

**Item 11**  
**File 11-1190**

**Department:**  
Office of Labor Standards and Enforcement (OLSE)

## 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 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 City contractors 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 workers, (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, City contractors for janitorial and window cleaning services, public off-street parking lots, garages, and vehicle storage facilities, theatrical workers, solid waste hauling services, and moving services that are covered by collective bargaining agreements 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 that provide for lower wages.
  - 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, or three months. Under the proposed ordinance, all new City contractors covered by the prevailing wage, 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 three months.
  - c. Currently, City contracts for janitorial and window cleaning services and moving services do not require non-profit contractors to pay prevailing wages. In addition, currently contracts for janitorial and window cleaning services do not require small businesses, defined as businesses with less than ten employees, to pay their employees prevailing wages. Under the proposed ordinance, small businesses and non-profit organizations that have City contracts for janitorial and window cleaning services would be required to pay prevailing wages. Non-profit organizations that have City contracts for moving services would continue to not have to meet the prevailing wage requirement.
  - d. Currently, City contracts have different penalties for violating prevailing wage requirements. Under the proposed ordinance, all City contractors 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 ten percent of the contracted dollar amount.

- e. 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 may be retained by the City contractor to perform 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 such 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 proposed ordinance could result in estimated increased annual costs to the City of approximately \$1,114,672 if contractors passed through the costs of the new prevailing wage requirements to the City. This includes requiring (a) \$630,072 for solid waste haulers that hire independent contractors rather than employees to pay prevailing wage; and (b) \$484,599 for non-profit organizations that provide janitorial services to pay prevailing wage.
- However, these estimated increased annual costs are conservative because they only compare direct wage increases. They do not include other salary or benefit costs that are based on a percentage of wage costs, such as payroll taxes or workers' compensation insurance, or indirect costs that will result from paying the higher prevailing wage.
- Under the proposed ordinance, new City contractors covered by the prevailing wage would be required to offer employees of the previous contractor six months of employment in order of their seniority. The City would incur increased costs if the new contractor hires the previous contractor's more senior employees with higher wage rates in lieu of less senior employees with lower wage rates. The potential increased costs to the City cannot be quantified because the number of potential contracts and affected employees is not known.

### **Policy Consideration**

- According to the legislative digest, provided by the City Attorney's Office, the proposed legislation does not intend to broaden the contracts covered by the prevailing wage 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. However, under the proposed ordinance, Department of Public Health and Human Services Agency non-profit contractors that provide janitorial services as part of a training program or to Human Services Agency programs would be required to pay prevailing wages.

### **Recommendation**

- 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

Currently, Administrative Code Section 21C requires City contracts for certain services to pay prevailing wages to their employees. These contracts include services for:

1. Motor bus services (Administrative Code Section 21C.1);
2. Janitorial and window cleaning services (Administrative Code Section 21C.2);
3. Public off-street parking lots, garages, and vehicle storage facilities (Administrative Code Section 21C.3);
4. Theatrical workers (Administrative Code Section 21C.4);
5. Solid waste hauling services (Administrative Code Section 21C.5); and
6. Moving services (Administrative Code Section 21C.6).

## DETAILS OF PROPOSED LEGISLATION

The proposed ordinance would amend the Administrative Code by modifying Administrative Code Sections 21C.2 through 21C.6, and adding a new 21C.7.<sup>1</sup> The proposed ordinance would not amend Administrative Code Section 6.22(E) covering public works and construction contracts.

Under the current Administrative Code Section 21C, requirements for setting prevailing wage rates, reporting and compliance, enforcement and penalties, and other related matters are contained in the separate subsections for each of the contract services. The proposed ordinance would standardize definitions and prevailing wage requirements, and consolidate these provisions into a new Administrative Code Section 21C.7. San Francisco Police Code Section 3300C.1 would also be amended to reflect the proposed new Administrative Code Section 21C.7, setting the prevailing wage requirements for janitors who are covered under the Police Code.

### Collective Bargaining Agreements

Currently, Administrative Code Sections 21C.2 through 21C.6 allow City contracts for janitorial and window cleaning services, public off-street parking lots, garages, and vehicle storage facilities, theatrical workers, solid waste hauling services, and moving services, to pay their

---

<sup>1</sup> Administrative Code Section 21C.1 allows the Purchaser to require motor bus service contractors to pay prevailing wages if directed to do so by the Mayor or City commissions in charge of the department receiving the services. If the Purchaser requires payment of prevailing wages by motor bus contractors, then the contractors must be notified of the requirements of Administrative Code Section 21C when bidding on the contract services.

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 that provides for lower wages.

### **Transitional Employment**

Currently, Administrative Code Sections 21C.3 and 21C.5 require new City contractors 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, or approximately three months.

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 three months.

### **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 services are performed by a non-profit organization. In addition, Administrative Code 21C.2 also currently 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 ten 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. However, City contracts with non-profit organizations for moving services would continue to be excluded from these 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 ten percent of the contracted amount in dollars for janitorial and window cleaning services, theatrical workers, 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 ten 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 City 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 ten 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 IMPACTS

The proposed ordinance could result in estimated increased annual costs to the City of approximately \$1,114,672 if contractors passed through the costs of the new prevailing wage requirements to the City as follows:

- \$484,599 for non-profit contracts providing janitorial services to the Department of Public Health, Human Services Agency, and Division of Real Estate. Currently, non-profit contractors for these services may pay the non-profit minimum wage rate. The proposed ordinance requires non-profit contractors for janitorial services to pay the prevailing wage.
- \$630,072 for solid waste hauling contractors that hire independent contractors rather than employees to provide services. The proposed ordinance requires contractors to pay prevailing wages to all individuals providing City contract services. 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.<sup>2</sup>

However, these estimated increased annual costs are conservative because they only compare direct wage increases. They do not include other salary or benefit costs that are based on a

---

<sup>2</sup> The Budget and Legislative Analyst estimated the increased costs for solid waste hauling contractors based on the per unit cost of hauling solid waste by S and S Trucking, which retains independent contractors, compared to Recology's wage rates, which hires employees to provide services.

percentage of wage costs, such as payroll taxes or workers' compensation insurance, or indirect costs that may result from paying the higher prevailing wages.

### **Transitional Employment**

Under the proposed ordinance, new City contractors covered by the prevailing wage would be required to offer employees of the previous contractor six months of employment in order of their seniority. The City would incur increased costs if the new contractor hires the previous contractor's more senior employees with higher wage rates in lieu of less senior employees with lower wage rates. The potential increased costs to the City cannot be quantified because the number of potential contracts and the number of affected employees is not known.

## **POLICY ISSUE**


**The proposed ordinance would apply to non-profit contractors that provide janitorial services but not to non-profit contractors that provide shelter and other services**

According to the legislative digest, provided by the City Attorney's Office, the proposed legislation does not intend to broaden the contracts covered by the prevailing wage 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.

However, under the proposed ordinance, Department of Public Health and Human Services Agency non-profit contractors that provide janitorial services as part of a training program or to Human Services Agency programs would be required to pay prevailing wages.

## **RECOMMENDATIONS**

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



Harvey M. Rose

cc: Supervisor Chu  
Supervisor Mirkarimi  
Supervisor Kim  
President Chiu  
Supervisor Avalos  
Supervisor Campos  
Supervisor Cohen  
Supervisor Elsbernd  
Supervisor Farrell  
Supervisor Mar  
Supervisor Wiener  
Clerk of the Board  
Cheryl Adams  
Controller  
Rick Wilson