

LEGISLATIVE DIGEST

[Administrative Code Amendment – San Francisco Local Hiring Policy for Construction]

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

Existing Law

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

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

Amendments to Current Law

Subsection 6.22(G) is amended to:

- Rename the subsection the San Francisco Local Hiring Policy for Construction (the "Policy"). (New subsection 6.22(G).)
- Make findings in support of the Policy. (New subsection 6.22(G)(1).)
- Define various terms used in the Policy, including covered project, disadvantaged worker, local resident, and project work hours. (New subsection 6.22(G)(2).)
- Require application of the Policy to public work or improvement contracts with prime contractors estimated to cost more than \$350,000, and to each contractor and subcontractor who performs more than \$100,000 of project work on such projects. (New subsections 6.22(G)(3)(a) and 6.22(G)(4)(a).)

- Require application of the Policy to City projects constructed outside of the City with percentage requirements proportional to the City's investment in the project. (New subsection 6.22(G)(3)(b).)
- Establish required procedures for projects using federal or state funds if application of the Policy would violate federal or state law, or would be inconsistent with the terms or conditions of a grant or contract with an agency of the United States or the State of California. (New subsection 6.22(G)(3)(c).)
- Exempt project work hours performed by residents of states other than California from local hiring requirements of the Policy, and require the Office of Economic and Workforce Development (“OEWD”) to track work hours performed by non-California residents and report such statistics to the Board on an annual basis. (New subsection 6.22(G)(3)(d).)
- For project work performed during the first year after the effective date of the Ordinance, require at least 30% of project work hours on covered projects be performed by local residents, with no less than 15% of project work hours performed by disadvantaged workers. (New subsection 6.22(G)(4)(b).)
- For project work performed during the second year after the effective date of the Ordinance, require at least 40% of project work hours on covered projects be performed by local residents, with no less than 20% of project work hours performed by disadvantaged workers. (New subsection 6.22(G)(4)(c).)
- For project work performed during the third year after the effective date of the Ordinance and thereafter, require at least 50% of project work hours on covered projects be performed by local residents, with no less than 25% of project work hours performed by disadvantaged workers. (New subsection 6.22(G)(4)(d).)
- For covered projects advertised after the effective date of the Policy, require at least 50% of project work hours performed by apprentices on covered projects be performed by local residents, with no less than 25% of apprentice project work hours performed by disadvantaged workers. (New subsection 6.22(G)(4)(e).)
- Authorize and require financial and non-financial incentives for contractors and subcontractors who exceed local hiring requirements, including financial incentives not to exceed two percent of the estimated cost of the contract and non-financial incentives developed by OEWD through regulation. (New subsection 6.22(G)(5).)
- Require prime contractors for projects estimated to cost in excess of \$1,000,000 to prepare and submit a local hiring plan to OEWD for approval. (New subsection 6.22(G)(6)(a).)

- Require a contractor or subcontractor to use referral sources identified by OEWD if contractor's or subcontractor's preferred or preexisting method of hiring does not enable contractor or subcontractor to meet the local hiring requirements of the Policy. (New subsection 6.22(G)(6)(b).)
- Clarify that the Policy does not limit a contractor's or subcontractor's ability to assess qualifications of prospective workers or to make final hiring and retention decisions. (New subsection 6.22(G)(6)(c).)
- Require that the City have third party beneficiary rights under subcontracts to enforce the requirements of the Policy directly against subcontractors. (New subsection 6.22(G)(6)(d).)
- Authorize OEWD to enforce the Policy and require awarding departments to work cooperatively with OEWD. (New subsection 6.22(G)(7)(a).)
- Authorize OEWD to engage community-based partners in the City's workforce development system to assist in attaining compliance with the Policy and the recruitment and retention of targeted workers. (New subsection 6.22(G)(7)(b).)
- Establish recordkeeping requirements relating to the Policy. (New subsection 6.22(G)(7)(c).)
- Establish various reporting and monitoring requirements relating to the Policy. (New subsections 6.22(G)(7)(d) – (e).)
- Establish various consequences of noncompliance with the Policy, including assessment of liquidated damages against contractors and subcontractors who fail to satisfy local hiring requirements in an amount equal to the journeyman prevailing wage rate for the primary trade used by the contractor or subcontractor on the project for each hour by which contractor or subcontractor fell short of the local hiring requirement. (New subsection 6.22(G)(7)(f)(ii).)
- Establish a process for assessment of liquidated damages, including a hearing procedure for contractors or subcontractors who wish to contest an assessment. (New subsections 6.22(G)(7)(f)(iii), (iv).)
- Authorize a contractor or subcontractor to avoid an assessment of liquidated damages if the contractor or subcontractor sponsors a targeted worker for application into a state-registered apprenticeship program, subject to certain restrictions and requirements. (New subsection 6.22(G)(7)(f)(iv).)

- Require liquidated damages collected for violations of the Policy be distributed to a special account, and the funds deposited into that account be used to support enforcement of the Policy and workforce development initiatives. (New subsection 6.22(G)(7)(f)(vi).)
- Authorize and require OEWD to issue regulations and administrative guidance implementing the Policy. (New subsection 6.22(G)(8)(a).)
- Authorize OEWD and awarding departments to enter into contracts for investigative or monitoring services to further the purposes of the Policy. (New subsection 6.22(G)(8)(b).)
- Subject to the fiscal and budgetary provisions of the Charter and applicable federal and state laws and regulations, authorize OEWD to receive funds from awarding departments to support monitoring and enforcement of the Policy. (New subsection 6.22(G)(8)(c).)
- Require application of the Policy to covered projects advertised for bids more than 30 days after the effective date of the ordinance. (New subsection 6.22(G)(8)(d).)
- Clarify application of the Policy to existing project labor agreements. (New subsection 6.22(G)(8)(e).)
- Require the Board to periodically review the Policy at a minimum of once every five years to determine whether there is a continuing need to ensure adequate local resident hiring. (New subsection 6.22(G)(8)(f).)
- Require that all contracts for performance of project work include compliance with the Policy as a material term. (New subsection 6.22(G)(8)(g).)
- Authorize awarding departments and OEWD to negotiate reciprocity agreements with other jurisdictions that maintain local hiring programs, subject to approval of the Board by resolution. (New subsection 6.22 (G)(8)(j).)

Background Information

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

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