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Fair Wage Policy	(yellow denotes changes/additions)
1. POLICY STATEMENT <i>(formerly section 1)</i>	1.1. Every Contractor and Sub-Contractor shall compensate their Employees in accordance with the Fair Wage Policy and Fair Wage Schedule on all Construction Contracts with the City. The compensation requirements as set out in the Fair Wage Policy and Fair Wage Schedule are minimum requirements.
2. PURPOSE <i>(new section)</i>	2.1. The purpose of the City's Fair Wage Policy and Fair Wage Schedule is to: <ul style="list-style-type: none"> a) ensure that Contractors and Sub-Contractors pay their Employees reasonable Wages and Benefits for work performed on City of Hamilton Construction Contracts; and b) to create a level playing field in procurement competitions so that no Contractor or Sub-Contractor secures an unfair competitive advantage over other construction employers by paying wages that are below prevailing norms.
3. INTREPRETATION <i>(formerly section 2)</i>	3.1. In this Fair Wage Policy and Fair Wage Schedule: <ul style="list-style-type: none"> a) a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa; b) the provisions shall be read with changes of gender or number as the context may require; c) a reference to any Act, by-law, rule, procedure, regulation or to a provision thereof shall be deemed to include a reference to any Act, by-law, rule, procedure, regulation or provision enacted in substitution or amendment thereof; d) any reference to an officer of the City shall be construed to mean the person holding that office, the designate or delegate of that person.
4. DEFINITIONS	4.1. Capitalized words and phrases used in this Fair Wage Policy and Fair Wage Schedule shall have the

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<i>(formerly section 3)</i>	following meanings, unless expressly stated otherwise.
Apprentice	as defined by the Building Opportunities in the Skilled Trades Act, 2021, means an individual who, pursuant to a registered training agreement, is receiving or is to receive training in a trade that is required as part of an apprenticeship program;
Benefits	shall mean any non-statutory payment to an Employee or non-statutory premiums or contributions paid to provide benefits to an Employee and shall include employer contributions to such items as a pension plan, Registered Retirement Savings Plan (RRSP), medical plan bonus, retention pay or the like and vacation. Benefits do not include legislated payroll deductions such as Canada Pension Plan ("CPP"), Employer Health Tax ("EHT"), Workplace Safety and Insurance Board ("WSIB") or Employment Insurance Canada ("EIC");
City Council	shall mean the Council of the City of Hamilton;
City	shall mean the City of Hamilton, its officers, officials, employees and agents;
Construction Contract	<p>means any construction work awarded to a Contractor of a minimum of \$500,000.00 excluding residential sectors</p> <p>shall mean any construction work awarded to a Contractor that is:</p> <ul style="list-style-type: none"> a) an "improvement" to the land as defined in the Construction Act, R.S.O. 1990, c. C.30; b) has a minimum contract value of \$500,000.00 upon award; and includes: <ul style="list-style-type: none"> i) the industrial, commercial and institutional sector; ii) the sewers and watermains sector; iii) the roads sector; iv) the heavy engineering sector, and v) any Landscaping Work, c) but does not include:

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	<p>i) the residential sector;</p> <p>ii) snow removal; and</p> <p>iii) maintenance work performed to prevent the normal deterioration of the land, building, structure or works, or to maintain the land, building, structure or works in a normal, functional state.</p> <p>Construction Contracts that exceed the construction contract threshold of \$500,000.00 solely as a result of change orders are not covered by the Fair Wage Policy.</p>
Contractor	shall mean any person having a Construction Contract with the City but does not include any person that only supplies materials for the Construction Contract;
Employee(s)	shall mean those persons employed by the Contractor or Sub-Contractor who perform work identified in the Fair Wage Schedule, for a Construction Contract with the City;
Fair Wage Policy	shall mean the Fair Wage Policy approved by Council;
Fair Wage Schedule	shall mean the Fair Wage Schedule approved by Council, as amended from time to time. The Fair Wage Schedule stipulates the Total Hourly Compensation Rate for Employees;
Hours of Work	shall mean the regular hours of work per day and week and shall include a provision for the payment of overtime beyond such regular hours, as per the Employment Standards Act, 2000, S.O. 2000, c.41, specifically Part VIII Overtime Pay;
Initiator	shall mean any person who submits a complaint to the City alleging non-compliance with the Fair Wage Policy and Fair Wage Schedule by any Contractor or Sub-Contractor performing construction work on a City Construction Contract.
Landscaping Work	<p>shall mean the installation or repair of:</p> <p>a) retaining walls;</p> <p>b) sidewalk's concrete and or stone pavers;</p> <p>c) fencing;</p>

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	d) grading; and sod installation and tree planting when that work is required as a component within a larger Construction Contract (not a stand alone sod installation and/or tree planting contract).
Manager of Procurement	shall mean the Manager of Policy and Contracts, Procurement Division , or designate.
Sub-Contractor	shall mean any person performing work on a City Construction Contract for a Contractor, or an agreement with another Sub-Contractor, but does not include any person that only supplies materials for the Construction Contract;
Substantial Performance	as defined in the Construction Act, R.S.O. 1990, c. C.30;
Total Hourly Compensation Rate	shall mean the aggregate amount of Wages and Benefits as stated in the Fair Wage Schedule;
Wages	shall mean the Employees basic hourly rate, which is paid as earned at the time of undertaking the work.
5. RESPONSIBILITIES	
5.1. General	5.1.1. The following persons are responsible for fulfilling the responsibilities detailed in this Policy as follows:
5.2. City Responsibilities (formerly section 4)	<p>5.2.1. The Director of Financial Services the Procurement Division shall periodically review the Fair Wage Policy and recommend to the appropriate standing committee of Council any required amendments to the Fair Wage Policy.</p> <p>5.2.2. The Director of Employee & Labour Relations will prepare and review the Fair Wage Schedule from time to time and recommend to the appropriate standing committee of Council those amendments to the Fair Wage Schedule.</p> <p>5.2.3. The Manager of Procurement shall reference the Fair Wage Policy and Fair Wage Schedule in all City</p>

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	<p>Construction Contracts. The City's Procurement website will post the Fair Wage Policy and Fair Wage Schedule and Fair Wage Complaint Form.</p> <p>5.2.4. The Manager of Procurement will co-ordinate the preparation of an annual report for the appropriate Standing Committee of Council regarding complaints investigated and resulting audits performed pursuant to the Fair Wage Policy and Fair Wage Schedule.</p> <p>5.2.5. The City shall address a written objection to the administration of the Fair Wage Policy and Fair Wage Schedule.</p> <p>5.2.6. The City is not in any way liable, obligated or responsible to any Employee, Sub-Contractor, Contractor or any other person for the payment of any monies not paid by a Contractor or Sub-Contractor in accordance with the Fair Wage Policy and Fair Wage Schedule, and the City assumes no responsibility to such Employee, Sub-Contractor, Contractor or any other person for the administration and enforcement of the Fair Wage Policy and Fair Wage Schedule.</p>
<p>5.3. Ad-Hoc Fair Wage Committee (formerly section 5)</p>	<p>5.3.1. The City shall participate in an ad hoc Fair Wage committee ("Committee") to discuss issues and provide a forum for consultation regarding issues related to the Fair Wage Policy and Fair Wage Schedule.</p> <p>5.3.2. The Committee shall meet on an as required basis.</p> <p>5.3.3. The Committee, as determined by the City, shall be comprised, as a minimum, of the following members:</p> <ol style="list-style-type: none"> a) Director of the Procurement Financial Services Division or designate, b) Director of the Employee & Labour Relations Division or designate, c) A representative from: <ul style="list-style-type: none"> • Hamilton & District Heavy Construction Association,

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	<ul style="list-style-type: none"> • Hamilton-Brantford Ontario, Building and Construction Trades Council, • Labourers' International Union of North America, • Christian Labour Association of Canada, and • Merit OpenShop Contractors Association of Ontario.
5.4. Contractor and Sub-Contractor Responsibilities <i>(formerly section 6)</i>	<p>5.4.1. A Contractor shall ultimately be responsible for any violations or non-compliance of the Contractor and Sub-Contractors on its City Construction Contracts.</p> <p>5.4.2. A Contractor is fully responsible for ensuring that the Contractor and all Sub-Contractors comply with the Fair Wage Policy and Fair Wage Schedule.</p> <p>5.4.3. The Contractor or Sub-Contractor shall not be responsible for any increase to the Fair Wage Schedule which occurs after the closing of the Request for Tenders or Request for Proposals for the City Construction Contract awarded to the Contractor.</p> <p>5.4.4. At the commencement of the work, the Contractor shall post a copy of the Fair Wage Policy and Fair Wage Schedule in a prominent location at the City Construction Contract site to enable Employees of the Contractor and Sub-Contractor to review. Alternate methods may be considered, and if approved by the Manager of Procurement, shall be in writing prior to the commencement of the Construction Contract.</p> <p>5.4.5. After Substantial Performance (as defined in the Construction Act, R.S.O. 1990, c. C.30) of the Construction Contract and prior to release of the holdback, for all Construction Contracts with the City, the Contractor shall provide to the City, in a form acceptable to the City, a statutory declaration confirming that the Contractor and its Sub-Contractors complied with the Fair Wage Policy and Fair Wage Schedule.</p>

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	<p>5.4.6. The City reserves the right to withhold or set-off from the Contractor, a minimum of FIVE THOUSAND DOLLARS (\$5,000.00) from any final payments under the Construction Contract or under any other contract between the City and the Contractor, until the Contractor's sworn statement of compliance is received and deemed to be satisfactory by the City.</p>
<p>6. COMPLIANCE <i>(formerly section 7)</i></p>	<p>6.1. A Contractor or Sub-Contractors shall be in compliance with the Fair Wage Policy and Fair Wage Schedule when the Employee receives a minimum compensation package that includes Wages and Benefits, where the which aggregate amount is not less than the Total Hourly Compensation Rate as set out in the Fair Wage Schedule.</p> <p>6.2. Employees shall be paid on a "pay by pay basis" every pay period in accordance with Fair Wage Schedule. Alternate methods of payment may be considered, and if approved by the Manager of Procurement, shall be in writing prior to the commencement of the Construction Contract. For example any lump sum pay-out made to the Employee to reconcile money owed at the completion of the Construction Contract is not permitted unless approved in writing by the Manager of Procurement prior to implementation.</p> <p>6.3. Any lump sum payment approved by the Manager of Procurement is to be made no later than the date of Substantial Performance of the related Construction Contract.</p>
<p>7. RECORDS <i>(formerly section 8)</i></p>	<p>7.1. The Contractor and Sub-Contractor shall keep records of the names, addresses, Wages, Benefits, vacation paid or provided, and hours worked for all of its Employees to demonstrate compliance with the Fair Wage Policy and Fair Wage Schedule.</p> <p>7.2. Unless otherwise approved by the City Manager of Procurement, the Contractor and Sub-Contractor shall make these records available for inspection upon request by the City within ten business days.</p>

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- 7.3. In any agreement with a Sub-Contractor, the Contractor shall require the Sub-Contractor to:
- a) provide written acknowledgment prior to the commencement of construction work that the Fair Wage Policy and Fair Wage Schedule applies;
 - b) keep records of the names, addresses, Wages, Benefits, vacation paid or provided, and hours worked for all of its Employees to demonstrate compliance with the Fair Wage Policy and Fair Wage Schedule; and
 - c) unless otherwise approved by the **City Manager of Procurement**, make these records available for inspection upon request by the City within ten business days.
- 7.4. If a Contractor or Sub-Contractor enters into a contract for service with a self-employed independent contractor to perform work identified in the Fair Wage Schedule, the Contractor or Sub-Contractor shall keep the following records to demonstrate that the self-employed independent contractor is not an Employee of the Contractor or Sub-Contractor:
- a) duties and responsibilities of both parties;
 - b) self-employed independent contractor invoices;
 - c) self-employed independent contractor HST registration number;
 - d) self-employed independent contractor Workplace Safety and Insurance Board and insurance certificates; and
 - e) self-employed independent contractor trade certificates or licences which relate to the Construction Contract.

Should there be concerns regarding the self-employed independent contractor's degree of dependency from the Contractor or Sub-Contractor, further records shall be made available to demonstrate that an employer employee relationship does not exist between the

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	<p>Contractor or Sub-Contractor and a self-employed independent contractor. The guideline issued by Canada Revenue Agency RC4110 "Employee or Self-Employed" may be used to assist in making a final determination.</p>
<p>8. INSPECTIONS AND AUDITS <i>(formerly section 9)</i></p>	<p>8.1. The City retains the right to inspect and audit the records of the Contractor or Sub-Contractor (as referred to in Section 7. Records) at any time during the period of the Construction Contract and at any time within five (5) years after the date of Substantial Performance of the Construction Contract, regardless if a complaint has been received or not.</p>
<p>9. ASSURANCE REPORTS <i>(formerly section 10.4 and 10.5)</i></p>	<p>9.1. If the Contractor or Sub-Contractor fails to keep accurate records, the Contractor or Sub-Contractor will pay a licensed Public Accountant to provide an assurance report, acceptable to the City, which clearly demonstrates compliance with the Fair Wage Policy and Fair Wage Schedule.</p> <p>9.2. Unless otherwise approved by the Manager of Procurement, assurance reports shall be completed and provided to the City within sixty days of City's notification to the Contractor or Sub-Contractor to provide. Failure to provide the assurance reports within the required timeline shall be deemed to be a material non-compliance with the Fair Wage Policy.</p>
<p>10. CONSEQUENCES OF NON-COMPLIANCE</p> <p>10.1. General <i>(formerly section 10)</i></p>	<p>10.1.1. Upon determining that a Contractor or Sub-Contractor is non-compliant with the Fair Wage Policy and/or Fair Wage Schedule, the Manager of Procurement:</p> <p>a) shall advise the Contractor, in writing, that it has been determined that the Contractor or Sub-Contractor is non-compliant and that the Contractor or Sub-Contractor is required to rectify the non-compliance(s) and provide</p>

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	<p>written proof of the same, in a form satisfactory to the City, within ten (10) business days;</p> <p>and</p> <p>b) may withhold making payment to the Contractor in an amount which is equal to the shortfall in Wages or Benefits, or may take any other remedies that are otherwise available at law or in equity;</p> <p>and</p> <p>c) shall impose upon the Contractor a minimum cost of \$5,000.00 (excluding taxes) for the City inspection, audit or other action as deemed necessary by the City and may deduct or set-off such costs from any payment or payments (as appropriate) under this the Construction Contract or under any other contract between the City and the Contractor owed by the City to the Contractor, or may take any other remedies that are otherwise available at law or in equity. In addition, the Contractor shall be responsible for all the City's costs beyond the minimum cost of \$5,000.00(excluding taxes), which will be payable immediately upon request.</p> <p>10.1.2. Where a Sub-Contractor has been found to be non-compliant, the Contractor shall also be deemed non-compliant and reported to City Council accordingly.</p>
<p>10.2. First Instance of Non-Compliance <i>(formerly section 10.2)</i></p>	<p>10.2.1. Where a Contractor or Sub-Contractor has been determined to be non-compliant with the Fair Wage Policy and or Fair Wage Schedule for the first time in a five (5) year period, the Manager of Procurement may require the Contractor or Sub-Contractor to pay for and submit a licensed Public Accountant assurance report, acceptable to the City, which verifies compliance with the Fair Wage Policy and Fair Wage Schedule on the next three (3) City Construction Contracts to which the Contractor is awarded or the Sub-Contractor is carried on a Construction Contract.</p>

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	<p>10.2.2. Such assurance report shall provide sufficient information and detail to demonstrate compliance with the Fair Wage Policy and Fair Wage Schedule and shall be submitted after Substantial Performance (as defined in the Construction Act, R.S.O. 1990, c. C.30) of the Construction Contract and prior to the release of money owing the Contractor. The City reserves the right to not release part or all of the money owing on a Construction Contract or under any other contract between the City and the Contractor until such assurance report is received and deemed to be satisfactory by the City.</p> <p>10.2.3. The City reserves the right to treat a first non-compliance as a second or subsequent non-compliance.</p>
<p>10.3. Subsequent Instance of Non-Compliance <i>(formerly section 10.3)</i></p>	<p>10.3.1. Where a Contractor or Sub-Contractor has been determined to be non-compliant with the Fair Wage Policy and or Fair Wage Schedule for a second or subsequent time within a five (5) year period from the date of the first determination of non-compliance by the Manager of Procurement, the City, as approved by City Council, may impose a ban and refuse:</p> <ul style="list-style-type: none"> a) to accept any bid, quotation or proposal from such Contractor or Sub-Contractor, or; b) the use of a Sub-Contractor where the Sub-Contractor was determined to be non-compliant with the Fair Wage Policy and or Fair Wage Schedule <p>on any City contract for a period of no less than two (2) years from the date of City Council, approval or as otherwise approved by City Council, save and except any Construction Contract the Contractor may currently have with the City.</p> <p>10.3.2. Within five (5) years from the date of the expiration of a ban imposed upon a Contractor or Sub-Contractor for non-compliance with the Fair Wage</p>

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	<p>Policy and or Fair Wage Schedule, the Manager of Procurement may require the Contractor or Sub-Contractor to pay for and submit a licensed Public Accountant assurance report, acceptable to the City, verifying the previously banned Contractor's or Sub-Contractor's compliance with the Fair Wage Policy and Fair Wage Schedule on at least three City Construction Contracts where:</p> <ul style="list-style-type: none"> a) the previously banned Contractor is awarded a Construction Contract or is carried as a Sub-Contractor on a Construction Contract; or b) the previously banned Sub-Contractor is awarded a Construction Contract or is carried as a Sub-contractor on a Construction Contract. <p>10.3.3. Any determination of non-compliance with the Fair Wage Policy or Fair Wage Schedule during the five-year period may result in a further ban imposed upon the Contractor or Sub-Contractor by City Council on any City Construction Contract.</p>
<p>11. COMPLAINTS</p> <p>11.1. Receipt of Complaint <i>(formerly section 11.1 to 11.5)</i></p>	<p>11.1.1. Any person may submit a complaint to the City, alleging non-compliance with the Fair Wage Policy or Fair Wage Schedule, by any Contractor or Sub-Contractor performing construction work on a City Construction Contract. All complaints must be submitted in writing and contain sufficient information in order to investigate the complaint. The Fair Wage Complaint Form may be completed for this purpose</p> <p>11.1.2. The complaint must be forwarded to the City's Manager of Procurement via email (procurement@hamilton.ca), regular mail or in person to the Procurement Division, Corporate Services Department, 28 James Street North, 4th Floor, Hamilton, Ontario, L8R 2K1.</p>

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	<p>11.1.3. The complaint may be initiated at any time during the Construction Contract but shall be received by the City no later than 21 calendar days following Substantial Performance of the related Construction Contract.</p> <p>11.1.4. Upon receipt of a complaint, the Manager of Procurement will conduct an initial review of the complaint submitted and advise the Initiator of the minimum investigation fee and what the likely cost of the investigation will be. The minimum cost of an investigation will be \$5,000.00 (excluding taxes). The City, at its discretion, may waive the cost of an investigation if an Employee is the Initiator of the complaint.</p> <p>11.1.5. The Initiator shall confirm to the City in a timely manner whether or not they would like to proceed with the complaint.</p>
<p>11.2. Investigation of the Complaint <i>(formerly section 11.6 to 11.9)</i></p>	<p>11.2.1. The City shall take such action or investigation as it deems is necessary to determine whether the Contractor or Sub-Contractor involved or named in the complaint is compliant with the Fair Wage Policy and or Fair Wage Schedule. Such action or investigation, as deemed necessary by the City, to determine compliance or non-compliance shall <u>begin</u> within 30 calendar days of receipt of a completed Fair Wage Complaint Form submitted to the Manager of Procurement.</p> <p>11.2.2. Once such action or investigation to determine compliance or non-compliance <u>is completed</u> to the City's satisfaction, the Manager of Procurement shall inform the Initiator and any Contractor or Sub-Contractor involved or named in the complaint of the City's determination of the Contractor's or Sub-Contractor's compliance or non-compliance with the Fair Wage Policy and or Fair Wage Schedule.</p> <p>11.2.3. Whenever a complaint is initiated by a person other than an individual Employee of the Contractor or Sub-Contractor involved or named in the complaint,</p>

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	<p>and said Contractor or Sub-Contractor is found to be compliant with the Fair Wage Policy and or Fair Wage Schedule with respect to the complaint, the costs associated with the inspections, audits or other action deemed necessary regarding the investigation of the complaint will be borne solely by the Initiator. Until the Initiator has paid the associated costs to the City, the City will not accept any additional complaints from the Initiator.</p> <p>11.2.4. For the purposes of the City not accepting any additional complaints from the Initiator under section 11.8 the previous section of this Fair Wage Policy, a reference to Initiator shall also include an officer, director, a majority or controlling shareholder, or a member of the Initiator, if a corporation; a partner of the Initiator, if a partnership; any corporation to which the Initiator is an affiliate of or successor to, or an officer, a director or a majority or controlling shareholder of such corporation; and any person with whom the Initiator is not at arm's length within the meaning of the <i>Income Tax Act (Canada)</i>.</p>
<p>11.3. Confidentiality (formerly section 11.10)</p>	<p>11.3.1. The City shall make every effort to safeguard the confidentiality of each Initiator's identity and the City will do its best efforts not to disclose this information. However, this information is subject to the provisions of the <i>Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56</i>. For greater certainty and direction regarding how such issues of confidentiality will be handled and may affect an Initiator's rights, the Initiator should reference the City's policies related to Freedom of Information on the City's website under the Office of the City Clerk at hamilton.ca.</p>
<p>12. APPEALS PROCESS (formerly section 12)</p>	<p>12.1. Contractors, Sub-Contractors or Initiators may feel aggrieved and may seek to dispute the outcome of a Fair Wage complaint process. If anyone wishes to appeal the outcome of a Fair Wage complaint, they shall write to the Manager Director of Procurement Division within five (5) business days of being</p>

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	<p>notified of the Fair Wage complaint outcome and provide a detailed statement outlining the grounds of the appeal and request a meeting with the Manager Director of Procurement.</p> <p>12.2. If no resolution satisfactory to both parties has been achieved, the Contractor, Sub-Contractor or Initiator will have three (3) business days from the date of the meeting with the Manager Director of Procurement Division to make a formal written request with the Manager Director of Procurement Division to meet with the General Manager of the Client Department issuing the Construction Contract and the General Manager of Finance and Corporate Services regarding their complaint. The General Managers will make the final decision regarding the outcome of the Fair Wage complaint process.</p>
<p>13. APPRENTICES <i>(new section)</i></p>	<p>13.1. The City encourages Contractors and Sub-Contractors to hire and train Apprentices under approved apprenticeship programs in Ontario. Apprentices will be assessed based on the appropriate government agency certification criteria and approved program.</p> <p>13.2. Employees reported as Apprentices not properly registered or are utilized at the jobsite in excess of the ration of journeymen permitted under the approved program, must be paid the applicable Total Hourly Compensation Rate for that work. The Contractor or Sub-Contractor shall be required to provide evidence of the Apprentice's registration at any time.</p> <p>13.3. The proper Total Hourly Compensation Rates to be paid to Apprentices are:</p> <ul style="list-style-type: none"> a) as set out in the Fair Wage Schedule; or b) where no Apprentice rate or calculation is identified in the Fair Wage Schedule, as specified by a particular industry program in which they are enrolled, expressed as a

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	percentage of the journeyman rate on the wage determination, multiplied by 24%.
<p>14. FAIR WAGE SCHEDULE AND UPDATES (formerly section 13)</p>	<p>The Fair Wage Schedule shall be automatically updated every three years.</p> <p>14.1. Unless otherwise approved by Council, the Manager of Procurement shall update Total Hourly Compensation Rates set out in the Fair Wage Schedule shall be every two years in accordance with the following:</p> <ul style="list-style-type: none"> a) based upon the collective hourly wage rates set out in the respective collective agreements from the two-year's preceding the date of the last Fair Wage Schedule update. For example, the updated rates in 2024 shall be based upon the 2022 hourly rates (two years preceding 2024) and shall be held until 2026 (two years after 2024); b) calculated by increasing the respective collective agreement's hourly wage rates by no more than 24%; and c) frozen for the two-year term.
<p>RELATED DOCUMENTS</p>	<p>The following related documents are referenced in this Policy:</p> <ol style="list-style-type: none"> 1. <i>Fair Wage Schedule</i>
<p>HISTORY</p>	<p>This policy replaces the former policy named Fair Wage Policy, approved by City Council on June 12, 2019, Report FCS19035/HUR19008</p>