

FILE NO. 021221

ORDINANCE NO. **208-02**

1 [Amendments to Administrative Code Chapter 6 to improve the laws and procedures
2 governing the enforcement of prevailing wages for workers on public work projects.]
3

4 **Ordinance amending the Administrative Code by adding subsection 6.1(H), definition of
5 prevailing wage; amending subsection 6.22(A)(6) to include a requirement concerning
6 subcontractor licenses; amending subsection 6.22(B) to include a requirement that all
7 contractor and subcontractors provide workers' compensation insurance certificates;
8 amending subsection 6.22(E) concerning application and enforcement of prevailing
9 wage requirements and assessment of penalties and backwages; amending subsection
10 6.22(O) to add further contractual requirements for the employment of apprentices and
11 to add penalties for noncompliance; adding subsection 6.22(P) concerning safety
12 requirements for contractors and subcontractors; amending section 6.24 to expand the
13 authority of the Office of Labor Standards Enforcement to enforce requirements of
14 state and federal law, to enforce working conditions and apprenticeship and to assess
15 monetary penalties and backwages against public work contractors.**

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

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

21 Section 1. The San Francisco Administrative Code is hereby amended by amending
22 Sections 6.1, 6.22 and 6.24, to read as follows:

23 **SEC. 6.1. DEFINITIONS.**

24 (A) Advertisement For Bid. An Advertisement For Bid is a set of documents which
25 includes without limitation the published advertisement for bids on a construction contract; the
forms to be submitted with a bid, as required by the contracting department and the Human

1 Rights Commission; the construction contract general and special conditions; and the plans
2 and specifications for the public work or improvement.

3 (B) Award. For contracts in excess of the Threshold Amount as defined below, a
4 contract is awarded by the City and County of San Francisco when the following events have
5 occurred: (1) For departments under the Mayor, (a) the Mayor or the Mayor's designee has
6 approved the contract for award and (b) the department head has then issued an order of
7 award; (2) For departments with boards or commissions, (a) the department head has
8 recommended to the board or commission concerned a contract for award and (b) such board
9 or commission has then adopted a resolution awarding the contract. For contracts less than
10 or equal to the Threshold Amount as defined below, a contract is awarded when the
11 department head either signs the contract or issues an order of award, whichever occurs first.
12 Pursuant to Charter Section 3.105, all contract awards are subject to certification by the
13 Controller as to the availability of funds.

14 (C) Bid. A sealed document submitted in response to an Advertisement For Bids.
15 No bid shall be deemed accepted by the City and County of San Francisco until such time as
16 the contract is awarded in accordance with this Chapter.

17 (D) Bidder. One who submits a bid in response to an Advertisement For Bids.

18 (E) Construction Manager. Any individual, firm, partnership, corporation,
19 association, joint venture or other legal entity permitted by law to furnish construction
20 management services to the City and County.

21 (F) Contract. For the purposes of this Chapter, a contract is an agreement in writing
22 between the City and County of San Francisco and any party to perform professional design
23 services, consultant services, construction management services or construction services
24 relative to a public work or improvement. No contract shall be deemed awarded effective or
25

1 binding on the City and County of San Francisco until such time as the requirements for
2 award are met, as provided in this Chapter.

3 (G) Contractor. A party who contracts directly with the City and County of San
4 Francisco to perform professional design services, consultant services, construction
5 management services or construction services relevant to a public work or improvement. A
6 contractor performing construction services may also be referred to as a "general contractor"
7 or a "prime contractor."

8 (H) Prevailing Wage or Prevailing Rate of Wage. The prevailing wage, as used in this
9 Chapter, is the highest general prevailing rate of wage plus "per diem wages" and wages paid for
10 overtime and holiday work paid in private employment in the City and County of San Francisco for the
11 various crafts and kinds of labor employed in the performance of any public work or improvement
12 under this Chapter. "Per diem wages" are defined pursuant to Labor Code section 1773.1, as amended
13 from time to time.

14 (H) Public Work or Improvement. A public work or public work or improvement, as
15 used in this Chapter, is any erection, construction, renovation, alteration, improvement,
16 demolition, excavation, installation, or repair of any public building, structure, infrastructure,
17 bridge, road, street, park, dam, tunnel, utility or similar public facility performed by or for the
18 City and County of San Francisco, the cost of which is to be paid wholly or partially out of
19 moneys deposited in the treasury of the City and County.

20 (I) Responsible. A responsible bidder or contractor is one who (1) meets the
21 qualifying criteria required for a particular project, including without limitation the expertise,
22 experience, record of prior timely performance, license, resources, bonding and insurance
23 capability necessary to perform the work under the contract and (2) at all times deals in good
24 faith with the City and County and shall submit bids, estimates, invoices claims, requests for
25 equitable adjustments, requests for change orders, requests for contract modifications or

1 requests of any kind seeking compensation on a City contract only upon a good faith honest
2 evaluation of the underlying circumstances and a good faith, honest calculation of the amount
3 sought.

4 (~~JK~~) Responsive. A responsive bid is one that complies with the requirements of the
5 subject Advertisement For Bids without condition or qualification.

6 (~~KL~~) Threshold Amount. The Threshold Amount, for the purposes of this Chapter, is
7 \$100,000. On January 1, 2005, and every five years thereafter, the Controller shall
8 recalculate the Threshold Amount to reflect any proportional increase in the Urban Regional
9 Consumer Price Index from January 1, 2000, rounded to the nearest \$1,000.

10 **SEC. 6.21. REQUIREMENTS FOR BIDS AND QUOTES.**

11 (A) Bids. All Advertisements For Bids for construction contracts in excess of the
12 Threshold Amount shall conform to and at a minimum require the following:

13 . . .

14 6. License. The department head shall specify in all Advertisements For Bids
15 and plans for public work projects the classification of the contractor's license which a
16 contractor shall possess at the time bids are submitted. Bidders and their subcontractors are
17 required to be properly licensed at the time of bid.

18 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING** 19 **CONDITIONS.**

20 All construction contracts awarded by the City and County of San Francisco shall
21 contain the following minimum terms and conditions:

22 (A) Bonds. Before the execution of any contract for public works or improvements,
23 the department head authorized to execute such contracts shall require the successful bidder
24 to file corporate surety bonds for the faithful performance thereof and to guarantee the
25 payment of wages for services engaged and of bills contracted for material, supplies and

1 equipment used in the performance of the contract. The bond shall be for a sum not less than
2 100 percent of the award.

3 The City and County of San Francisco, acting through its Human Rights
4 Commission ("HRC"), intends to provide guarantees to private bonding assistance companies
5 and financial institutions in order to induce those entities to provide required bonding and
6 financing to eligible contractors bidding on and performing City public work contracts. This
7 bonding and financial assistance program is subject to the provisions of Administrative Code
8 Section 12D.A.9.

9 (B) Insurance. All construction contracts awarded under this Chapter must conform
10 to the insurance requirements established by the Risk Manager. The Risk Manager shall
11 develop uniform insurance requirements for City contracts subject to this Chapter and shall
12 publish such requirements in the Risk Manager's Manual. The Risk Manager shall review and
13 update such insurance requirements on an annual basis.

14 Every contractor and subcontractor shall comply with the provisions of California
15 Labor Code section 3700. Prior to commencing the performance of work under any public work
16 contract, the contractor and all of its subcontractors file with the awarding department a certificate of
17 insurance against liability for workers compensation or proof of self-insurance in accordance with the
18 provisions of the California Labor Code.

19 (C) Indemnification. All construction contracts awarded under this Chapter shall
20 require that the contractor fully indemnify the City and County to the maximum extent provided
21 by law, such that each contractor must save, keep, bear harmless and fully indemnify the City
22 and County and any of its officers or agents from any and all liability, damages, claims,
23 judgments or demands for damages, costs or expenses in law or equity that may at any time
24 arise.

1 This indemnification requirement may not be waived or abrogated in any way for
2 any contract without the recommendation of the City's Risk Manager and the express
3 permission and approval of the Board of Supervisors.

4 (D) Assignment. No contract shall be assigned except upon the recommendation of
5 the department head concerned and with the approval of the Mayor or the Mayor's designee,
6 relative to the department under the Mayor's jurisdiction, or the approval of the board or
7 commission concerned for departments not under the Mayor.

8 (E) Prevailing Wages.

9 (1) Generally. All contractors and subcontractors performing a public work or
10 improvement for the City and County of San Francisco shall pay its workers on such projects
11 the ~~highest rate of~~ prevailing rate of wages as provided below. For the purpose of prevailing wage
12 requirements only, the definition of a public work shall include those public works or improvements
13 defined in the foregoing section 6.1 of this Chapter and shall also include (a) any trade work performed
14 at any stage of construction (including preconstruction work) and (b) any public work paid for by the
15 City and County of San Francisco with "the equivalent of money" under the meaning of Labor Code
16 section 1720(b).

17 (2) Leased Property Included. For the limited purposes of this subsection, a
18 "public work or improvement" also means and includes any construction work done under
19 private contract when all of the following conditions exist:

20 (a) The construction contract is between private persons; and

21 (b) The property subject to the construction contract is privately
22 owned, but upon completion of the construction work will be leased to the City and County of
23 San Francisco for its use; and

24 (c) Either of the following conditions exist: (1) The lease agreement
25 between the lessor and the City and County of San Francisco, as lessee, is entered into prior

1 to the construction contract, or (2) The construction work is performed according to the plans,
2 specifications, or criteria furnished by the City and County of San Francisco, and the lease
3 agreement between the lessor and the City and County of San Francisco as lessee, is
4 entered into during, or upon completion, of the construction work.

5 (3) Determination of the Prevailing Wage. It shall be the duty of the Board of
6 Supervisors, from time to time and at least once during each calendar year, to fix and
7 determine the prevailing rate of wages~~highest general prevailing rate of wages paid in private~~
8 ~~employment in the City and County of San Francisco, including such rate of wages paid for overtime~~
9 ~~and holiday work, which said highest general prevailing rate of wages shall be fixed and determined~~
10 as follows:

11 On or before the first Monday in November of each year, ~~The~~ Civil Service
12 Commission shall furnish to the Board of Supervisors ~~on or before the first Monday in November~~
13 ~~of each year,~~ data as to the highest general prevailing rate of wages of the various crafts and
14 kinds of labor as paid in private employment in the City and County of San Francisco,
15 ~~including said plus "per diem wages" and wages for overtime and holiday work. , and~~ ~~The Civil~~
16 Service Commission shall provide the Board of Supervisors data for "per diem wages" pursuant to
17 California Labor Code sections 1773.1 and 1773.9, as amended from time to time. The Board of
18 Supervisors shall, upon receipt of such data, fix and determine the ~~highest general~~ prevailing
19 rate of wages ~~for said various crafts and kinds of labor as paid for similar work in the City and~~
20 ~~County of San Francisco in private employment. Such highest general~~ The prevailing rate of wages
21 as so fixed and determined by ~~said the~~ Board of Supervisors shall remain in force and shall be
22 deemed to be the highest general prevailing rate of wages paid in private employment for
23 similar work, until the same is changed by ~~said the~~ Board of Supervisors. In determining the
24 highest general prevailing rate of wages, per diem wages and wages for overtime and holiday
25 work, as provided for in this section, the Board of Supervisors shall not be limited to the

1 consideration of data furnished by the Civil Service Commission, but may consider such other
2 evidence upon the subject as ~~said by the~~ Board shall deem proper and thereupon base its
3 determination upon any or all of the data or evidence considered.

4 In the event that the Board of Supervisors does not fix or determine the
5 highest general prevailing rate of wages in any calendar year, the rates established by the
6 California Department of Industrial Relations for such year shall be deemed adopted.

7 (4) Specifications to Include Wage Rate. The department head authorized to
8 execute a construction contract under this Chapter shall include in the contract specifications,
9 or make available in the offices of the department or at the job site, a detailed statement of the
10 ~~highest general prevailing rate of wages, including the wages for holiday and overtime work, as~~
11 ~~determined by the Board of Supervisors for the several kinds of labor to be used or employed in the~~
12 ~~performance of said contract~~ prevailing rate of wages as fixed and determined by the Board of
13 Supervisors at the time the department issued the Advertisement For Bids on the contract. The
14 contractor shall agree to pay to all persons performing labor in and about the public work or
15 improvement the highest general prevailing rate of wages as ~~set forth in the~~
16 ~~specifications~~ determined pursuant to this Chapter, including wages for holiday and overtime work.
17 If the specifications do not include the prevailing rate of wages, the specifications shall include a
18 statement that copies of the prevailing rate of wages as fixed and determined by the Board of
19 Supervisors are on file at the department's principal office or at the job site and shall be made
20 available to any interested party on request.

21 (5) Subcontractors Bound by Wage Provisions. Every contract for any public
22 work or improvement shall also contain a provision that the contractor shall insert in every
23 subcontract or other arrangement which he or she may make for the performance of any work
24 or labor on a public work or improvement. This provision shall be that the subcontractor shall
25 pay to all persons performing labor or rendering service under said subcontract or other

1 arrangement the highest general prevailing rate of wages as fixed and determined by the
2 Board of Supervisors for such labor or services.

3 (6) Records to be Kept by Contractors and Subcontractors. Every public
4 works contract or subcontract awarded under this Chapter shall contain a provision that the
5 contractor shall keep, or cause to be kept, for a period of four years from the date of substantial
6 completion of a public work, an accurate record showing the name, place of residence, citizenship,
7 occupation and per diem pay of each person engaged in the execution of said contract. Every
8 subcontractor who shall undertake the performance of any part of said original contract shall keep a
9 like record of each person engaged in the execution of said subcontract. All such records shall at all
10 times be open to the inspection and examination of the duly authorized officers and agents of the City
11 and County of San Francisco, payrolls and basic records including time cards, trust fund forms,
12 apprenticeship agreements, accounting ledgers, tax forms and superintendent and foreman daily logs
13 for all trades workers performing work at or for a City and County of San Francisco public work or
14 improvement. Such records shall include the name, address and social security number of each worker
15 who worked on the project, including apprentices, his or her classification, a general description of the
16 work each worker performed each day, the rate of pay (including rates of contributions for, or costs
17 assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and
18 actual wages paid. Every subcontractor who shall undertake the performance of any part of a public
19 work or improvement shall keep a like record of each person engaged in the execution of the
20 subcontract.

21 The contractor shall maintain weekly certified payroll records for submission to
22 the awarding department as required. The contractor shall be responsible for the submission of
23 payroll records of its subcontractors. All certified payroll records shall be accompanied by a statement
24 of compliance signed by the contractor indicating that the payroll records are correct and complete,
25

1 that the wage rates contained therein are not less than those determined by the San Francisco Board of
2 Supervisors and that the classifications set forth for each employee conform with the work performed.

3 All such records as described in this section shall at all times be open to
4 inspection and examination of the duly authorized officers and agents of the City and County of San
5 Francisco, including representatives of the Office of Labor Standards Enforcement.

6 Should the department head responsible for the public work or the Labor
7 Standards Enforcement Officer determine that a contractor or subcontractor is not in compliance with
8 the requirements of this subsection, the department head or the Labor Standards Enforcement Officer
9 shall issue written notification to the contractor or subcontractor mandating compliance within not
10 fewer than ten calendar days from the date of the notification. Should the contractor or subcontractor
11 fail to comply as required in the notification, the department head who executed the contract or the
12 Labor Standards Enforcement Officer may impose a penalty of \$25.00 for each calendar day of
13 noncompliance, or portion thereof, for each worker. Upon the request of the responsible department
14 head or the Labor Standards Enforcement Officer, the Controller shall withhold these penalties from
15 progress payments then due or to become due.

16 (78) Non-compliance with Wage Provisions—Penalties.

17 (a) Penalty and Forfeiture. Any contractor or subcontractor who shall
18 fail or neglect to pay to the several persons who shall perform labor under any contract,
19 subcontract or other arrangement on any public work or improvement as defined in this
20 Chapter the highest general prevailing rate of wages as fixed by the Board of Supervisors
21 under authority of this Chapter, shall forfeit; and, in the case of any subcontractor so failing or
22 neglecting to pay said wage, the original contractor and the subcontractor shall jointly and
23 severally forfeit to the City and County of San Francisco back wages due plus the penal sum of
24 \$50 per day for each laborer, workman or mechanic employed for each calendar day or
25 portion thereof, while they shall be so employed and not paid said highest general prevailing

1 rate of wages, and in addition shall be subject to the penalties set forth in Article V of this
2 Chapter, including debarment.

3 (b) Enforcement. It shall be the duty of the officer, board or
4 commission under whose jurisdiction said public work or improvement is being carried on,
5 made or constructed, when certifying to the Controller any payment which may become due
6 under said contract, to deduct from said payment or payments the total amount of said
7 forfeiture provided for in this subsection. In doing so, the department head must also notify in
8 writing the Labor Standards Enforcement Officer of his/her action. The Labor Standards Enforcement
9 Officer may also, upon written notice to the department head who is responsible for the project, certify
10 to the Controller any forfeiture(s) to deduct from any payment as provided for in this subsection.
11 Certification of forfeitures under this subsection shall be made only upon an investigation by the
12 responsible department head or the Labor Standards Enforcement Officer and upon written notice to
13 the contractor identifying the grounds for the forfeiture or forfeitures. The Controller, in issuing any
14 warrant for any such payment, shall deduct from the amount which would otherwise be due on
15 said payment or payments the amount of said forfeiture or forfeitures as so certified.

16 (c) Recourse. If the contractor or subcontractor disagrees with the forfeiture
17 as so provided in the foregoing subparagraph (b), then within fifteen working days of the date of the
18 notification as provided for above, the contractor or subcontractor may request a hearing before the
19 City Administrator. The City Administrator, or his/her designee, shall consider the evidence provided
20 by the contractor or subcontractor and the responsible department head and/or the Labor Standards
21 Enforcement Officer. The hearing shall occur within forty-five days of the request, unless all parties
22 agree to an extended period. The determination of the City Administrator, or his/her designee, shall be
23 final. The contractor or subcontractor may appeal such determination only by action at law for breach
24 of contract.

1 (d) Distribution of Forfeiture. The Controller shall withhold any forfeiture
2 as provided in the foregoing paragraphs until such time as either the contractor or subcontractor has
3 conceded to the forfeiture or, in the event of an objection, there is a determination no longer subject to
4 judicial review. The Controller shall then distribute the amounts withheld in the following order: (1)
5 the Labor Standards Enforcement Officer shall make its best efforts to distribute back wages withheld
6 to the individual workers identified as not having been paid the proper wage rate; (2) the penal sums
7 provided for above shall inure to the benefit of the general fund of the City and County of San
8 Francisco; (3) the Controller shall hold the balance of any back wages in escrow for workers whom the
9 Labor Standards Enforcement Officer, despite his/her best efforts, cannot locate; funds so held for two
10 years or more shall be dedicated to the enforcement of the prevailing wage requirements.

11 (e) Additional Required Contract Provisions. Every public works contract
12 shall contain provisions stating that (1) the contractor will cooperate fully with the Labor
13 Standards Enforcement Officer and other City employees and agents authorized to assist in
14 the administration and enforcement of the prevailing wage requirements and other labor
15 standards imposed on public works contractors by the Charter and Chapter 6 of the San
16 Francisco Administrative Code; (2) the contractor agrees that the Labor Standards
17 Enforcement Officer and his or her designees, in the performance of their duties, shall have
18 the right to engage in random inspections of job sites and to have access to the employees of
19 the contractor, employee time sheets, inspection logs, payroll records and employee
20 paychecks; (3) the contractor shall maintain a sign-in and sign-out sheet showing which
21 employees are present on the job site; (4) the contractor shall prominently post at each job-
22 site a sign informing employees that the project is subject to the City's prevailing wage
23 requirements and that these requirements are enforced by the Labor Standards Enforcement
24 Officer; and (5) that the Labor Standards Enforcement Officer may audit such records of the
25 contractor as he or she reasonably deems necessary to determine compliance with the

1 prevailing wage and other labor standards imposed by the Charter and this Chapter on public
2 works contractors. Failure to comply with these requirements may result in penalties and forfeitures
3 consistent with California Labor Code Section 1776(g), as amended from time to time.

4 (F) Hours and Days of Labor.

5 (1) Generally. For the purpose of meeting prevailing conditions and enabling
6 employers to secure a sufficient number of satisfactory workers and artisans, no person
7 performing labor or rendering service in the performance of any contract or subcontract for
8 any public work or improvement as defined in this Chapter shall perform labor for a longer
9 period than ~~40 hours per week, or~~ five days (Monday through Friday) of eight hours each, ~~with two~~
10 ~~45~~10-minute breaks per eight-hour day, except in those crafts in which a ~~shorter~~ different work
11 day ~~or week~~ now prevails by agreement in private employment. Any person working hours in
12 addition to the above shall be compensated in accordance with the prevailing California
13 ~~Department of Labor~~ overtime standards and rates.

14 (2) Noncompliance—Penalties and Forfeiture. Any contractor or
15 subcontractor who shall violate any of ~~to the~~ provisions of this subsection shall be liable for the
16 same penalties and forfeits as those specified in Subsection 6.22(E) of this Chapter; penalties
17 and forfeits shall be applicable for each laborer, mechanic or artisan employed for each
18 calendar day or portion thereof whereon such laborer, mechanic or artisan is compelled or
19 permitted to work more than the days and hours specified herein. The provisions of this
20 subsection shall be made a part of all contracts and subcontracts for the construction of any
21 public work or improvement.

22 (3) Contracts Outside City and County. In the event that any public work or
23 improvement is to be constructed outside of the City and County of San Francisco and at such
24 a distance therefrom that those engaged in performing labor on said public work or
25 improvement must under ordinary conditions remain at or near the site of said work or

1 improvement when not actually engaged in the performance of labor thereon, then the officer,
2 board or commission responsible for the construction of said public work or improvement may,
3 in making specifications or letting contracts therefor, make provision therein for days and
4 hours of labor beyond the limitations provided for in Section 6.22(F) of this Chapter; but not to
5 exceed eight hours in any one calendar day, or six days in any calendar week. In the event
6 that emergency conditions shall arise, making a change advisable during the performance of
7 any such contract, or any portion thereof, the hours and days of labor may be extended
8 beyond the limits hereinabove expressed; but not to exceed eight hours per day, upon the
9 written authority of the officer, board or commission awarding such contract. Failure of the
10 contractor to perform such contract within the time provided shall not constitute an
11 emergency.

12 (G) Local Hiring.

13 (1) Contract Requirements. All construction contracts for public works or
14 improvements to be performed within the boundaries of the City and County of San Francisco
15 shall contain the following provisions:

16
17 Contractor agrees to make a good-faith effort, with the assistance of community organizations
18 designated by the City or local labor union hiring halls, to hire qualified individuals who are
19 residents of the City and County of San Francisco to comprise not less than 50% of each
20 contractor's total construction work force, measured in labor work hours, and contractor
21 promises to give special preference to minorities, women and economically disadvantaged
22 individuals.

1 Contractor shall keep, and provide to the City, an accurate record showing the name, place of
2 residence, hours employed and per diem pay of each person employed by the contractor,
3 including full-time, part-time, permanent and temporary employees.

4
5 Contractor shall keep, and provide to the City, an accurate record describing in detail
6 contractor's good-faith efforts to secure employment of residents of the City and County of
7 San Francisco.

8
9 A failure to abide by these contract provisions may result in the imposition of sanctions and
10 penalties, including those provided for in San Francisco Administrative Code Section 6.80.

11 (2) Definitions.

12
13 "Qualified individual" shall mean an individual who (A) is eligible for a certified apprenticeship
14 program in an applicable trade; (B) has completed a certified apprenticeship program in an
15 applicable trade; or (C) has completed comparable time in an applicable trade.

16
17 "Resident of the City and County of San Francisco" shall mean an individual who is domiciled,
18 as defined by Section 200(b) of the California Election Code, within the boundaries of the City
19 and County during the entire time of the performance of the contract and who can verify his or
20 her domicile, upon request of the contractor or City, by producing documentation such as a
21 rent/lease agreement, telephone and utility bills or payment receipts, a valid California driver's
22 license or identification card, and/or any other similar, reliable evidence that verifies that the
23 individual is domiciled within the City and County of San Francisco.

24 "Economically disadvantaged" shall mean an individual who has been unable to secure
25 employment in his or her trade for more than 20 working days in the past six months, or

1 whose annual maximum income falls within the income limits established by the Mayor's
2 Office of Community Development for the Community Development Block Grant (CDBG)
3 programs.

4
5 (3) Enforcement. The Human Rights Commission shall be the City agency
6 charged with the monitoring and enforcement of the provisions of this subsection.

7
8 (H) Modifications—General Requirements. If it becomes necessary in the
9 prosecution of any public work or improvement under contract to make alterations or
10 modifications or to provide for extras, such alterations, modifications or extras shall be made
11 only on written recommendation of the department head responsible for the supervision of the
12 contract, together with the approval of the Mayor or the Mayor's designee or the board or
13 commission, as appropriate to the department, and also the approval of the Controller, except
14 as hereafter provided. The Mayor or the board or commission, as appropriate to the
15 department, may delegate in writing the authority to approve such alterations, modifications or
16 extras to the department head. The Controller may delegate in writing the authority to
17 encumber funds from prior appropriations for such alterations, modifications or extras to the
18 department head prior to the certification for payment. Such authority, when granted, will
19 clearly state the limitations of the changes to be encompassed.

20 (1) Increasing or Decreasing Price. Alterations, modifications or extras in
21 any contract, which will increase or decrease the contract cost or scope, may be made or
22 allowed only on the written recommendation of the department head responsible for the
23 supervision of the contract stating the amount and basis for such increase or decrease. For
24 any cumulative increase or decrease in price in excess of ten percent of the original contract
25

1 price or scope, the department head shall obtain the approval of the Mayor or Mayor's
2 designee or the board or commission as appropriate and also the approval of the Controller.

3 (2) Extensions of Time. Upon finding that work under a construction contract
4 cannot be completed within the specified time because of an unavoidable delay as defined in
5 the contract, the department head may extend the time for completion of the work. If the
6 cumulative extensions of time exceeds ten percent of the original contract duration, the
7 department head shall first obtain the approval of the Mayor, the Mayor's Designee, board or
8 commission, as appropriate to the department. All time extensions shall be in writing, but in
9 no event shall any extension be granted subsequent to the issuance of a certificate of final
10 completion.

11 (a) Time Extension Not Waiver of City's Rights. The granting of an
12 extension of time because of unavoidable delays shall in no way operate as a waiver on the
13 part of the City and County or the department head, Mayor, board or commission of the right
14 to collect liquidated damages for other delays or of the right to collect other damages or of any
15 other rights to which the City and County is entitled.

16 (b) No Extension Granted When Contract Based on Time Estimates.
17 When any award of contract has been made in consideration, in whole or in part, of the
18 relative time estimates of bidders for the completion of the work, no extension of time may be
19 granted on such contract beyond the time specified for completion, unless the liquidated
20 damages for each day the work is uncompleted beyond the specified time shall be collected;
21 provided, however, that this shall not apply to unavoidable delays due to acts of God.

22 (c) Avoidable and Unavoidable Delay; Limitation of Damages for
23 Delay. The department head administering the public work shall have the authority to specify
24 in the contract the delays that shall be deemed avoidable or unavoidable. The City and
25 County shall not pay damages or compensation of any kind to a contractor because of delays

1 in the progress of the work, whether such delays be avoidable or unavoidable; provided,
2 however, the City and County may pay for (1) delays caused to the contractor by the City and
3 County; and (2) such unavoidable delays as may be specifically stated in the contract. Such
4 latter delays will be compensated for only under the conditions specified in the contract.

5 (d) Notice of Delay Required. The contractor shall promptly notify the
6 department head in writing, of all anticipated delays in the prosecution of the work and, in any
7 event, promptly upon the occurrence of a delay, the notice shall constitute an application for
8 an extension of time only if the notice requests such extension and sets forth the contractor's
9 estimate of the additional time required together with a full recital of the causes of unavoidable
10 delays relied upon. The department head may take steps to prevent the occurrence or
11 continuance of the delay, may classify the delay as avoidable or unavoidable and may
12 determine to what extent the completion of the work is delayed thereby.

13 (I) Liquidated Damages. Any contract may provide a time within which the contract
14 work, or portions thereof, shall be completed and may provide for the payment of agreed
15 liquidated damages to the City and County for every calendar or working day thereafter during
16 which such work shall be uncompleted.

17 (J) Retention of Progressive Payments. Any contract may provide for progressive
18 payments, if the Advertisement For Bids shall so specify. No progressive payments under
19 any contract shall be made which, with prior payments, shall exceed in amount 90 percent of
20 the value of the work and labor and materials furnished. However, if the department head
21 responsible for the public work determines that the contract is 50 percent or more complete,
22 that the contractor is making satisfactory progress and that there is no specific cause for
23 greater withholding, progressive payments may be made not to exceed in amount the lesser
24 of either 95 percent of the value of the work and labor and material furnished or 95 percent of
25 the contract price. When the department head responsible for the public work determines that

1 the contract is 95 percent complete, funds withheld may be reduced to an amount equal to
2 200 percent of the estimated value of the work yet to be completed as determined by the
3 department head.

4 (K) Inspection and Acceptance of Completed Work; Final Payment. The
5 department head authorized to execute any contract for public works or improvements shall
6 be responsible for the inspection and acceptance of such work on completion. Such
7 acceptance shall be in writing and shall include the certificate of the department head
8 concerned that the work covered by the contract has been fully and satisfactorily completed in
9 accordance with the plans and specifications therefor. Receipt of copy of such acceptance in
10 writing shall constitute the Controller's authority to complete any payments due the contractor
11 under the contract; provided that the Controller may make such additional investigation or
12 inspection as is provided by Administrative Code Section 10.07.

13 (L) Termination for Convenience. In all contracts for the construction of any public
14 work or improvement, the department head authorized to execute any contract for any public
15 work or improvement may include in the specifications setting forth the terms and conditions
16 for the performance of the contract a provision that the City and County may terminate the
17 performance of work under the contract whenever the department head shall determine, with
18 the approval of the Mayor, the Mayor's designee or the board or commission concerned, that
19 such termination is in the best interest of the City and County. Any such termination shall be
20 effected by delivery to the contractor of a notice of termination specifying the extent to which
21 performance of work under the contract is terminated and the date upon which such
22 termination becomes effective. The department head is hereby authorized to include within
23 such construction contract the appropriate language to implement this subsection.

24 (M) Violations of Chapter 6; False Claims. Every public work contract performed at
25 the expense of the City and County of San Francisco, or the cost of which is paid for out of

1 monies deposited in the treasury of the City and County, whether directly awarded or
2 indirectly by or under subcontract, subpartnership, day labor, station work, piece work or any
3 other arrangement whatsoever, shall contain a clause incorporating the provisions of Section
4 6.80 of this Chapter.

5 (N) Articles Not to be Prison Made. No article furnished under any contract awarded
6 under the provisions of this Chapter shall have been made in a prison or by convict labor
7 except for articles made in prisons or by convicts under the supervision and control of the
8 California Department of Corrections and limited to articles for use by the City and County's
9 detention facilities.

10 (O) Employment of Apprentices. All construction contracts awarded under this
11 Chapter shall require the Contractor to comply with the requirements of the State
12 Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4
13 [commencing at Section 3070] and Section 1777.5), as it may be amended from time to time,
14 and shall require the Contractor to include in its subcontracts the obligation for subcontractors
15 to comply with the requirements of the State Apprenticeship Program.

16 (P) Safety. All construction contracts awarded under this Chapter shall require the
17 Contractor and all of its subcontractors to abide by the applicable Occupational Safety and Health
18 statutes and regulations.

19
20 **SEC. 6.24. OFFICE OF LABOR STANDARDS ENFORCEMENT.**

21 (~~4~~) There is hereby created within the Department of Administrative Services an
22 Office of Labor Standards Enforcement. The Office of Labor Standards Enforcement shall
23 have the authority to ensure that public work contractors comply with the prevailing wage
24 requirements and other labor standards imposed by the Charter, ~~and~~ this ~~Chapter~~ Administrative
25 Code and State and/or Federal Law on public work contractors. The Office shall be administered


1 by the Labor Standards Enforcement Officer, who shall be appointed by, and shall serve at
2 the pleasure of, the Mayor. In appointing the Labor Standards Enforcement Officer, the
3 Mayor shall consider, among other relevant factors, the individual's experience enforcing labor
4 standards, including prevailing wage requirements, and the diversity of San Francisco in the
5 construction industry. Subject to the approval of the Mayor and Director of the Department of
6 Administrative Services, the Labor Standards Enforcement Officer shall develop and
7 administer a plan for the enforcement of the prevailing wage requirements and other labor
8 standards imposed by the Charter and this Chapter on public work contractors. The Labor
9 Standards Enforcement Officer shall coordinate his or her activities with federal and state
10 labor standards agencies. The Labor Standards Enforcement Officer shall direct the City's
11 enforcement of the prevailing wage requirements and other labor standards imposed by the
12 Charter and this Chapter on public work contractors as directed by the Mayor, and to this end
13 all City departments shall cooperate with the Labor Standards Enforcement Officer. The
14 Labor Standards Enforcement Officer has the authority to seek for violations of prevailing
15 wage, working conditions and apprenticeship requirements all of the penalties imposed by *Article*
16 ~~of~~ this Chapter, including the authority to file charges, in the same manner and to the same
17 extent as a department head, which may lead to the debarment of the contractor under *Section*
18 ~~6.82~~ Article V of this Chapter. The Labor Standards Enforcement Officer shall oversee the
19 training of City personnel in the area of labor standards enforcement. In accordance with
20 applicable law, the Mayor may enter into a contract for investigative and monitoring services
21 to further the purposes of this section. In evaluating the qualifications of persons seeking that
22 contract, the Mayor shall consider, among other relevant factors, the experience of those
23 persons in monitoring and investigating labor standards compliance.

24 (b) Subject to the fiscal and budgetary provisions of the charter, the Office of Labor
25 Standards Enforcement is authorized to receive from departments awarding public work

1 contracts the amount reasonably calculated to pay for the costs, including litigation costs, of
2 enforcing the City prevailing wage requirements and other labor standards for contracts
3 awarded by those departments. The Labor Standards Enforcement Officer shall supervise
4 the expenditure of all funds appropriated for enforcement of prevailing wage requirements and
5 other labor standards imposed by the Charter and this Chapter on public works contractors.
6

7 APPROVED AS TO FORM:
8 DENNIS J. HERRERA, City Attorney

9
10 By:


11 SHERYL BREGMAN
12 Deputy City Attorney
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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 021221

Date Passed:

Ordinance amending the Administrative Code by adding subsection 6.1(H), definition of prevailing wage; amending subsection 6.22(A)(6) to include a requirement concerning subcontractor licenses; amending subsection 6.22(B) to include a requirement that all contractor and subcontractors provide workers' compensation insurance certificates; amending subsection 6.22(E) concerning application and enforcement of prevailing wage requirements and assessment of penalties and backwages; amending subsection 6.22(O) to add further contractual requirements for the employment of apprentices and to add penalties for noncompliance; adding subsection 6.22(P) concerning safety requirements for contractors and subcontractors; amending section 6.24 to expand the authority of the Office of Labor Standards Enforcement to enforce requirements of state and federal law, to enforce working conditions and apprenticeship and to assess monetary penalties and backwages against public work contractors.

September 30, 2002 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,
Newsom, Peskin, Sandoval, Yee

October 7, 2002 Board of Supervisors — FINALLY PASSED

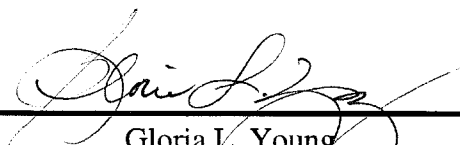
Ayes: 10 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,
Newsom, Peskin, Sandoval
Absent: 1 - Yee

File No. 021221

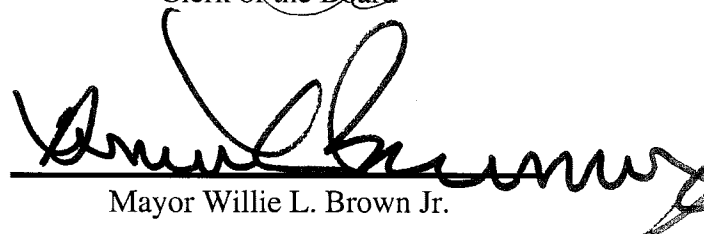
I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on October 7, 2002
by the Board of Supervisors of the City and
County of San Francisco.

OCT 7 5 2002

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Willie L. Brown Jr.