

1 [Administrative Code - Retention of Progressive Payments for Public Works Construction  
2 Contracts]

3 **Ordinance amending the San Francisco Administrative Code Section 6.22(J) to reduce**  
4 **the amount of retention withheld from progress payments in construction contracts**  
5 **from ten to five percent; and to make minor clarifying corrections.**

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

10  
11 Be it ordained by the People of the City and County of San Francisco:

12 Section 1. The San Francisco Administrative Code is hereby amended by amending  
13 Section 6.22(J), to read as follows:

14 (J) **Retention of Progressive Payments.** Any contract *for construction services* may  
15 provide for progressive *or milestone* payments, if the Advertisement For Bids shall so specify.  
16 Each progress *or milestone* payment shall constitute full compensation for the value of work  
17 performed and materials furnished for a specified period, less amounts withheld as a result of  
18 dispute or as required by law.

19 (1) *For all contracts entered into on or after the effective date of this*  
20 *Ordinance, from ~~From~~ every progress payment, the City shall hold ~~5~~ percent in retention.*

21 (2) *Notwithstanding the subparagraph above, the City may hold greater than*  
22 *5 percent but not more than 10 percent in retention if the Department head responsible for the public*  
23 *work determines that the work or improvement is substantially complex and therefore warrants a*  
24 *higher retention amount, and the retention amount is specified in the Advertisement For Bids. For*  
25 *contracts with retention amounts greater than 5 percent, if the Department head responsible for*

1 the public work determines that the contract is 50 percent or more complete, that the  
2 contractor is making satisfactory progress, and that there is no specific cause for greater  
3 withholding, the Department head, upon the written request of contractor, may authorize one  
4 of the following two options: (a) the City shall release part of the retention to the contractor so  
5 that the amount held in retention by the City, after release to the contractor, is reduced to an  
6 amount not less than 5 percent of the total value of the labor and materials furnished, and the  
7 City shall proceed to retain 5 percent of any subsequent progress payment under the contract;  
8 or (b) the City shall continue to hold the already withheld retention amount, up to 5 percent of  
9 the total contract price, and shall not deduct further retention from progress payments.

10 (3) The Department head shall authorize the release of retention, in  
11 whole or in part, for work completed by subcontractors certified by the HRC as LBEs. The  
12 Department head shall do so only upon a written request by the contractor certifying (i) the  
13 work by the certified LBE subcontractor is completed and satisfactory in accordance with the  
14 plans and specifications for the project; (ii) the total ~~final~~ amount paid to the certified LBE  
15 subcontractor by the contractor as of the date of the written request and the total amount of the  
16 subcontract; and (iii) the amount of retention associated with the work performed by the  
17 certified LBE subcontractor. Following a release of such retention, and in order to calculate  
18 retention and retention withholding from further progress or milestone payments, the City will  
19 reduce the total retention required under the foregoing paragraphs (1) and (2) by the amount  
20 paid to the certified LBE subcontractor(s) for whom the City released the retention. The  
21 release of retention under this subparagraph shall not reduce the responsibilities or liabilities  
22 of the contractor or its surety under the contract or applicable law. For any contract awarded  
23 under this Chapter prior to the enactment of this subparagraph, a Department head may in his  
24 or her sole discretion incorporate this subparagraph by change.

1 (4) The Department head shall authorize the release of retention, in  
2 whole or in part, for work completed by subcontractors under any public work contract  
3 awarded under this Chapter with a construction duration of more than two years. The  
4 Department head shall do so only upon a written request by the contractor certifying (i) the  
5 work by the subcontractor is completed and satisfactory in accordance with the plans and  
6 specifications for the project; (ii) the total ~~final~~ amount paid to the subcontractor by the contractor  
7 as of the date of the written request and the total amount of the subcontract; and (iii) the amount of  
8 retention associated with the work performed by the subcontractor. The City may issue or  
9 authorize the release of retention within six months of the date of the request. Following a  
10 release of such retention, and in order to calculate retention and retention withholding from  
11 further progress or milestone payments, the City will reduce the total retention required under  
12 the foregoing paragraphs (1) and (2) by the amount paid to the subcontractor(s) for whom the  
13 City released retention. The release of retention under this subparagraph shall not reduce the  
14 responsibilities or liabilities of the contractor or its surety under the contract or applicable law.  
15 For any contract awarded under this Chapter prior to the enactment of this subparagraph with  
16 a construction duration of more than two years, a Department head may in his or her sole  
17 discretion incorporate this subparagraph by change order.

18 (5) Retention shall be withheld solely for the benefit and protection of  
19 the City,

20 (6) When the Department head responsible for the public work determines  
21 that the contract is 98 percent or more complete, the Department head may reduce retention funds to  
22 an amount equal to 200 percent of the estimated value of work yet to be completed, plus any amount  
23 necessary to cover offsets by the City for liquidated damages, defective work, stop notices, forfeitures,  
24 and other charges. The City shall release retention to the contractor upon the following  
25 conditions: (a) the contractor has reached final completion under the contract terms and

1 conditions and (b) the contract is free of offsets by the City for liquidated damages, defective  
2 work and the like, and is free of stop notices, forfeitures, and other charges. ~~When the~~  
3 ~~Department head responsible for the public work or his/her designee determines that the contract is 98~~  
4 ~~percent or more complete, the Department head or his/her designee may reduce retention funds to an~~  
5 ~~amount equal to 200 percent of the estimated value of work yet to be completed, provided that the~~  
6 ~~contract is free of offsets by the City and is free of stop notices, forfeitures, and other charges.~~

7 (7) For all contracts awarded under this Chapter, in no event shall the  
8 City be liable for interest or charges arising out of or relating to the date the City issues any  
9 progress, milestone or other payment or the date the City releases all or part of the retention,  
10 except that the City will pay interest at the legal rate, as set forth in section 685.010(a) of the  
11 California Code of Civil Procedure as that section may be amended from time to time, on any  
12 improperly withheld amounts commencing no earlier than 90 days after the date the City  
13 should have made any progress payment or released all or part of the retention. Under no  
14 circumstances shall the legal rate of interest paid by the City under this provision exceed 10  
15 percent per annum. The payment of interest under this provision is the limit of the City's  
16 liability with respect to any claim for interest on improperly withheld amounts.

17 (8) For contracts entered into between January 1, 2012 and the effective  
18 date of this Ordinance, upon the written request of the contractor, the Department head responsible for  
19 the public work shall have the discretion to reduce retention to 5 percent, pursuant to one of the two  
20 options set forth in subparagraph (2).

21 Section 2. Effective Date. This ordinance shall become effective 30 days from the  
22 date of passage.

23 Section 3. This section is uncodified. In enacting this Ordinance, the Board intends to  
24 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
25 punctuation, charts, diagrams, or any other constituent part of the Administrative Code that

1 are explicitly shown in this legislation as additions, deletions, Board amendment additions,  
2 and Board amendment deletions in accordance with the "Note" that appears under the official  
3 title of the legislation.

4  
5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

7 By: \_\_\_\_\_  
8 Yadira Taylor  
9 Deputy City Attorney

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25