

## **LEGISLATIVE DIGEST**

[Administrative, Police Codes - Prevailing Rate of Wages Under City Contracts For Specified Services]

**Ordinance amending the San Francisco Administrative Code by amending Sections 21C.2 through 21C.6 and adding Section 21C.7, to: 1) specify the City contracts for services that are subject to the City's prevailing rate of wage requirement ("Covered Contracts"); 2) consolidate and create consistent standards for determining and enforcing prevailing rate of wage requirements in all Covered Contracts, 3) provide an employment transition period for workers under successor contracts to all Covered Contracts, and 4) provide that all work on Covered Contracts be performed by employees and not independent contractors; and amending the San Francisco Police Code by amending Section 3300C.1, to make conforming changes.**

### Existing Law

The City's Administrative Code requires City contracts to require contractors to pay the "prevailing rate of wages" in contracts with the City for Motor Bus Services; Janitorial Services; Public Off-street Parking Lots, Garages or Storage Facilities for Automobiles; Theatrical Workers; Hauling of Solid Waste Generated By The City In The Course Of City Operations; and Moving Services. (Admin. Code Sections 21C.1 through 21C.6.)

Each type of contract has its own duplicative Administrative Code section. For each type of contract, the governing Code section sets forth the prevailing wage requirement, defines the contracts to which it applies, establishes a method for determining the prevailing rate of wages, and provides for penalties against contractors who do not pay the prevailing rate of wages. For some types of contracts, but not all, the Code includes worker retention requirements for successor contracts.

### Amendments to Current Law

The proposed amendments would (1) in some cases broaden the types of City contracts ("Covered Contracts") under which prevailing wages would be required, (2) consolidate in a new section consistent standards for establishing and enforcing prevailing wages in Covered Contracts, (3) provide an employment transition period of six months for workers under all successor Covered Contracts, and (4) require that all work on Covered Contracts be performed by employees and not by independent contractors.

Sec. 21C.1, Motor Bus Service Contracts. Under the proposed amendments, the contracts covered by this section would be unchanged, but would be governed by the general standards

set forth the in new Section 21C.7 for prevailing wage establishment, enforcement, employment transition period and employee requirements.

Sec. 21C.2, Janitorial Services Contracts. Under the proposed amendments, the contracts covered by this section would remain unchanged except that the amendments would eliminate the exceptions for non-profit and small business contractors. Accordingly, these contractors would be subject to the prevailing rate of wage requirements. But there is no intent to broaden the contracts covered beyond contracts entered into by the City specifically for janitorial services on property owned or leased by the City. For example, there is no intent to include contracts entered into by the City with non-profits to provide shelter for the homeless even if the shelter provider is required to keep the premises clean by using janitors or others. Also, the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage in City janitorial contracts to new Section 21C.7, where those sections would be consistent for all Covered Contracts. The proposed amendments also would make these janitorial contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months, and that all contractors and subcontractor use employees, not independent contractors.

Sec. 21C.3, Public Off-Street Parking Lots, Garages, Or Storage Facilities For Automobiles. Under the proposed amendments, the contracts covered by this section would remain unchanged. But the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage for these contracts to new Section 21C.7, and change the penalty for willful violation from \$50/day per employee to not more than 10% of the dollar amount of the contract. The proposed amendments also would make these contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months (as opposed to 90 days under the current 21C.3), and that all contractors and subcontractors use employees not independent contractors.

Sec. 21C.4. Theatrical Workers. Under the proposed amendments, the contracts covered by this section would remain unchanged. But the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage to new Section 21C.7, where those sections would be consolidated for all Covered Contracts. The proposed amendments also would make these contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months, and that all contractors and subcontractor use employees, not independent contractors. The

requirements on worker retention, however, may have limited application because they do not apply where there is no successor contract, for example, where a contract is for a one time theatrical or music production.

Sec. 21C.5. Workers Engaged In Hauling Of Solid Waste Generated By The City. Under the proposed amendments, the contracts covered by this section would remain unchanged. But the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage. In addition, the proposed amendments include a statement of policy that any change to the Administrative Code permit process for residential refuse collection should be accompanied by the requirement that any refuse hauler under a franchise or other process must pay the prevailing wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage to new Section 21C.7. The proposed amendments also would make these contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months (as opposed to 90 days under the current 21C.3), and that all contractors and subcontractor use employees not independent contractors.

Sec. 21C.6. Moving Services. Under the proposed amendments, the contracts covered by this section would remain unchanged. But the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage to new Section 21C.7, and change the penalty for willful violation from \$50/day per employee to not more than 10% of the dollar amount of the contract. The proposed amendments also would make these contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months and that all contractors and subcontractor use employees not independent contractors.

Sec. 21C.7. Standard Provisions Governing The Prevailing Rate of Wages, Worker Retention, And Use Of Employees Not Independent Contractors. The proposed amendments would consolidate in this new section the standards applicable to all Covered Contracts for: determining and enforcing prevailing wages, worker retention during a transition period under a successor contractor, and the use of employees and not independent contractors to do the work.

"Individual." Under the proposed amendments, all Covered Contracts would require that the contractor pay the prevailing wage to all individuals who perform work under the Covered Contract. Therefore, a contractor or subcontractor could not claim that they are not required to pay the prevailing rate of wages to individuals working on the contract because they are owner- operators.

"Prevailing Rate of Wages." The proposed amendments require that the Civil Service Commission provide data for, and the Board of Supervisors set, a prevailing rate of wages that includes both an hourly wage rate and an hourly rate attributable to each fringe benefit. The Civil Service Commission has 90 days from the effective date of the ordinance to provide this information to the Board of Supervisors. Once the Board adopts the prevailing rate of wages that includes the two components, contracting officers must require prospective contractors to specify the hourly wage rates, including hourly cost of fringe benefits, that the contractor will be paying for work on the contract.

Enforcement. The proposed amendments provide that either the Contracting Officer or the Labor Standards Officer may enforce the prevailing rate of wages. The proposed amendments also specify a penalty of up to 10% of the amount of the contract for a willful violation, whereas for some types of contracts the existing penalty is \$50 per day.

Transition Employment Requirements. The proposed amendments contain transition employment requirements for all successor Covered Contracts. Under the proposed amendments, the transition employment requirements apply to all employees, with the exception of managerial, supervisory and confidential employees.

Currently only City janitorial, parking lot/garage, and solid waste hauling contracts have worker transition requirements for successor contractors. The proposed amendments would require successor contractors on all Covered Contracts to continue the employment of workers who worked for the ending contractor for at least 15 hours per week for the prior 12 months. The proposed amendments require that the successor contractors continue to employ these workers for six months (up from the 90 days specified in the janitorial, parking lot/garage, and solid waste hauling contracts) provided there is not just cause to terminate the worker's employment.

The proposed amendments would continue the requirement that at the end of six months, the successor contractor perform a written performance evaluation of the employee and offer continued employment if the employee's performance has been satisfactory. The proposed amendments would continue the exception that permits the successor contractor to use its existing employees if they would otherwise be laid off as a result of the award of the successor contract.

To be certain that all prospective contractors are aware of the worker retention requirements, and the wage rates of the workers to be covered, when a contract is put out to bid, the "ending Contractor" must provide information on the ending Contractor's employees to the Contracting Officer and Purchaser, who must include the information with the request for bids.

The proposed amendments continue the provision that permits employees to enforce the worker retention provisions by bringing an action in the Superior Court. The proposed

amendments add a provision that permits the Contracting Officer or Labor Standards Officer to enforce the worker retention provisions, including the levying of monetary penalties.

Requirement of Employer-Employee Relationship. The proposed amendments would require that all work on a Covered Contract be done by employees and not by independent contractors. Accordingly, the proposed amendments would require all contractors and subcontractors to use employees to do the work under the contract.

Under the proposed amendments, if a contractor uses an independent contractor for 3 or more days, the City may terminate the contract and/or impose penalties for a willful violation.

Police Code Sec. 3300C. The Police Code currently requires the payment of prevailing wages for all contracts within the City for "security and janitorial and building maintenance" services. The proposed amendments would clarify that the prevailing wage requirements for City janitorial service contracts are set in the Administrative Code.

### Background Information

The Administrative Code currently contains separate sections that require the prevailing rate of wages to be paid for certain City contracts for services. These sections are repetitive and in some cases inconsistent.

The proposed amendments create a consistent set of standards for establishing and enforcing the prevailing wage requirements on Covered Contracts. The proposed amendments also extend the worker transition requirement to all Covered Contracts. And the proposed amendments make it clear that all individuals who work on a Covered Contract are to be paid the prevailing rate of wages, and that contractors and subcontractors are to use employees and not independent contractors to do work under Covered Contracts.

The City is acting in its proprietary capacity and interest in imposing these requirements. It is in the City's interest to establish a level playing field among prospective city contractors, and to have services provided by adequately compensated and experienced personnel who are in an employer-employee relationship with the contractor or subcontractor.