

RULES COMMITTEE: 03-21-18
ITEM: G.7.



Memorandum

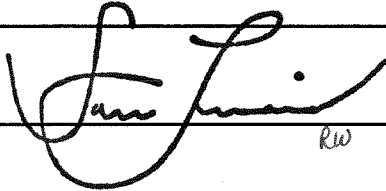
TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Mayor Sam Liccardo

SUBJECT: PRIVATE DEVELOPMENT
WORKFORCE STANDARDS/COMMUNITY
WORKFORCE AGREEMENTS ON PUBLIC
PROJECTS

DATE: March 21, 2018

Approved



RW

Date

3/21/18

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

The memorandum that I submitted to the Rules and Open Government Committee on March 16, 2018 on the subject matter indicated that a Supplemental Exhibit A and Exhibit B would be forthcoming. Please find attached said exhibits.

EXHIBIT A

- A. Workforce standards (including prevailing wage, apprentice ratios, local and targeted hire, and monitoring and compliance provisions, all described in Paragraph D., below) shall be mandated upon private development where there is a public subsidy for that project. Such standards shall not be mandated where there is no public subsidy, and public works shall not constitute a “private development” subject to these standards.
- B. “Public subsidy” consists of the City’s substantial contribution of land, money, or other direct financial assistance, or a substantial reduction in fees or taxes in a manner that is not described in Section C below.
- C. “Subsidy” for these purposes does NOT include:
- (1) Any City contribution to deed-restricted, affordable housing, defined as rent- or price-restricted for persons making less than 100% AMI.
 - (2) Public construction of supportive infrastructure (such as a traffic signal or off-ramp) resulting from collection of impact fees or taxes, where the development has paid its proportionate share of fees and taxes.
 - (3) Fee or tax reductions resulting from changes to State or Federal regulations related to CEQA or the Mitigation Fee Act, e.g., modifications to City Policy 5-3 Level of Service Policy resulting from SB743.
 - (4) Fee or tax reductions applied uniformly across an entire category of projects, wherein “category” is limited to five general designations: “residential,” “office,” “retail,” “research & development,” and “industrial.”
 - (5) Fee or tax reductions applied uniformly across an entire specified subcategory of project, where Council makes findings of fact that (a) prevailing law, such as the Quimby Act or Prop. 26, requires such reductions; or (b) financing or construction of that subcategory of development is “infeasible” without a fee or tax reduction, and reducing said fees is in the public interest.
 - a. “Infeasibility” shall be determined by the City Council, after making findings based upon objective evidence presented in a public hearing that such fee/tax reductions are necessary to enable financial viability of the class of projects.
 - i. “Objective evidence” must include a study by an independent third party, such as Keyser Marston or EPS. The parties will agree to a list of potential consultants as part of this negotiation, but City staff will be responsible for selecting and retaining the consultant from the list.
 - ii. “Necessary to enable financial viability” means that projects in that subcategory are not likely to be built within a reasonable time period absent a reduction in fees, based on findings in the third-party report.
 - iii. In assessing the feasibility of a specific subcategory, the independent third party and Council should consider, among other issues:
 1. Whether all projects in the subcategory are financially infeasible;

2. The reasons why all projects in the subcategory are financially infeasible;
 3. An estimate of the size of the gap between financial feasibility and infeasibility;
 4. The anticipated duration that these conditions of infeasibility will persist;
 5. The options available to the City and project developers to achieve feasibility. The options evaluated shall include, but are not limited to:
 - a. Providing the tax and/or fee break proposed by the City.
 - b. Providing an equivalent tax/fee break with the imposition of the City's workforce accountability standards.
 - c. Any other feasible options as identified by the consultant, with input from stakeholders. Should the consultant conclude that the City could employ cost-saving measures other than a fee reduction, those measures must be:
 - i. Compliant with CEQA, the General Plan, and all other prevailing laws and regulations, and
 - ii. Reasonably likely to result in the financing and commencement of a construction project in that subcategory.
 - iv. The Council and staff must undertake every reasonable effort to ensure that it can issue its findings within sixty (60) days of commissioning a feasibility study.
- b. "Specified subcategory" of projects can include any one of the following:
- i. High-rise (as defined in the Fire Code) Citywide;
 - ii. High-rise (as defined in the Fire Code) Downtown, i.e., subject to OEI height constraints;
 - iii. Mixed-use development with a minimum of three stories, wherein "mixed-use" is comprised with some combination of residential, retail, office, or other use;
 - iv. Small retail (<10,000 SF);
 - v. Medium retail (10,000 SF – 30,000 SF);
 - vi. Large retail (>30,000 SF);
 - vii. Hotel;
 - viii. Restaurant;
 - ix. Theaters, concert halls, and similar public assembly uses;
 - x. Large R & D, industrial park, or office (>1,000,000 SF);
 - xi. Mid-size R & D, industrial park, or office (100,000-1,000,000 SF);
 - xii. Small R & D or office (<100,000 SF);

- xiii. Small industrial/manufacturing/warehouse/distribution (<200,000 SF);
- xiv. Large industrial/manufacturing/warehouse/distribution (>200,000 SF);
- xv. Data centers;
- xvi. Single resident occupancy unit (SRO) or micro housing (<500 SF/DU);
- xvii. Secondary residential unit (ADO);
- xviii. Mid-rise residential multi-family (>30 DU/ AC);
- xix. Non-profit university, hospital, or other non-profit campus use having unique public benefit;
- xx. Any of the above categories identified in C.(4), located within a geographic area subject to fees under a City-approved area development policy (ADP) or fee-generating district, such as an urban village (UV), or the Edenvale Area Development Policy. The City may not define a new geographically-defined ADP, UV, or other district for the purpose of reducing fees in that area;
- xxi. Any of the subcategories listed in the 2018 International Building Code as “Defined Sub-Categories” under Option A of the Labor proposal; and
- xxii. Another subcategory for which parties have conferred and agreed upon, prior to Council hearing and approval.

D. Workforce Standards

Monitoring and compliance for all workforce standards shall be at the direction of the City Manager.

(1) Prevailing Wage

On subsidized projects, developers shall pay, or cause to be paid, prevailing wages to workers for all Construction Work performed on the Covered Project by all contractors and subcontractors at every tier. “Prevailing wages” means a total wage and benefit package that is at least equivalent to the general State prevailing wage for the type of work and geographic area as determined by the California Director of Industrial Relations.

(2) Local Hire – Good Faith Effort for 30% Local Hire

- a) There must be a uniform standard for all contractors. A worker is considered “local” if and only if their primary place of residence is in the specified local area. However, no local community member shall be excluded from “local hire” due to being homeless.
- b) This requirement will not apply if the unemployment rate for the construction industry is beneath a specified threshold (e.g., 5%), as published monthly by the Bureau of Labor Statistics.
- c) A general contractor who is otherwise unable to satisfy this standard can do so by demonstrating “Best Faith Efforts” to comply, which can consist of EITHER:

- a. The general contractor's solicitation of local labor from the respective union hiring halls for a specified duration (e.g., ten days), and the unions are unable to satisfy that requirement with local labor, OR
- b. The general contractor agrees to fairly consider all qualified local residents who apply or are referred to them, to be demonstrated by maintaining a log of local residents who apply or are referred, date of interview (or reason not qualified for interview), and outcome; and satisfies at least five (5) of the following eight (8) elements:
 - i. Place valid job order for projected position vacancies with the local office of the State EDD & other specified job-placement nonprofits, for no less than 10 consecutive calendar days.
 - ii. Advertising existing and projected position, job application workshops, centers, and job interviews by posting notices in (a) conspicuous public places (City Hall, libraries, high schools, etc.), (b) with local media (public access TV, newspapers, ethnic newspapers).
 - iii. Conducting a job information meeting to inform community of employment opportunities of the contractor, held at a City facility.
 - iv. Provide ongoing assistance to local residents to complete job application forms.
 - v. Conduct a job application workshop to assist with applications and interviews, held at a City facility (may be combined with other contractors).
 - vi. Identifying a location where job applications may be obtained, delivered, and collected.
 - vii. Conduct job interviews with all qualified local residents until all positions are filled.
 - viii. Telephone solicitation of known potential local subcontractors/employees.

(3) Apprenticeships – Good Faith Effort for 1:5 Apprentice Ratio

- a) Apprentices can come from any state-approved, certified program, whether joint labor-management or unilateral.
- b) A contractor who is otherwise unable to satisfy this standard can do so by demonstrating "best faith efforts" by soliciting apprentices from the respective union hiring hall for a minimum duration (e.g., 10 days).

(4) Targeted Hiring of Disadvantaged Workers – Good Faith Effort to Hire Disadvantaged Workers for 25% of Apprentice Hours

Private projects receiving a subsidy shall undertake a good faith effort to hire targeted workers from disadvantaged populations as entry-level apprentices, under similar Targeted Hiring procedures as included in the VTA and Santa Clara County CWA policies.

EXHIBIT B

City Capital Maintenance Projects shall be defined as: Existing infrastructure/assets that require repair, maintenance, or upgrades that extend the useful life of the asset. They include:

- Street Maintenance: Sealing, slurry, re-paving, re-surfacing, on-call maintenance contracts
- Sewer Maintenance: Repairs, rehabilitation, lining, maintenance at storm and sanitary pump stations
- Muni Water: Water tank and water pipeline maintenance
- Airport pavement maintenance
- On-call maintenance contracts for various repairs: Roof, pavement work, City facilities, parks