

**EXECUTIVE SUMMARY**

**Legislative Objective**

- The proposed ordinance would amend the San Francisco Administrative Code to standardize prevailing wage requirements for all City contracts covered by prevailing wages, consolidate specific provisions into a new Administrative Code Section 21C.7, and amend the San Francisco Police Code Section 3300C.1 to make corresponding changes. The proposed ordinance would not revise existing Administrative Code provisions for public works and construction contracts' prevailing wage requirements.

**Key Points**

- Currently, the City's Administrative Code requires specified businesses, having City contracts, to pay a "prevailing wage" rate to their employees. This includes City contracts for (a) public works and construction, (b) motor bus service, (c) janitorial and window cleaning services, (d) public off-street parking lots, garages, and vehicle storage facilities, (e) theatrical performances, (e) solid waste hauling services, and (f) moving services. Each of these types of contracts has separate Administrative Code sections with different definitions, provisions, and exclusions.
- The proposed ordinance would revise the Administrative Code as follows:
  - a. Currently, with respect to City contracts for janitorial and window cleaning services, public off-street parking lots, garages, and vehicle storage facilities, theatrical performances, solid waste hauling services, and moving services that are covered by collective bargaining agreements, specified businesses may pay their employees less than prevailing wages if the collective bargaining agreement provides for lower wages. Under the proposed ordinance, all City contracts covered by the prevailing wage ordinance would be required to pay prevailing wages, even if the City contracts are covered by collective bargaining agreements.
  - b. Currently, City contracts for public off-street parking lots, garages, and vehicle storage facilities, and solid waste hauling services require new City contractors for these services to offer employment to the employees of the previous contractors for up to 90 days. Under the proposed ordinance, businesses having new City contracts which require the payment of prevailing wages, except for public works and construction contracts, would be required to offer employment to the employees of the previous contractors for up to six months instead of up to 90 days.
  - c. Currently, City contracts for janitorial and window cleaning services and moving services do not require non-profit contractors to pay prevailing wages. Contracts for janitorial and window cleaning services do not require small businesses, defined as businesses with less than 10 employees, to pay their employees prevailing wages. Under the proposed ordinance, businesses having City contracts which require the payment of prevailing wages, including City contracts for janitorial and window cleaning services, would be required to pay prevailing wages to their employees. However, City contracts for moving services would not require the payment of prevailing wages if such services are provided by non-profit contractors.
  - d. Currently, City contracts have different penalties for violating prevailing wage requirements. Under the proposed ordinance, all City contractors, which are required to pay prevailing wages, would be subject to the same penalties for willful violations of prevailing wage requirements. Such penalties would be up to 10 percent of the contracted dollar amount.

- e. Currently, the Administrative Code does not require City contractors, covered by prevailing wage requirements, to hire employees in an employer-employee relationship, as defined by California law. Currently, independent contractors retained by the City contractor, perform such work under the City contracts. Under the proposed ordinance, all City contractors covered by prevailing wages would be required to hire permanent employees rather than retain independent contractors to perform work on the City contracts.
- f. Currently, Administrative Code 21C.5 establishes the permit process for solid waste hauling services. Under the proposed ordinance, Administrative Code Section 21C.5 would be amended to contain a policy statement that any future changes to the Administrative Code permit process for residential solid waste hauling services, including creating a franchise process, would require solid waste hauling companies to pay prevailing wages.

### **Fiscal Impact**

- The fiscal impact of the proposed ordinance, pertaining to any potential increased cost to the City, is unknown. According to Ms. Donna Levitt, Manager of the City’s Office of Labor Standards Enforcement (OLSE), while City contractors may pass through to the City any potential costs as a result of the proposed Administrative Code amendments, OLSE and other City departments do not have sufficient data to quantify the potential cost to the City.

### **Recommendations**

- Approval of the proposed ordinance is a policy decision for the Board of Supervisors.

## **MANDATE STATEMENT / BACKGROUND**

### **Mandate Statement**

In accordance with Section 2.105 of the City’s Charter, any amendments to the Administrative Code must be approved by ordinance of the Board of Supervisors.

### **Background**

The City and County of San Francisco currently has prevailing wage requirements in the Administrative Code for the following types of contracts: (a) public works and construction, (b) motor bus service, (c) janitorial and window cleaning services, (d) public off-street parking lots, garages, and vehicle storage facilities, (e) theatrical performances, (e) solid waste hauling services, and (f) moving services. Currently, each type of contract is subject to different provisions under the respective sections of the Administrative Code. These Administrative Code provisions include certain requirements or conditions for City contracts covered by prevailing wages.

## **DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would revise the Administrative Code to clarify existing language and modify provisions pertaining to specified City contracts, wherein the businesses holding the City contracts are required to pay prevailing wages to their employees related to contracts for (a)

motor bus services (Administrative Code Section 21C.1), (c) janitorial and window cleaning services (Administrative Code Section 21C.2), (d) public off-street parking lots, garages, and vehicle storage facilities (Administrative Code Section 21C.3), (e) theatrical performances (Administrative Code Section 21C.4), (e) solid waste hauling services (Administrative Code Section 21C.5), and (f) moving services (Administrative Code Section 21C.6). The proposed ordinance would not revise Administrative Code Section 6.22(E) covering public works and construction contracts.

Currently, Administrative Code provisions, defining terms and setting certain prevailing wage requirements, are contained in separate sections of the Administrative Code pertaining to specific City contracts. These requirements include the method for setting prevailing wage rates, reporting and compliance, enforcement and penalties, and other related requirements. The proposed ordinance would standardize definitions and prevailing wage requirements, and consolidate such provisions into a new Administrative Code Section 21C.7. San Francisco Police Code Section 3300C.1 would also be amended to reflect the fact that the proposed new Administrative Code Section, 21C.7, would set the prevailing wage requirements for janitors who are covered under the Police Code.

The proposed ordinance would amend Administrative Code Sections 21C.2 through 21C.6 and add a new Administrative Code Section, 21C.7, as follows:

### **Collective Bargaining Agreements**

Currently, Administrative Code Sections 21C.2, 21C.3, 21C.4, 21C.5, and 21C.6 allow businesses having City contracts for janitorial and window cleaning services, public off-street parking lots, garages, and vehicle storage facilities, theatrical performances, solid waste hauling services, and moving services, to pay their employees less than the prevailing wage if the City contracts are covered by collective bargaining agreements with wage rates lower than prevailing wage rates.

Under the proposed ordinance, the new section of the Administrative Code, Section 21C.7, would require all businesses having City contracts covered by prevailing wage requirements to pay prevailing wages to their employees, regardless of whether or not the City contract is covered by a collective bargaining agreement.

### **Transitional Employment**

Currently, Administrative Code Sections 21C.3 and 21C.5, require businesses having new City contracts for public off-street parking lots, garages, and vehicle storage facilities, and solid waste hauling services to offer employment to the employees of the previous City contractor for up to 90 days.

Under the proposed ordinance, the new Administrative Code Section 21C.7 would require all businesses having new City contracts covered by prevailing wage requirements, except for public works and construction contracts, to offer employment to the employees of the previous City contracts for up to six months instead of up to 90 days.

## **Non Profit Exclusion and Small Business Exclusion**

Currently, Administrative Code Sections 21C.2 and 21C.6 allow City contracts for janitorial and window cleaning services and moving services to be excluded from the prevailing wage rates if performed by a non-profit organization. Administrative Code 21C.2 also allows City contracts for janitorial and window cleaning services to be excluded from the prevailing wage rates if performed by a small business defined as having less than 10 employees.

Under the proposed ordinance, the new Administrative Code Section 21C.7 would require businesses having City contracts covered by prevailing wage requirements to pay prevailing wages, including contracts with non-profit organizations and small businesses, except that City contracts for moving services with non-profit organizations would continue to be excluded from prevailing wage requirements.

## **Penalties**

Currently, penalties, imposed on businesses having City contracts for willful violation of not paying prevailing wages to their employees, are either \$50 per employee per day for public off-street parking lots, garages, and vehicle storage facilities, and moving services; or up to 10 percent of the contracted amount in dollars for janitorial and window cleaning services, theatrical performances, and solid waste hauling services. Administrative Code Section 21C.1 for motor bus services currently does not include specified penalties for such willful violation.

Under the proposed ordinance, the new Administrative Code Section 21C.7 would subject all businesses having City contracts covered by prevailing wage requirements, to the same penalties as a result of willful violations of not paying employees the prevailing wage rates. Such penalties would be up to 10 percent of the contracted dollar amount.

## **Independent Contractors**

Currently, there are no provisions in the Administrative Code that require work performed under City contracts, covered by prevailing wages, to be performed by employees of the business that was awarded the City contract. Therefore such work can be performed by independent contractors retained by the business which has a City contract.

Under the proposed ordinance, the new Administrative Code Section 21C.7 would require businesses having City contracts covered by prevailing wages to hire employees to perform the work under the contract in an employer-employee relationship as defined by California law, rather than permit the City contractors to retain independent contractors to perform such work under the contract. Under the proposed ordinance, if the City contractor uses an independent contractor for three or more days, the City may terminate the contract and/or impose penalties of up to 10 percent of the contracted dollar amount for willful violation.

Currently, Administrative Code 21C.5 establishes the permit process for solid waste hauling services. Under the proposed ordinance, Administrative Code Section 21C.5 would be amended to contain a policy statement that any future changes to the Administrative Code permit process

for residential solid waste hauling services, including creating a franchise process, would require solid waste hauling companies to pay prevailing wages.

## **FISCAL IMPACT**

The fiscal impact of the proposed ordinance, pertaining to any potential increased cost to the City, is unknown. According to Ms. Donna Levitt, Manager of the City's Office of Labor Standards Enforcement (OLSE), while City contractors may pass through to the City any potential costs as a result of the proposed Administrative Code amendments, OLSE and other City departments do not have sufficient data to quantify the potential cost to the City.

## **RECOMMENDATIONS**

Approval of the proposed ordinance is a policy decision for the Board of Supervisors.