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City Manager's Office

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: David Sykes

**SUBJECT: POWER WASHING OF
SIDEWALKS**

DATE: November 28, 2012

Approved

Date

11/28/12

INFORMATION

At the November 14, 2012, Rules Committee meeting, staff was directed to report back whether the power washing of sidewalks as part of the Downtown PBID is subject to the City's prevailing wage requirements. After a careful analysis of the issue, staff has concluded that such power washing is not subject to the City's prevailing wage requirements but is subject to the living wage requirements.

On July 2, 2012, the California Supreme Court decided the case of *State Building and Constructions Trades Councils of California, AFL – CIO v. City of Vista*. In the City of Vista case, the Court finally determined, after years of uncertainty that California's prevailing wage law does *not* apply to charter cities undertaking projects constituting "municipal affairs." Accordingly, charter cities such as San José, are free to determine the wages paid to workers performing projects that are "municipal affairs."

The City of San José adopted Resolution No. 61144 in 1989 setting forth its own prevailing wage policy. Resolution No. 61144 continues to set forth the core of the City's prevailing wage requirements. Resolution No. 61144 is also consistent with the conclusion in the City of Vista case that charter cities are not subject to State prevailing wage requirements for projects that are "municipal affairs."

Like California prevailing wage law, Resolution No. 61144 requires the payment of prevailing wages to workers constructing public works and to workers performing maintenance on public facilities. Unlike California prevailing wage law, Resolution No. 61144 also requires the payment of prevailing wages to workers providing certain specified services to the City (i.e., residential street sweeping, convention center food services, parking lot management services and janitorial services). Currently, Resolution No. 61144 expressly states that the prevailing wage rates are those rates established by the State Department of Industrial Relations, which administers the State's prevailing wage laws.

ANALYSIS

Before 2005, the Director of the Department of Industrial Relations issued two decisions (PW 1999-028 6/30/99 and PW 2000-021 8/11/00) which held cleaning roads with a street sweeper constituted maintenance for purposes of paying prevailing wages under State law. The City has generally followed the Director of the Department of Industrial Relations with regard to what constitutes "maintenance" for the purposes of paying prevailing wages. This approach is supported by the requirement in Resolution No. 61144 to use the prevailing wage rates established by the State Department of Industrial Relations. Accordingly, because of the similarity between street sweeping and power washing, OEA staff previously had concluded that power washing of sidewalks was subject to the City prevailing wage requirements.

On November 14th, OEA staff for the first time became aware of a June 1, 2005, determination issued by then Acting Department of Industrial Relations Director John Rea. The determination was to the City of Santa Clarita regarding coverage of street sweeping work under California's prevailing wage laws. In Acting Director Rea's determination, he states that street sweeping work is a cleaning of the streets which serves an aesthetic purpose and does not constitute "maintenance" for prevailing wage purposes. This decision changed the Department's previous position on the issue.

Based on Acting Director Rea's 2005 determination, which remains in effect today according to the Department of Industrial Relations, and the similarities between street sweeping and power washing sidewalks (for aesthetic purposes), OEA staff has determined sidewalk power washing does not constitute maintenance for the purposes of paying prevailing wages. Just as with street sweeping, power washing to clean sidewalks, without more, is for aesthetic purposes and does not constitute "maintenance" for the purpose of paying prevailing wages. Moreover, none of the other provisions of Resolution No. 61144 require the payment of prevailing wages for power washing. However, because the City's prevailing wage policy is intended to apply to anyone performing services on, for or on behalf of the City, power washing sidewalks will be subject to living wage requirements.

The Department of Industrial Relations' recently redesigned website includes all public works coverage determinations dating from 2002 to present. This will allow OEA staff to keep better informed of changes in coverage determinations.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the Department of Transportation.

/s/
DAVID SYKES
Director of Public Works

For questions, please contact Nina Grayson, Division Manager, at 408-535-8455