

[Prevailing wage and displaced worker requirements for City contracts for hauling of solid waste generated by City operations.]

Ordinance adding Section 21.25-5 to the Administrative Code, requiring payment of wages at prevailing rates to workers engaged in the hauling of solid waste, generated by the City in the course of City operations, pursuant to a contract with the City; establishing a process for the Board of Supervisors to set prevailing wage rates; establishing rules and a process for enforcement of prevailing wage rate requirements; requiring retention of workers engaged in the hauling of solid waste generated by the City in the course of City operations, pursuant to a contract with the City, upon transition to a new contractor; and establishing rules and a process for enforcement of worker retention requirements.

Note: Additions are single-underline italics Times New Roman;
deletions are ~~strikethrough italics Times New Roman~~.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Administrative Code is hereby amended by adding Section 21.25-5, to read as follows:

Sec. 21.25-5. PREVAILING RATE OF WAGES AND WORKER RETENTION REQUIRED FOR WORKERS ENGAGED IN HAULING OF SOLID WASTE GENERATED BY THE CITY IN THE COURSE OF CITY OPERATIONS.

(a) Definitions. For purposes of this Section, the following definitions shall apply to the terms used herein.

(1) "City" shall mean the City and County of San Francisco.

(2) "Contracting Officer" shall mean any officer or employee of the City authorized to enter into a Contract on behalf of the City.

1 (3) "Contract" shall mean an agreement with the City for the hauling of solid waste,
2 generated by the City in the course of City operations, to be performed at the expense of the City or to
3 be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by
4 the City. For purposes of this Section, "Contract" shall not include (a) a permit issued under the
5 Refuse Collection and Disposal Ordinance, Appendix 1 of the San Francisco Administrative Code, or
6 (b) a contract governed by the provisions of Chapter 6 of the San Francisco Administrative Code.

7 (4) "Contractor" shall mean any Person who submits a bid and/or enters into a Contract
8 with the City for the hauling of solid waste generated by the City in the course of City operations.

9 (5) "Employee" shall mean any individual engaged in the hauling of solid waste, generated
10 by the City in the course of City operations, for a Contractor or Subcontractor. For purposes of this
11 Section, "Employee" shall not include a person who (a) is a managerial, supervisory, or confidential
12 employee, including those employees who would be so defined under the Fair Labor Standards Act; or
13 (b) does not possess or has not maintained a required occupational license.

14 (6) "Hauling" of solid waste shall mean collection and transport of solid waste generated by
15 the City in the course of City operations. For purposes of this Section, "hauling" shall not include
16 "solid waste disposal" or "disposal" as defined in Section 40192 of the California Public Resources
17 Code.

18 (7) "Person" shall mean any individual, proprietorship, partnership, joint venture,
19 corporation, limited liability company, trust, association, or other entity that may employ individuals or
20 enter into contracts, or any combination thereof.

21 (8) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe
22 benefits or the matching equivalents thereof, being paid to a majority of workers engaged in the
23 hauling of solid waste, if a majority of such workers are paid at a single rate; if there is no single rate
24
25

1 being paid to a majority, then the prevailing rate shall be that single rate being paid to the greatest
2 number of workers.

3 (9) "Solid Waste" shall mean "solid waste" as defined in Section 40191 of the California
4 Public Resources Code.

5 (10) "Subcontract" shall mean any agreement under or subordinate to a prime Contract.

6 (11) "Subcontractor" shall mean any Person who enters into a Subcontract with a
7 Contractor.

8 (b) Prevailing Wage Rate Requirements.

9 (1) Basic Prevailing Wage Rate Requirement. Every Contract awarded by the City for the
10 hauling of solid waste generated by the City in the course of City operations must require that any
11 Employee engaged in the hauling of solid waste be paid not less than the Prevailing Rate of Wages,
12 including fringe benefits or the matching equivalents thereof, paid in private employment for similar
13 work in the area in which the Contract is being performed.

14 (2) Contractual Provision Concerning Prevailing Wage Rate Requirement. All Contracts
15 subject to this Section shall include a provision in which the Contractor agrees to comply with, and to
16 require Subcontractors to comply with, the prevailing wage rate requirement imposed by this Section.

17 (3) Determination of Prevailing Rate of Wages. It shall be the duty of the Board of
18 Supervisors, from time to time and at least once during each calendar year, to fix and determine the
19 Prevailing Rate of Wages paid in private employment in the City for individuals engaged in the hauling
20 of solid waste, including such rate of wages paid for overtime and holiday work, which said Prevailing
21 Rate of Wages shall be fixed and determined as follows:

22 The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after the
23 effective date of this Section, and on or before the first Monday in November of each year, data as to
24 the Prevailing Rate of Wages for individuals engaged in the hauling of solid waste, including such rate
25

1 of wages paid for overtime and holiday work, and the Board of Supervisors shall, upon receipt of such
2 data, fix and determine the Prevailing Rate of Wages for individuals engaged in the hauling of solid
3 waste, including such rate of wages paid for overtime and holiday work, as paid for similar work in the
4 City in private employment. Such Prevailing Rate of Wages as so fixed and determined by the Board of
5 Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages paid in
6 private employment for similar work, until the same is changed by the Board of Supervisors.

7 In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of
8 Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission,
9 but may consider such other evidence upon the subject as the Board of Supervisors shall deem proper
10 and thereupon base its determination upon any or all of the data or evidence considered.

11 (4) Enforcement of Prevailing Wage Rate Requirements. Where the Contracting Officer
12 determines that a Contractor for the hauling of solid waste, or a Subcontractor, may have violated the
13 prevailing wage requirements of this Section, the Contracting Officer shall send written notice to the
14 Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to any
15 other remedy available, the Contracting Officer may terminate the Contract, in which case the
16 Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt of
17 the violation notice the Contractor has either (i) cured the violation or (ii) established by documentary
18 evidence, including but not limited to payroll records, the truth and accuracy of which is attested to by
19 affidavit, proof of compliance with the provisions of this Section. For purposes of this Section, where a
20 Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to Employees as
21 required by this Section, the Contractor shall have "cured the violation" once the Contractor or
22 Subcontractor reimburses such individuals by paying each individual the balance of what he or she
23 should have earned in accordance with the requirements of this Section. In addition to, or instead of
24 terminating the Contract, where the Contracting Officer finds that the Contractor has willfully violated
25

1 the requirements of this Section, the Contracting Officer or the Labor Standards Enforcement Officer
2 may assess a penalty (a "willful violation penalty") of not more than 10 percent of the dollar amount of
3 the Contract, such sums to be deposited in the fund out of which the Contract is awarded or, if none
4 exists, the General Fund. The Contracting Officer or Labor Standards Enforcement Officer may
5 impose such willful violation penalty regardless of whether the Contractor has cured the violation.

6 (c) Worker Retention Requirements.

7 (1) Purpose. The City has an important proprietary interest in maintaining the stability of
8 the workforce engaged by a Contractor in the hauling of solid waste generated by the City in the course
9 of City operations. Turnover of experienced workers resulting from a change in the City's Contractor
10 jeopardizes the quality, efficiency, and cost-effectiveness of service provided to the City under the
11 successor Contract.

12 (2) Worker Retention Requirements. All Contracts covered by this Section shall impose the
13 following obligations on the Contractor for Employees who work at least 15 hours per week under the
14 Contract.

15 (i) Where the Contracting Officer has given notice that a Contract has been terminated or
16 ended, or where a Contractor has given notice of such termination, upon giving or receiving such
17 notice, as the case may be, the terminated or ending Contractor shall, within ten days thereafter,
18 provide to the successor Contractor, the name, date of hire, and employment occupation classification
19 of each Employee who works at least 15 hours per week under the Contract. This provision shall also
20 apply to the Subcontractors of the terminated Contractor.

21 If the terminated Contractor has not learned the identity of the successor Contractor, if any, by
22 the time that notice was given of the Contract termination, the terminated Contractor shall obtain such
23 information from the Contracting Officer. If a successor Contractor has not been awarded by the end
24 of the 10 day period, the employment information referred to in subsection (c)(2)(i) shall be provided to
25

1 the Contracting Officer at such time. Where a Subcontractor has been terminated prior to the
2 termination of the Contract, the terminated Subcontractor shall for the purposes of this provision be
3 deemed a terminated Contractor.

4 (ii) A successor Contractor shall retain, for a 90-day transition employment period,
5 Employees who have worked at least 15 hours per week and been employed by the terminated
6 Contractor or its Subcontractors, if any, for the preceding twelve months or longer under the Contract,
7 providing that just cause does not exist to terminate such Employee. The predecessor Contractor's
8 Employees who worked at least 15 hours per week shall be employed in order of their seniority with the
9 predecessor. This requirement shall be stated by the City in all initial bid packages, Requests for
10 Proposals, and Requests for Qualifications involving Contracts governed by this Section.

11 (iii) If at any time a successor Contractor determines that fewer Employees are required to
12 perform the new Contact than were required by the terminated Contractor (and Subcontractors, if any),
13 the successor Contractor shall retain Employees by seniority within the job classification.

14 (iv) During such 90-day period the successor Contractor (or Subcontractor, where
15 applicable) shall maintain a preferential hiring list of eligible covered Employees not retained by the
16 successor Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall
17 hire additional Employees.

18 (v) Except as provided in subsection (c)(2)(iii), during such 90-day period, the successor
19 Contractor (or Subcontractor, where applicable) shall not discharge without cause an Employee
20 retained pursuant to this Section. "Cause," for this purpose, shall include, but not be limited to, the
21 Employee's conduct while in the employ of the terminated Contractor or Subcontractor that contributed
22 to any decision to terminate the Contract or Subcontract for fraud or poor performance, excluding
23 permissible union-related activity.

1 (vi) At the end of such 90-day period, a successor Contractor (or Subcontractor, where
2 applicable) shall perform a written performance evaluation for each Employee retained pursuant to
3 this Section. If the Employee's performance during such 90-day period is satisfactory, the successor
4 Contractor (or Subcontractor) shall offer the Employee continued employment under the terms and
5 conditions established by the successor Contractor (or Subcontractor) or as required by law.

6 (3) Contractual Provision Concerning Worker Retention Requirements. All Contracts
7 subject to this Section shall include a provision in which the Contractor agrees to comply with, and to
8 require Subcontractors to comply with, the obligations imposed by this Section.

9 (4) Enforcement of Worker Retention Requirements. An Employee who has not been hired
10 or has been discharged in violation of this Section by a successor Contractor or its Subcontractor may
11 bring an action in the Superior Court of the State of California, as appropriate, against the successor
12 Contractor and, where applicable, its Subcontractor, and shall be awarded back pay, including the
13 value of benefits for each day during which the violation continues, which shall be calculated at a rate
14 of compensation not less than the higher of (i) the average regular rate of pay received by the
15 Employee during the last three years of the Employee's employment in the same occupation
16 classification or (ii) the final regular rate received by the Employee. If the Employee is the prevailing
17 party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the
18 costs recoverable.

19 (5) Successor's Prior Employees. Notwithstanding the provisions of subsection (c), a
20 successor Contractor or Subcontractor may replace an Employee otherwise entitled to be retained
21 pursuant to this Section with a person employed by the Contractor or Subcontractor continuously for
22 twelve months prior to the commencement of the successor Contract or Subcontract in a capacity
23 similar to that proposed under the successor Contract or Subcontract. This Section shall apply only
24
25

1 where the existing Employee of the successor Contractor or Subcontractor would otherwise be laid off
2 work as a result of the award of the successor Contract.

3 (d) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this
4 Section, if a Contract conflicts with an existing collective bargaining agreement to which a Contractor
5 or Subcontractor is a party, the collective bargaining agreement shall prevail. However, the
6 Contractor or Subcontractor will be obligated to make good faith efforts to comply with the
7 requirements of its Contract that do not conflict with the collective bargaining agreement.

8 (e) Preemption. Nothing in this Section shall be interpreted or applied so as to create any
9 power or duty in conflict with any federal or state law.

10 (f) No Cause of Action Against City. This Section is not intended to create a private right
11 of action against the City.

12 (g) Prospective Application. This Section is intended to have prospective effect only, and
13 shall not be interpreted to impair the obligations of any pre-existing Contract entered into by the City.
14 This Section shall only apply to Contracts entered into on or after the effective date of this Section.

15 (h) Severability. If any part or provision of this Section, or the application thereof to any
16 Person or circumstance, is held invalid, the remainder of this Section, including the application of such
17 part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue
18 in full force and effect. To this end, the provisions of this Section are severable.

19
20 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21
22 By: _____
22 PAUL ZAREFSKY
23 Deputy City Attorney