Covered Contracts	LEC § 102.1(c)(4)	LEC Art. 106
Transition Employment Requirements	LEC § 102.1(d)	LEC Art. 109

II. Substantive Amendments

The ordinance makes a number of substantive amendments to the City’s Municipal Code. The following is a summary of some of the significant substantive amendments; however, the ordinance contains amendments – including substantive amendments and non-substantive or technical amendments – beyond those discussed in this Legislative Digest.

The ordinance relocates some existing definitions related to Prevailing Wages and certain other labor requirements to LEC Article 101, and creates new defined terms for the classes of projects subject to Prevailing Wage requirements. The ordinance defines Covered Project as a new umbrella term for construction projects subject to Prevailing Wage requirements, including, without limitation, contracts for construction, demolition, alteration,

repair, and/or maintenance. There are three sub-definitions within the broader definition of Covered Project:

- (1) Covered Local Project encompasses projects that are subject to Prevailing Wage requirements because they fall within Chapter 6 of the Administrative Code's definition of Public Work or Improvement; they qualify as residential projects required to comply with "City Contracting Requirements" pursuant to Chapter 43, Article IX of the Administrative Code; or they are projects required to pay Prevailing Wages pursuant to the City Loan program in Administrative Code Section 66.13;
- (2) Covered State Project encompasses projects that are subject to Prevailing Wage requirements through the City's Municipal Code incorporating, and adopting by reference – for Prevailing Wage purposes alone – certain state Prevailing Wage requirements, such as the California Labor Code's definition of "public works"; and
- (3) Covered Real Estate Project encompasses projects arising from a City property sale contract or lease that are subject to Prevailing Wage requirements.

Covered Contracts remains the defined term for service contracts and other service agreements for which LEC Article 102 requires the payment of Prevailing Wages.

The ordinance creates a new Article 103 of the LEC, which requires, among other things, the payment of Prevailing Wages on all Covered Projects and Covered Contracts. Some notable substantive changes located in Article 103 include the following:

- Section 103.1 clarifies that where the rate required by the Minimum Compensation Ordinance, Labor and Employment Code Article 111, exceeds the Prevailing Rate of Wages, the worker shall be entitled to the higher rate of the Minimum Compensation Ordinance.
- Section 103.2 provides the process by which the Board of Supervisors sets the Prevailing Rate of Wages under the City's Municipal Code. The ordinance sets a deadline of December 31st of each year for the Board of Supervisors to fix and determine the Prevailing Rate of Wages, and establishes that if the Board of Supervisors does not do so by the deadline, the Civil Service Commission's recommended rates shall become the Prevailing Rate of Wages. In addition, the ordinance expressly endorses and permits the Board of Supervisors to fix the Prevailing Rate of Wages to track and match future wage determinations issued by the California Department of Industrial Relations.

The ordinance creates LEC Article 106, which establishes consolidated penalty and enforcement provisions for Prevailing Wage, Apprenticeship, and Hours and Days of Labor requirements. The penalty and enforcement provisions are similar to the provisions that were

previously located in subsection 6.22(e) of the Administrative Code. Where the City can withhold funds under a contract, Article 106 provides for enforcement by the Office of Labor Standards Enforcement (“OLSE”) or the contracting Department Head through the issuance of a Notice of Forfeiture/Certification of Forfeiture (“NOF/COF”). Where the City is unable to withhold funds, Article 106 provides for OLSE’s or the Department Head’s enforcement through the issuance of a Determination of Violation (“DOV”). The amendments also make the following changes to the relevant penalty provisions:

- (1) For Covered Contracts, Article 106 provides for enforcement through the City’s issuance of a NOF/COF or DOV for violations, recourse procedures, and provisions detailing a party’s right to appeal. Also, Article 106 subjects Covered Contracts to penalties under Section 106.1, including penalties of not less than \$50 for each day or portion thereof during the violation. Article 102 of the LEC provided for penalties of not more than 10% of the contract value upon a finding of a willful violation.
- (2) Previously, Covered Real Estate Projects were subject to enforcement through the DOV process. Under Article 106, where the City has the ability to withhold funds, Covered Real Estate Projects are subject to enforcement through the NOF/COF process under Section 106.2. For the purposes of Section 106.2, funds disbursed through a City loan for a Covered Real Estate Project do not qualify as funds the City has the ability to withhold

The ordinance also amends Article 102 of the Labor and Employment Code. Amendments include:

- (1) The ordinance moves the LEC’s Transition Employment Requirements from subsection 102.1(d) to a new LEC Article 109, with Article 109 providing for OLSE enforcement or civil enforcement;
- (2) For Moving Services contracts as defined under Section 102.6, the amendments create an exemption for work covered by the California Department of Industrial Relations’ Modular Furniture Installers (Carpenters) classification;
- (3) For Motor Bus Service contracts as defined under Section 102.7, the amendments remove the Purchaser’s discretion to omit a contract from coverage where the contract would otherwise meet the requirements of the Section;
- (4) For Trade Show and Special Event Work on City property as defined under Section 102.8, the amendments strike the exemption from coverage for “[a]ny permit or agreement to engage in film production pursuant to Chapter 57 of this Code or under the circumstances set forth in Section 57.7 of this Code”; and clarify the definition of “Exhibit, Display, or Trade Show Work” to include enclosures, tenting, and furniture;

- (5) For Broadcast Services work as defined under Section 102.9, the amendments delete the exemption for work covered by a collective bargaining agreement; and
- (6) For loading and unloading of commercial vehicles on City property as defined under Section 102.10, the amendments delete the exemption for work covered by a collective bargaining agreement.

Background Information

The creation of the LEC provides an opportunity for the City to reorganize and consolidate the Municipal Code's Prevailing Wage requirements, as well as certain other labor requirements, in a more logical location. The ordinance achieves this by creating LEC Articles 101 and 103 through 109, and by amending the definitions encompassing projects or contracts subject to Prevailing Wage requirements.

As of 2024, the City's Municipal Code contained multiple provisions related to the payment of Prevailing Wages, including in Chapters 6 and 23 of the Administrative Code and Article 102 of the Labor and Employment Code. Prevailing Wage requirements have grown in complexity and length, with Chapter 6, Chapter 23, and Article 102 each having distinct requirements that differ from one another in significant ways. Locating such provisions across multiple codes, chapters, and articles can make it more difficult for City officials and employees and for the public (including, among others, employees, unions, and businesses) to find and understand the requirements, which is key to ensuring that workers receive legally required wage and fringe benefits.

The Municipal Code also currently has separate requirements and enforcement procedures for different types of projects or contracts subject to Prevailing Wage requirements. The ordinance amends the Municipal Code to consolidate and streamline the enforcement procedures and clarify OLSE's authority, making the requirements and procedures easier to find and more understandable to City officials and employees and the public.

In addition, a central purpose of the ordinance is to improve the process for the City to adopt wage rates for the various worker classifications. The wage rates the Board of Supervisors adopts are generally based on the rates of the California Department of Industrial Relations ("DIR"), which issues two rates per year for each classification: one takes effect in March, and the other takes effect in September. The ordinance confirms that the Board of Supervisors generally sets rates to track the DIR's rates. Also, the ordinance sets a December 31st deadline for the Board of Supervisors to fix and determine the Prevailing Rate of Wages, and makes the Civil Service Commission's recommended rates effective if the Board of Supervisors does not act. These changes will help the City's Prevailing Wage rates reasonably consistent with wage trends in private employment.