

1 [Administrative Code - Prevailing Wage for Special Event or Trade Show Work on City
2 Property]

3 **Ordinance amending the Administrative Code to require that prevailing wages be paid**
4 **for work involving the on-site installation, set-up, assembly, and dismantling of**
5 **temporary exhibits, displays, booths, modular systems, signage, drapery, specialty**
6 **furniture, floor coverings, and decorative materials in connection with trade shows,**
7 **conventions, expositions, and other special events on City property.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

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

16 Section 1. The Administrative Code is hereby amended by revising Section 21C.7 and
17 adding Section 21C.8, to read as follows:

18 **SEC. 21C.7. STANDARD PROVISIONS GOVERNING THE PREVAILING RATE OF**
19 **WAGES, WORKER RETENTION, AND USE OF EMPLOYEES FOR WORK UNDER CITY**
20 **CONTRACTS FOR CERTAIN SERVICES.**

21 (a) Prevailing Wage Requirement. Every Covered Contract issued by the City and
22 County of San Francisco must require that any Individual performing services thereunder be
23 paid not less than the Prevailing Rate of Wages.

24 (b) Definitions. For purposes of this Section, the following definitions shall apply to
25 the terms used herein.

(+) "City" shall mean the City and County of San Francisco.

1 (2) "Contracting Officer" shall mean any officer or employee of the City authorized
2 to enter into a Covered Contract on behalf of the City.

3 (3) "Contractor" shall mean any Person who submits a bid or proposal and/or
4 enters into a Covered Contract.

5 (4) "Covered Contract" shall mean an agreement between the City and a
6 Contractor for the following services: (i) "Motor Bus Services" as defined in Section 21C.1,
7 subject to the provisions of Section 21C.1; (ii) "Janitorial Services" as defined in Section
8 21C.2; (iii) "Public Off-Street Parking Lots, Garages, or Storage Facilities for Automobiles"
9 as defined in Section 21C.3; (iv) "Theatrical Services" as defined in Section 21C.4; (v)
10 "Solid Waste Generated By The City In Course of City Operations" as defined in Section
11 21C.5; ~~and (vi)~~ "Moving Services" as defined in Section 21C.6; ~~and~~ "Trade Show and Special
12 Event Work" as defined in Section 21C.8.

13 (5) "Individual" shall mean any person who performs work under a Covered
14 Contract.

15 (6) "Person" shall mean any individual, proprietorship, partnership, joint venture,
16 corporation, limited liability company, trust, association, or other entity that may employ or hire
17 individuals or enter into contracts.

18 (7) "Prevailing Rate of Wages" shall mean that rate of compensation, including
19 fringe benefits or the matching equivalents thereof, being paid to a majority of workers
20 engaged in the services for which a Covered Contract is entered into by the City and County
21 of San Francisco, if a majority of such workers are paid at a single rate; if there is no single
22 rate being paid to a majority, then the prevailing rate shall be that single rate being paid to the
23 greatest number of workers.

24 (8) "Subcontract" shall mean any agreement under or subordinate to a prime
25 Contract.

1 (9) "Subcontractor" shall mean any Person who enters into a Subcontract with a
2 Contractor.

3 (c) Prevailing Wage Rate Requirements.

4 (1) Determination of Prevailing Rate of Wages. It shall be the duty of the Board of
5 Supervisors, from time to time and at least once during each calendar year, to fix and
6 determine the Prevailing Rate of Wages paid in private employment in the City for Individuals
7 engaged in services under Covered Contracts including such rate of wages paid for overtime
8 and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as
9 follows:

10 The Civil Service Commission shall furnish to the Board of Supervisors on or
11 before the first Monday in November of each year, data as to the Prevailing Rate of Wages for
12 Individuals engaged in services under Covered Contracts including such rate of wages paid
13 for overtime and holiday work, and the Board of Supervisors shall, upon receipt of such data,
14 fix and determine the Prevailing Rate of overtime and holiday work, as paid for similar work in
15 the City in private employment. Such Prevailing Rate of Wages as so fixed and determined by
16 the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate
17 of Wages paid in private employment for similar work, until the same is changed by the Board
18 of Supervisors.

19 In determining the Prevailing Rate of Wages, as provided for in this Section, the
20 Board of Supervisors shall not be limited to the consideration of data furnished by the Civil
21 Service Commission, but may consider such other evidence upon the subject as the Board of
22 Supervisors shall deem proper and thereupon base its determination upon any or all of the
23 data or evidence considered.

24 For purposes of this Section, the Civil Service Commission shall provide data
25 on and the Board shall certify two components for each craft, classification, and type of work,

1 which together shall be deemed the "Prevailing Rate of Wages": (1) the basic hourly wage
2 rate and (2) the hourly rate of each fringe benefit, which together equal the hourly prevailing
3 rate of wages. The Civil Service Commission shall provide this data to the Board of
4 Supervisors within days of the effective date of this Section.

5 (2) Contracting Officers. Each bid or proposal for a Contract shall include, on a
6 form provided by the Contracting Officer, the (a) basic hourly rate of wages to be paid by the
7 Contractor and Subcontractor, if any, for each craft, classification, or type of work to be
8 performed by Employees under the Contract, and (b) for each required fringe benefit, the
9 hourly cost of each fringe benefit, or cash equivalent, the Contractor and Subcontractor, if
10 any, intend to provide. In meeting the Prevailing Rate of Wages, no amount of fringe benefit
11 credit shall be used to reduce the obligation to pay the basic hourly straight time or overtime
12 wage rate. The Contracting Officer shall reject any bid or proposal that does not include
13 payment of the Prevailing Rate of Wages as defined in this Section. This provision shall
14 become operative after the Board of Supervisors adopts a "Prevailing Rate of Wages" under
15 Subsection (c)(1) that includes a wage rate and the hourly rate of each fringe benefit.

16 (3) Contractual Provision Concerning Prevailing Wage Rate Requirement. All
17 Contracts subject to this Section shall include a provision in which the Contractor agrees to
18 comply with, and to require Subcontractors to comply with, the prevailing wage rate
19 requirement imposed by this Section.

20 (4) Enforcement of Prevailing Wage Rate Requirements. Where the Contracting
21 Officer or the Labor Standards Enforcement Officer determines that a Contractor or a
22 Subcontractor may have violated the prevailing wage rate requirements of this Section, the
23 Contracting Officer or Labor Standards Enforcement Officer shall send written notice to the
24 Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to
25 any other remedy available, the Contracting Officer may terminate the Contract, in which case

1 the Contractor shall not be entitled to any additional payment thereon unless within thirty (30)
2 days of receipt of the violation notice the Contractor has either (i) cured the violation or (ii)
3 established by documentary evidence, including but not limited to payroll records, the truth
4 and accuracy of which is attested to by affidavit, proof of compliance with the provisions of this
5 Section. For purposes of this Section, where a Contractor or Subcontractor fails to pay at least
6 the Prevailing Rate of Wages to Individuals as required by this Section, the Contractor shall
7 have "cured the violation" once the Contractor or Subcontractor reimburses such Individuals
8 by paying each individual the balance of what he or she should have earned in accordance
9 with the requirements of this Section, plus an annualized rate of interest of ten percent (10%).
10 In addition to, or instead of terminating the Contract, if the Contracting Officer or the Labor
11 Standards Enforcement Officer finds that the Contractor has willfully violated the requirements
12 of this Section, the Contracting Officer or the Labor Standards Enforcement Officer, shall
13 assess a penalty (a "willful violation penalty") of not more than ten (10%) percent of the dollar
14 amount of the Contract, such sums to be deposited in the fund out of which the Contract is
15 awarded or, if none exists, the General Fund. The Contracting Officer or Labor Standards
16 Enforcement Officer may impose such willful violation penalty regardless of whether the
17 Contractor has cured the violation.

18 (d) Transition Employment Requirements. The City has an important proprietary
19 interest in maintaining the stability of the workforce engaged by a Contractor or Subcontractor
20 under a Covered Contract. Turnover of experienced workers resulting from a change in the
21 City's Contractor jeopardizes the quality, efficiency, and cost-effectiveness of service provided
22 to the City under the successor Contract. All Covered Contracts shall impose the following
23 obligations on the Contractor and Subcontractor.

24 (1) Where the Contracting Officer has given notice that a Covered Contract will be
25 bid, or where a Contractor has given notice of termination, upon giving or receiving such

1 notice, as the case may be, the Contractor ("ending Contractor") shall, within ten days
2 thereafter, provide to the Contracting Officer and the Purchaser, for each Employee who
3 worked at least 15 hours per week for the ending Contractor, the name, date of hire, number
4 of hours and months worked in total for the employer, wage rate, and employment occupation
5 classification. This provision shall also apply to the subcontractors of the ending Contractor.

6 Where a Subcontractor has been terminated prior to the termination or ending of
7 the Contract, the Subcontractor shall for the purposes of this Section be deemed an ending
8 Contractor.

9 All requests for bids for Covered Contracts shall include the information listed
10 above for Employees and shall notify prospective bidders about the Transition Employment
11 requirements of this Section.

12 (2) A successor Contractor shall retain, for a six-month transition employment
13 period, Employees who have worked at least 15 hours per week and have been employed by
14 the ending Contractor or its Subcontractors, if any, for the preceding twelve months under the
15 Covered Contract, providing that just cause does not exist to terminate such Employee. The
16 ending Contractor's Employees who worked at least 15 hours per week shall be employed in
17 order of their seniority with the predecessor within job classification and shall be paid the
18 Prevailing Rate of Wages to which they were entitled when employed by the ending
19 Contractor. This requirement shall be stated by the City in all initial bid packages involving a
20 Covered Contract.

21 (3) If at any time a successor Contractor determines that fewer Employees are
22 required to perform the new Contract than were required by the ending Contractor (and
23 Subcontractors, if any), the successor Contractor shall retain Employees by seniority within
24 job classification.

1 (4) During such six-month period the successor Contractor (or Subcontractor,
2 where applicable) shall maintain a preferential hiring list of eligible covered Employees not
3 retained by the successor Contractor (or Subcontractor) from which the successor Contractor
4 (or Subcontractor) shall hire additional Employees.

5 (5) During the six-month period, the successor Contractor (or Subcontractor,
6 where applicable) shall not discharge without cause an Employee retained pursuant to this
7 Subsection. "Cause," for this purpose, shall include, but not be limited to, the Employee's
8 conduct while in the employ of the ending Contractor or Subcontractor that contributed to any
9 decision to terminate the Contract or Subcontract for fraud or poor performance, excluding
10 permissible union-related activity.

11 (6) At the end of the six-month period, a successor Contractor (or Subcontractor,
12 where applicable) shall perform a written performance evaluation for each Employee retained
13 pursuant to this Subsection. If the Employee's performance during such six-month period is
14 satisfactory, the successor Contractor (or Subcontractor) shall offer the Employee continued
15 employment under the terms and conditions established by the successor Contractor (or
16 Subcontractor) or as required by law.

17 (7) All Covered Contracts subject to this Section shall include a provision in which
18 the Contractor agrees to require any Subcontractor to comply with the obligation imposed by
19 this Subsection (d).

20 (8) Successor's Prior Employees. Notwithstanding the provisions of this
21 Subsection (d), a successor Contractor or Subcontractor may replace an Employee otherwise
22 entitled to be retained with a person employed by the Contractor or Subcontractor
23 continuously for twelve months prior to the commencement of the successor Contract or
24 Subcontract in a capacity similar to that proposed under the successor Contract or
25 Subcontract. This provision shall apply only where the existing Employee of the successor

1 Contractor or Subcontractor would otherwise be laid off work as a result of the award of the
2 successor Contract.

3 (9) The retention requirements of this Subsection (d) shall not apply where there is
4 no successor Contractor or Subcontractor. For example, where a Contract is for services over
5 a single day, week, or month for a discrete nonrepeating event there is no successor and the
6 retention requirements described herein are inapplicable.

7 (10) For the purposes of this Subsection (d) on Transition Employment
8 Requirements only, the term "Employee" shall include any person who performs work under a
9 Covered Contract but shall not include an individual who serves in a managerial, supervisory,
10 or confidential capacity, including those individuals who would be defined as such under the
11 Fair Labor Standards Act.

12 (11) Enforcement. An Employee who has not been hired or has been discharged
13 in violation of this Section by a successor Contractor or its Subcontractor may bring an action
14 in the Superior Court of the State of California, as appropriate, against the successor
15 Contractor and, where applicable, its Subcontractor, and shall be awarded back pay, including
16 the value of benefits for each day during which the violation continues, which shall be
17 calculated at a rate of compensation not less than the higher of:

18 (i) The average regular rate of pay received by the Employee during the last
19 three years of the Employee's employment in the same occupation classification; or

20 (ii) The final regular rate received by the Employee.

21 If the Employee is the prevailing party in any such legal action, the Court shall
22 award reasonable attorney's fees and costs as part of the costs recoverable.

23 (12) This Section is not intended to create a private right of action against the City
24 and County of San Francisco.

1 (13) If during the term of a Covered Contract, a Contractor (or Subcontractor
2 engaged by said Contractor) violates the worker transition requirements of this Subsection (d),
3 the Contractor or Subcontractor shall be subject to the enforcement remedies as set forth in
4 Subsection (c)(4), including termination of the Contract or Subcontract and penalties for willful
5 violation.

6 (e) Requirement of Employer-Employee Relationship.

7 (1) The City has an important proprietary interest in maintaining the stability of the
8 workforce engaged by a Contractor for a Covered Contract by ensuring that individuals
9 working pursuant to City contracts have the protections afforded by state and municipal laws
10 governing employment. In order for the City to maintain the integrity of its contracting process,
11 the city's prevailing wage laws ensure contractors a level playing field on which to bid for
12 contracts. When contractors are allowed to classify workers as independent owner operators,
13 contractors can appear to pay the prevailing wage when in reality, after the owner operator's
14 operating costs are taken into account, the owner operator receives less than the prevailing
15 wage for his or her labor. This outcome contradicts one of the goals of the prevailing wage
16 law, which is to provide for fair competition among contractors, all of whom must pay workers,
17 at a minimum, the same prevailing rate of wages and benefits. The City's proprietary interest
18 is such that employment of Employees in an Employer-Employee relationship shall be
19 required for all work done under any Covered Contract.

20 (2) Every Covered Contract shall require the Contractor (and Subcontractors, if
21 any) to perform said Contract, with Individuals employed by said Contractor or Subcontractor
22 in an Employer-Employee relationship as defined by California law.

23 (3) No Covered Contract shall be awarded by the City to a Contractor and/or
24 Subcontractor who proposes to perform the Contract with self-employed persons or
25 independent contractors.

1 (4) If during the term of a Covered Contract, a Contractor (or Subcontractor
2 engaged by said Contractor) engages any self-employed persons or independent contractors
3 to perform the Contract for a period of three (3) days or more, the Contractor or Subcontractor
4 shall be subject to the enforcement remedies as set forth in Subsection (c)(4), including
5 termination of the Contract or Subcontract and penalties for willful violation.

6 (5) Contractors shall be fully responsible for the compliance of Subcontractors
7 with this provision. Contractors shall be jointly and severally liable for any penalties assessed
8 against their Subcontractors in the event that the Subcontractor is unable or unwilling to pay a
9 penalty.

10 (f) Preemption. Nothing in this Section shall be interpreted or applied so as to create
11 any power or duty in conflict with any federal or state law.

12 (g) No Cause of Action Against City. This Section is not intended to create a private
13 right of action against the City.

14 (h) Prospective Application. This Section is intended to have prospective effect only,
15 and shall not be interpreted to impair the obligations of any pre-existing Contract entered into
16 by the City. This Section shall only apply to Contracts entered into on or after the effective
17 date of this Section.

18 (i) Severability. If any part or provision of this Section, or the application thereof to
19 any Person or circumstance, is held invalid, the remainder of this Section, including the
20 application of such part or provisions to other Persons or circumstances, shall not be affected
21 thereby and shall continue in full force and effect. To this end, the provisions of this Section
22 are severable.

23 **SEC. 21C.8. PREVAILING RATE OF WAGES REQUIRED FOR TRADE SHOW AND**
24 **SPECIAL EVENT WORK.**

1 (a) Prevailing Wage Requirement. Every Contract, Lease, Franchise, Permit, or Agreement
2 awarded, let, issued, or granted by the City for the use of property owned by the City must require that
3 any Individual engaged in Exhibit, Display, or Trade Show Work at a Special Event be paid not less
4 than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid
5 in private employment for similar work in the area in which the Contract, Lease, Franchise, Permit or
6 Agreement is being performed. All Contracts, Leases, Franchises, Permits or Agreements subject to
7 this Section 21C.8 shall include a provision in which the Contractor agrees to comply with, and to
8 require Subcontractors to comply with, the obligations imposed by this Section.

9 (b) Definitions. For purposes of this Section 21C.8, the following definitions shall apply:

10 “City” shall mean the City and County of San Francisco.

11 “Contract, Lease, Franchise, Permit, or Agreement” shall mean an agreement with the City for
12 the use of property owned by the City, but shall not include any contract, lease, franchise, permit, or
13 agreement for:

14 A. Celebration of a marriage, domestic partnership, or similar civil union;

15 B. The presentation of a Special Event to which the public has free access when the
16 Special Event is in a public park, on a public street, or on property under the jurisdiction of the Port
17 Commission, and the advertising and promotion for the Special Event is less than \$10,000;

18 C. Any permit or agreement to engage in film production pursuant to Chapter 57 of
19 this Code or under the circumstances set forth in Section 57.7 of this Code;

20 D. In any circumstance where application of this Section 21C.8 would be preempted
21 by federal or state law;

22 E. Any Special Event for which the time required for the set-up is three hours or less
23 and the number of individuals working on the set-up is no more than two.

24 F. Any Special Event where the Special Event itself takes five hours or less.

1 G. Any Special Event that requires the payment of prevailing wage rates applicable to
2 public works projects.

3 “Convention” shall mean an organized association of persons with a common interest,
4 including but not limited to a professional, commercial, political, social, cultural, vocational,
5 recreational, or fraternal interest, who meet in a hotel, convention center, or other building to discuss
6 or act on matters affecting their common interest or to participate in activities related to their common
7 interest. Attendees at a “Convention” come mainly from places other than San Francisco.

8 “Exhibit, Display, or Trade Show Work” shall mean the on-site installation, set-up, assembly,
9 and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty
10 furniture, floor coverings, or decorative materials in connection with or related to a Special Event.

11 “Exposition” shall mean a large-scale public exhibition with a primary though not necessarily
12 exclusive purpose of promoting one or more products, services, or businesses.

13 “On-site” shall mean the site of the Special Event, which may occur in enclosed space or open
14 space or both. If the primary site of the Special Event is enclosed space, “On-site” shall include open
15 space within 150 feet of the enclosed space that is the primary site of the Special Event. “On-site” shall
16 also include public rights of way, including but not limited to a street or sidewalk, as to which a City
17 permit, including but not limited to an ISCOTT (Interdepartmental Staff Committee on Traffic and
18 Transportation) permit, has been issued in connection with the Special Event.

19 “Prevailing Rate of Wages” shall mean that rate of compensation as determined in Section
20 21C.7.

21 “Special Event” shall mean any Trade Show, Convention, Exposition, or other Temporary
22 Event with the characteristics of a Trade Show, Convention, or Exposition, that involves Exhibit,
23 Display, or Trade Show Work.

24 “Temporary Event” shall mean an event lasting no more than six months.
25

1 “Trade Show” shall mean a gathering in which one or more businesses or association of
2 businesses in one or more industries or professions show their products or services to possible
3 customers or patrons. A “Trade Show” may include but is not limited to a gathering in which there are
4 exhibits, displays, or demonstrations of specific products or services or that highlight all or part of an
5 industry or profession.

6 (c) Preemption. Nothing in this Section 21C.8 shall be interpreted or applied so as to create
7 any power or duty in conflict with any federal or State law.

8 (d) Effective Date and Application. This Section 21C.8 shall become effective 30 days after it
9 is enacted, is intended to have prospective effect only, and shall not be interpreted to impair the
10 obligations of any pre-existing Contract, Lease, Franchise, Permit, or Agreement issued or entered into
11 by the City. This Section shall only apply to Contracts, Leases, Franchises, Permits, or Agreements
12 entered into on or after the effective date of this Section.

13 (e) Severability. If any severable provision or provisions of this Section 21C.8 or any
14 application thereof is held invalid, such invalidity shall not affect any other provisions or applications
15 of the Section.

16
17 Section 2. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor’s veto of the ordinance.

21
22 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
23 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
24 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
25 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

3

4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 PAUL ZAREFSKY
8 Deputy City Attorney

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