

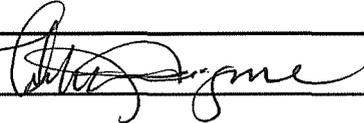
Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Ed Shikada
Katy Allen
Albert Balagso

SUBJECT: SEE BELOW

DATE: 09/13/07

Approved 

Date 9/13/07

COUNCIL DISTRICT: City-Wide

Subject: PUBLIC/PRIVATE PARTNERSHIPS AND THE APPLICABILITY OF
PREVAILING WAGE TO DONATED SERVICES

RECOMMENDATION

It is recommended that the City Council:

1. Provide direction to staff on whether the City's Prevailing Wage Policy should be revised to exclude:
 - a. work performed by volunteers, volunteer coordinators, and Conservation Corps, as defined in the California Labor Code, and Habitat for Humanity;
 - b. construction and/or maintenance services donated by private entities to the City;
 - c. services involving expenditures less than \$25,000 for new construction and \$15,000 (annually) for alteration, demolition, repair or maintenance work; and/or,
 - d. If Council determines prevailing wage should apply to donated services, eliminate the reporting requirements.
2. Direct the City Attorney's Office to draft revisions to the City's Prevailing Wage Policy in accordance with City Council direction.

OUTCOME

Direction to staff on the applicability of the City's Prevailing Wage Policy to donated services will create clear expectations with respect to proposed public/private partnership agreements among private entities, and City officials, as well as, expedite and possibly encourage future donations from private entities.

BACKGROUND

On June 12, 2007, the City Council directed staff to proceed with implementation of a proposed framework for advancing and encouraging public/private partnerships, including monthly status reports to the Rules and Open Government Committee (Rules Committee) beginning in August

through December 2007 and presentation of policy recommendations to the City Council by January 2008. Staff was further directed to return to Council as needed for input on specific policy issues or “deal points” as encountered throughout the review period. As established for this work initiative:

Public/private partnerships are defined as agreements between the City and businesses, non-profit organizations or individual donors to enhance the improvement, operation and/or maintenance of public facilities beyond levels possible through current funding. Public/private partnerships do not include situations in which the City pays fair market value for services.

On August 8, 2007, staff submitted its first status report on public/private partnerships to the Rules Committee. The report provided an update on the eleven pending partnership proposals. In addition, based on recent Council direction to require prevailing wage for sidewalk repairs performed by the City on behalf of property owners, staff requested the Rules Committee to: 1) confirm staff’s assumption that the City’s Prevailing Wage Policy is to apply to public/private partnerships involving private donations of construction and/or maintenance services, or 2) direct staff to raise the prevailing wage policy issue to the full Council.

The Rules Committee discussion centered on the need to distinguish between publicly funded services and non-publicly funded (donated) services, and directed staff to bring a more narrowly framed prevailing wage policy question to the full Council. The question before the Council is as follows: When construction and/or maintenance services are donated by a private entity, should prevailing wage be required?

ANALYSIS

Through the process of stakeholder outreach to prospective private company partners, non-profit organizations, community representatives, and labor organizations over the past few months, staff has received a variety of perspectives regarding public/private partnerships. In general, the consensus goals of advancing the City’s public/private partnerships are to:

- Enhance the delivery of services to maintain the City’s parks and provide other public improvements without replacing the work of city employees.
- Pursue opportunities to leverage contributions from partners that enhance City resources to deliver services that the City could not otherwise provide.
- Build and empower communities, and inspire civic engagement, service and volunteerism.

Within this context, the question of how prevailing wage should apply to public/private partnerships has drawn strong reactions. On one side of the debate are opinions that it should apply regardless of source of funding, based on the importance of ensuring a competitive wage to employees. On the other side are opinions that it should not apply where no city or other public funds are used, based on the importance of minimizing burdens on private partners.

Background on the City's Prevailing Wage Policy

Since the City's Prevailing Wage Policy was adopted eighteen years ago, it has been amended three times. Attachment A provides the City's Prevailing Wage Policy and an overview of how the policy has evolved.

The City's Prevailing Wage Policy requires public works construction contractors, maintenance (e.g., parks landscaping and maintenance) contractors, and their subcontractors with contracts over \$1,000 to pay workers specific wages based on specific industry classifications set forth by the California Department of Industrial Relations. The purpose of the Prevailing Wage Policy is to ensure equitable and sufficient wages for citizens, protect City job opportunities, and stimulate the local economy when public funds are involved and to ensure that the ability to get a contract is not based on paying lower wage rates than a competitor.

As a point of clarification and distinction, the City's *Living Wage* Policy requires service contractors and their subcontractors to pay a City-established minimum living wage rate, and is not industry-specific. The Policy applies to contracts with expenditures in excess of \$20,000, and includes direct services or labor to the City such as janitorial and custodial services, moving services and security services. The living wage rate is typically lower than prevailing wage rates.

Handling of Donations and Volunteers Under the Prevailing Wage Policy

Because the City's Prevailing Wage Policy applies to construction services "funded in whole or in part by the City," and all maintenance services in excess of \$1,000 (with no "whole or in part" limitation) donations of either construction or maintenance services have typically been considered to be subject to prevailing wage. Since construction projects typically require City staff plan review, permitting, and inspection, the City's contribution of these costs has been interpreted as constituting "funded in part" by the City and therefore triggered prevailing wage.

The work of "volunteers" is not specifically defined under the Prevailing Wage Policy, and leads to some uncertainty related to public/private partnerships:

- Consistent with interpretation provided by the California Labor Code, unpaid volunteers have been interpreted as not being subject to prevailing wage.
- The City Council recently approved a finding that the San Jose Conservation Corps is not subject to prevailing wage for its services provided to the City; a similar situation is currently being considered related to Our City Forest.
- Company "community service days," where a company's employees are paid to participate in community cleanups or other voluntary activities, are not addressed under City policy. A strict interpretation of the policy could conclude that since these employees are being paid, prevailing wage would apply.

- A company that donates maintenance services to the City by paying a landscaping contractor to maintain a City park, while no City funds are involved, is subject to prevailing wage.

Application of the City's Prevailing Wage Policy in these scenarios is confusing, and discourages donated services.

Comparison to the California Labor Code

Although, as a charter city, San Jose is generally not required to follow state prevailing wage laws, the California Labor Code provides a useful frame of reference. Staff has been interpreting the City's Prevailing Wage Policy in conformance with the California Labor Code definition of "paid for in whole or in part." Council may wish to clarify when the City's Policy should be applied differently to public/private partnerships.

- Sections 1720 and 1771 of the Labor Code require prevailing wage to be paid on public works and maintenance contracts paid for in whole or in part out of public funds in excess of \$1,000. "Public works" means construction, alteration, demolition, installation and repair. Labor Code Section 1720 also includes several provisions defining the term "paid for in whole or in part" (Attachment B), notably including waiver of fees normally charged for a contract.
- Section 1720.4 identifies work not subject to prevailing wage, including work performed by (also Attachment B):
 - Volunteers, defined as an individual who performs work for civic, charitable or humanitarian reasons for a public agency or 501(c)(3) non-profit;
 - Volunteer coordinators, paid by a tax-exempt organization to oversee or supervise volunteers; and,
 - Members of the California Conservation Corps or of Community Conservation Corps certified by the California Conservation Corps.

The Labor Code also provides a limited exemption to an awarding body having a State-approved Labor Compliance Program. The limited exemption does not require payment of prevailing wage for any public works construction project of \$25,000 or less or any alteration, demolition, repair or maintenance project of \$15,000 or less. While the City does not have a State-approved Labor Compliance Program, the City's Prevailing Wage Policy could be amended to conform to this State Labor Code exemption.

Options for Clarifying Applicability of the City's Prevailing Wage Policy

- a. Exclude work performed by volunteers, volunteer coordinators, and Conservation Corps as defined in the California Labor Code, with certain modifications

In recognition of the City's desire to encourage community involvement through public/private partnerships, staff and several labor organizations have concluded that applicability of the City's prevailing wage policy could be clarified by incorporating certain exemptions stated in the California Labor Code. These include volunteers, volunteer coordinators, and the Conservation Corps. In addition, Habitat for Humanity, which is not specifically mentioned in the Labor Code, would be added.

Incorporating these exemptions will improve clarity for staff, partners, and labor organizations, and potentially lead to additional volunteerism that will directly benefit improved levels of service. Furthermore, it is believed these exemptions are consistent with the purpose, intent and spirit of the City's Prevailing Wage Policy.

The definition of volunteer coordinators would cover Our City Forest, as well as potentially other situations with paid volunteers working through non-profit organizations. Revising the state exemptions to include Habitat for Humanity would specifically identify this organization, while clarifying the City's intent that prevailing wage apply to non-profit housing developers.

b. Exclude construction and/or maintenance services donated by a private entity (with no public funds)

As discussed by the Rules Committee, the City's Prevailing Wage Policy could also be amended to exclude construction and/or maintenance work performed by private entities at no cost to the City or other public agencies. Within the context of the Labor Code, this would represent a finding that donated construction and maintenance services are not "funded in whole or in part" by the City.

If the City Council desires to pursue this approach, staff would recommend the following clarifications also be made:

- i. Company community service projects, in which company employees receive their standard pay while performing community service work, would be excluded and prevailing wage would not apply.
- ii. A company that contracts with and pays a contractor to construct or maintain a public facility would be excluded and prevailing wage would not apply.
- iii. A construction contractor who pays his/her employees their standard pay while performing community service work involving construction of a public improvement or maintenance services would be excluded and prevailing wage would not apply.
- iv. In order to be functional for most public/private partnership proposals, City costs for plan review, permits, inspection, and other oversight would need to be specifically excluded from project costs. While noting that this is not consistent with definitions of "in whole or in part" provided in the California Labor Code, requiring partners to cover City costs of this nature would likely preclude most partnerships.

In addition to the two primary issues noted above, staff has also identified the following potential criteria for City Council consideration:

- c. Exclude services involving expenditures less than \$25,000 for new construction and \$15,000 (annually) for alteration, demolition, repair or maintenance work

The CA Labor Code provides a limited exemption from the requirement to pay prevailing wage to an awarding body having a State-approved Labor Compliance Program (LCP). The Labor Code does not require payment of prevailing wage for any public works construction project of \$25,000 or less or any alteration, demolition, repair or maintenance project of \$15,000 or less. The City's Prevailing Wage Policy applies to construction and maintenance contracts in excess of \$1,000. This option would result in modifying the City's Prevailing Wage Policy and increasing the monetary threshold in conformance to the State Labor Code. This option is consistent with a similar threshold established by the City for its Living Wage Policy which applies to service and labor contracts involving expenditures in excess of \$20,000.

- d. If Council determines prevailing wage should apply to donated services, eliminate the reporting requirements

Private partners and non-profits find the prevailing wage reporting requirements particularly burdensome and are discouraged from participating in partnership agreements. Staff from the City Manager's Office, Office of Equality Assurance, and City Attorney's Office have discussed the viability of eliminating reporting requirements for donated services, as a means of streamlining administrative burdens on partners. Under this scenario, the contract language for donated services could include requirements for contractors to keep certified payroll records and other labor compliance documentation and upon request of the City provide the records and documents within 10 days of request. This would enable the City to follow-up and resolve any prevailing wage complaints in a timely and efficient manner.

EVALUATION AND FOLLOW-UP

The follow-up actions will be reported to the Rules Committee through staff's monthly status reports. Staff will return to Council as needed for further input on specific policy issues throughout the pilot period.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or

a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

As part of an on-going process to solicit community input staff facilitated several focus group and stakeholder input sessions. The first meeting was held with prospective private company partners on July 11, 2007. A second meeting was held with non-profit organization partners on July 12, 2007, followed by a general "town hall" meeting at the Northside Community Center on August 16, 2007. Staff has also met with bargaining units representing City employees regularly since inception of the public/private partnership initiative, and with several labor organizations on September 5, 2007.

COORDINATION

This staff report has been coordinated with the following Departments and Offices: Employee Relations; General Services; Housing, Human Resources, Parks, Recreation and Neighborhood Services, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This report seeks City Council clarification to reconcile fiscal and policy priorities.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

This work effort is being pursued within existing operating budgets; no special budget allocation has been established.

CEQA

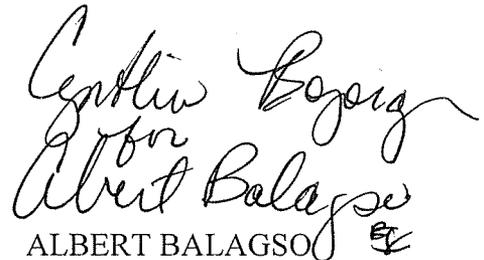
Not a project.



EDWARD K. SHIKADA
Deputy City Manager



KATY ALLEN
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For questions please contact Ed Shikada, Deputy City Manager, at (408) 535-8190, Katy Allen, Director of Public Works at (408) 535-8444, or Albert Balagso at (408) 793-5553.

ATTACHMENT A
CITY OF SAN JOSE'S PREVAILING WAGE POLICY (RESOLUTION NO. 61144)

Section 1. City's Prevailing Wage Policy (Resolution No. 61144)

Section 2. Obligations of Contractors

Section 3. History of the City's Prevailing Wage Policy

ATTACHMENT A
CITY'S PREVAILING WAGE POLICY, CON'T

Section 1. Prevailing Wage Policy (Resolution No. 61144)

A resolution of the council of the city of san jose approving a policy which requires the payment of prevailing wages in designated city projects and services to the city

WHEREAS, ensuring equitable and sufficient wages for citizens of the City of San Jose is an essential goal; and

WHEREAS, a prevailing wage requirement in City construction contracts and other designated City contracts is important to protect City of San Jose job opportunities, stimulate the City's economy; and

WHEREAS, on October 11, 1988, the City Council of the City of San Jose adopted a prevailing wage policy by Resolution and recommended that the extension of prevailing wage requirements to other City projects and programs be studied,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of San Jose:

SECTION 1. Prevailing Wage Policy of the City of San Jose

- I. It is the policy of the City of San Jose that in any contract hereinafter entered into under the circumstances set forth below shall provide that not less than the general prevailing wage of per diem wages as defined in the California Labor Code shall be required to be paid:
 - A. City public works construction projects funded in whole or in part by City funds, where work is performed pursuant to any public works construction contract to which the City is a party.
 - B. The following direct services which are provided under contract to the City:
 1. Residential Street Sweeping
 2. Convention Center Food Services
 3. Parking Lot Management Services
 4. Janitorial or Custodial Services
 - C. City maintenance projects of a routine, recurring or usual nature for the preservation, protection and keeping of City owned buildings, structures and ground facilities, where work is performed pursuant to contracts to which the City is a party and which exceed the contractual amount of \$1,000.00.

SECTION 2. Application

- A. This requirement shall apply to the employees of an employer including the general contractor, subcontractor or other contractor engaged by the general contractor in construction, alteration, demolition or repair work for construction projects designated in Section 1, above.

ATTACHMENT A
CITY'S PREVAILING WAGE POLICY, CON'T

- B. This policy shall not apply to construction on property owned by City Employee Retirement Systems.
- C. The City Council reserves its right to require the payment of prevailing wages on any City project or service provided to the City not expressly designated in this Policy.
- D. This Policy is not intended to create any power or duty in conflict with state or federal law or to diminish any rights or obligations established by state or federal law.
- E. This Policy shall not confer upon the City any power, not otherwise provided by law, to determine the legality of any collective bargaining agreement.
- F. This Policy is not intended to impose upon the City or its officers and employees, an obligation for breach of which the city or its officers and employees is liable in money damages to any person or entity who claims that such breach proximately caused injury.

SECTION 3. Implementation of Policy

- A. This policy shall be implemented through the City's authority to contract with parties affected by adoption of this Resolution.
- B. Prevailing wage rates for employees covered by this Policy shall be those wage rates as established or published by the State Department of Industrial Relations.
- C. Contracts or agreements entered into by the city for the projects or services specified in Section 1 above shall include provisions relating to records, apprentices, notices and enforcement in accordance with the requirements of the California Labor Code.
- D. The City Manager shall develop a process and procedure for establishing prevailing wage rates where the State Department of Industrial Relations has not determined prevailing wage rates for applicable job classifications.
- E. The requirements of this Policy shall be included in any requests for proposals, requests for qualifications or specifications for a project or service specified in Section 1, above. Where no request for proposal, request for qualifications or specifications are issued, potential contracting parties shall be notified of the prevailing wage rate at the first appropriate time but under no circumstance later than execution of a contract or agreement.

SECTION 4. Enforcement

- A. Nothing in this Resolution and Policy shall preclude enforcement by the State Department of Industrial Relations in the projects or services specified in Section 1, above.
- B. Every City contract or agreement to which this Policy applies shall contain provisions hereby the contracting party with the City may be deemed to be in breach of contract for failure to comply with the contractual requirements to pay prevailing wages in accordance with this Resolution. Such provisions shall also authorize the City to take all

**ATTACHMENT A
CITY'S PREVAILING WAGE POLICY, CON'T**

appropriate action including rescission of the contract or agreement, or to seek judicial relief for damages.

- C. In imposing on its contracting parties this Policy's requirements to pay prevailing wages, the City is not assuming, nor imposing on its officers and employees, an obligation for breach of which the City or its officers and employees is liable in money damages to any person who claims that such breach proximately caused injury.

SECTION 5. Applicability

- A. This Policy shall be applicable for all contracts and agreements for which requests for proposals, requests for qualifications or specifications contain the requirements of this Policy.
- B. All requests for proposals, requests for qualifications or specifications issued after the adoption of this Resolution shall contain the requirements of this Policy.
- C. This Policy is immediately effective for all contracts and agreements executed by a party after adoption of this Resolution and for which no request for proposal, request for qualifications or specifications are issued.
- D. This Policy shall supersede the Policy adopted by the City Council by Resolution on October 11, 1988.

ADOPTED this 7th day of February, 1989 by the following vote:

Section 2. Obligations of Contractors

On publicly funded projects, contractors are required to pay and ensure that their subcontractors pay the prevailing wage as determined by the Director of the California Department of Industrial Relations and/or the awarding body.

Contractors must also comply with certain apprenticeship obligations set forth in the Labor Code. State law requires that contractors awarded public works contracts provide contract award information, request apprentices from local apprenticeship committees, employ apprentices in the appropriate ratio (at least one hour of apprentice work for every five hours of labor performed by a journeyman) and contribute to the California Apprenticeship Council or the local apprentice training trust fund.

Another obligation imposed on contractors is to maintain and furnish weekly certified payroll reports to the awarding body accompanied by a statement of compliance certifying under penalty of perjury that the information is truthful and correct.

**ATTACHMENT A
CITY'S PREVAILING WAGE POLICY, CON'T**

Section 3. History of the City's Prevailing Wage Policy

Resolution 60932 – Established 1988

On October 11, 1988, the Council adopted Resolution 60932 which promulgated the City's first Prevailing Wage Policy. The Resolution required that prevailing wage be paid on City funded public works construction contracts executed by the City but not for City maintenance projects or to construction on property owned by the City Employee Retirement Systems. The Policy did not set a minimum contract amount nor require that the project be funded in whole or in part by City funds. In the memorandum from the City Attorney that accompanied the resolution, it was reported that Phase II of the Prevailing Wage Policy review would include "an analysis and recommendations by the Administration on the policy issues involved in extending the requirement of prevailing wages to other City and Agency projects."

Resolution 61144 – Revised 1989

Council adopted Resolution 61144 on February 7, 1989, superseding Resolution 60932. The Administration's memorandum recommending the Revised Policy stated that the proposed maintenance language was the same as the language in the California Labor Code and therefore all covered wage categories would be set by the State of California's Department of Industrial Relations. Specifically, the Revised Policy amended the applicability to public works construction contracts and added subsections B and C:

- A. City public works construction projects funded in whole or in part by City funds, where work is performed pursuant to any public works construction contract to which the City is a party;
- B. The following direct services which are provided under contract to the City;
 - 1. Residential Street Sweeping;
 - 2. Convention Center Food Services;
 - 3. Parking Lot Management Services;
 - 4. Janitorial or Custodial Services;
- C. City maintenance projects of a routine, recurring or usual nature for the preservation, protection and keeping of City owned buildings, structures and ground facilities, where work is performed pursuant to contracts to which the City is a party and which exceed the contractual amount of \$1,000.

Extension to Resolution 61144 – Revised 1989

A third Council Resolution was adopted on October 10, 1989 that extended Council Resolution 61144 to City housing projects in excess of eight dwelling units. For any City housing projects, new construction and rehabilitation involving less than eight dwelling units or the construction work portion of City self-help housing projects that are not contracted out by the developer, the City's prevailing wage policy does not apply.

Resolution 71584 – Revised 2003

The City Council also adopted a Resolution amending the Prevailing Wage Policy and the Living Wage Policy in 2003, to include a liquidated damages requirement for failure to pay prevailing or living wages (Resolution No. 71584)

ATTACHMENT B
CALIFORNIA LABOR CODE

Section 1720. "Public Works" Defined; "Paid for in Whole or in Part Out of Public Funds" Defined; Exception for Private Residential Properties; Exclusions

Section 1720.4. Work Performed by Volunteer

ATTACHMENT B
LABOR CODE SECTION 1720

CA Labor Code Section 1720. "Public works" defined; "paid for in whole or in part out of public funds" defined; exception for private residential projects; exclusions

(a) As used in this chapter, "public works" means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

(6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(b) For purposes of this section, "paid for in whole or in part out of public funds" means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis

LABOR CODE SECTION 1720

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter unless the projects are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(2) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from a Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

(5) "Paid for in whole or in part out of public funds" does not include tax credits provided pursuant to Section 17053.49 or 23649 of the Revenue and Taxation Code.

(6) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

(A) The project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the homebuyers.

(B) The project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars (\$25,000).

(C) Assistance is provided to a household as either mortgage assistance, down payment assistance, or for the rehabilitation of a single-family home.

(D) The project consists of new construction, or expansion, or rehabilitation work associated

ATTACHMENT B
LABOR CODE SECTION 1720

with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased. Total project cost includes the value of donated labor, materials, architectural, and engineering services.

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

(d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142 (d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 of Division 31 (commencing with Section 50199.4) of the Health and Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

(e) If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in subdivision (d) do not apply to that project.

(f) For purposes of this section, references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended, and include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

(g) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision [FN1] shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

ATTACHMENT B
LABOR CODE SECTION 1720.4

California Labor Code, Section 1720.4. Work performed by Volunteer

1720.4. (a) This chapter shall not apply to any of the following work:

(1) Any work performed by a volunteer. For purposes of this section, "volunteer" means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

(A) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

(B) An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

(C) An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that is receiving payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

(2) Any work performed by a volunteer coordinator. For purposes of this section, "volunteer coordinator" means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

(3) Any work performed by members of the California Conservation Corps or of Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

(b) This section shall apply retroactively to otherwise covered work concluded on or after January 1, 2002, to the extent permitted by law.

(c) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2009, deletes or extends that date.