

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Michael Brown, Executive Officer, Civil Service Commission  
Phil Ginsburg, General Manager, Recreation and Park Department  
Donna Levitt, Division Manager, Office of Labor Standards Enforcement  
Regina Dick-Endrizzi, Director, Small Business Commission  
Susannah Greason Robbins, Executive Director, Film Commission

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee

DATE: March 15, 2016

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Supervisor Scott Wiener:

**File No. 160199**

**Ordinance amending the Administrative Code to require that prevailing wages be paid for work loading or unloading materials, goods, or products for special events on City park property, and the driving of commercial vehicles for that purpose.**

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Sarah Madland, Recreation and Park Department

1 [Administrative Code - Prevailing Wages for Commercial Vehicle Loading and Unloading on  
2 Park Property]

3 **Ordinance amending the Administrative Code to require that prevailing wages be paid**  
4 **for work loading or unloading materials, goods, or products for special events on City**  
5 **park property, and the driving of commercial vehicles for that purpose.**

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

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

12 Section 1. The Administrative Code is hereby amended by revising Section 21C.7 and  
13 adding Section 21C.10, to read as follows:

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

17 \* \* \* \*

18 (b) Definitions. For purposes of this Chapter 21C, the following definitions shall apply  
19 to the terms used herein.

20 \* \* \* \*

21 "Covered Contract" shall mean an agreement between the City and a Contractor for  
22 the following services: "Motor Bus Services" as defined in Section 21C.1, subject to the  
23 provisions of Section 21C.1; "Janitorial Services" as defined in Section 21C.2; "Public Off-  
24 Street Parking Lots, Garages, or Storage Facilities for Automobiles" as defined in Section  
25 21C.3; "Theatrical Services" as defined in Section 21C.4; "Solid Waste Generated By The City

1 In Course of City Operations" as defined in Section 21C.5; "Moving Services" as defined in  
2 Section 21C.6; *and* "Trade Show and Special Event Work" as defined in Section 21C.8;  
3 "Broadcast Services" as defined in Section 21C.9; *and* "Loading, Unloading, and Driving of  
4 Commercial Vehicles" under Section 21C.10.

5 \* \* \* \*

6 **SECTION 21C.10. PREVAILING RATE OF WAGES REQUIRED FOR LOADING,**  
7 **UNLOADING, AND DRIVING COMMERCIAL VEHICLES AT SPECIAL EVENTS ON PARK**  
8 **PROPERTY.**

9 (a) Prevailing Wage Requirement. Every Permit issued or granted by the City for the use of  
10 property owned by the City for a Special Event as defined in subsection (b), below, must require that  
11 (1) any Individual engaged in loading or unloading on City property of materials, goods, or products  
12 into or from a Commercial Vehicle for the Special Event be paid not less than the Prevailing Rate of  
13 Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for  
14 similar work in the area in which the loading or unloading is being performed, and (2) any Individual  
15 driving a Commercial Vehicle from which materials, goods, or products are loaded or unloaded on  
16 City property for such Special Event shall be paid not less than the Prevailing Rate of Wages if the  
17 origin, destination, and entirety of the Commercial Vehicle's trip to and from the Special Event are  
18 within City limits. All Permits subject to this Section 21C.10 shall require that the permittee agrees to  
19 comply with, and to require subcontractors to comply with, the obligations imposed by this Section.

20 (b) Definitions. For purposes of this Section 21C.10, the following definitions shall apply to  
21 the terms used herein:

22 "Commercial Vehicle" shall mean a vehicle that (1) is used or maintained primarily for the  
23 transportation of materials, goods, or products, (2) has six wheels or more, and (3) is required by law  
24 to be registered as a commercial vehicle with the California Department of Motor Vehicles.  
25 Notwithstanding the foregoing sentence, Commercial Vehicle shall not include a vehicle used

1 exclusively for food catering purposes, meaning its exclusive purpose on a particular trip is for the  
2 transport of food and/or beverages to be served at a Special Event, the transport of equipment for the  
3 preparation and service of such food and/or beverages at a Special Event, or both.

4 “Permit” shall mean a permit to use property under the jurisdiction of the Recreation and Park  
5 Commission, but shall not include a permit:

6 (1) For celebration of a marriage, domestic partnership, or similar civil union;

7 (2) Which involves engaging in film production pursuant to Chapter 57 of this Code or  
8 under the circumstances set forth in Section 57.7 of this Code;

9 (3) For which the payment of prevailing wage rates applicable to public works projects  
10 is required;

11 (4) For a Special Event that is a street fair, block party, parade, festival, or any  
12 celebration directly associated with such street fair, block party, parade, festival, or any other  
13 expressive activity such as a protest, demonstration, or similar public assembly, that is free and open to  
14 the public and does not advertise or promote a commercial product or service; provided, however, that  
15 a commercial entity’s sponsorship of such an event shall not, by itself, constitute advertising or  
16 promotion for purposes of this exclusion so long as the entity does not engage in the sale of products or  
17 services at the event;

18 (5) For which the permit fee to be paid to the City is \$1,000 or less;

19 (6) For a concert in a public park to which the public has free access;

20 (7) For a Special Event that is sponsored by a non-profit entity where the primary  
21 purpose of the event is fundraising for that non-profit entity and/or other non-profit entities; or

22 (8) For a Special Event that is sponsored by a primary or secondary educational  
23 institution or by a youth athletic league.

24 “Special Event” shall mean a temporary event on property under the jurisdiction of the  
25 Recreation and Park Commission with anticipated attendance of 150 or more persons. Examples of

1 Special Events include concerts, fairs, festivals, community events, mass participation sports (such as  
2 marathons and other running events, bicycle races, or tours), or spectator sports. "Special Event"  
3 shall include an event that is funded in whole or in part by City funds.

4 (c) Preemption. Nothing in this Section 21C.10 shall be interpreted or applied so as to create  
5 any right, power, or duty in conflict with any federal or state law.

6 (d) Conflict with Other Sections. In the event of a conflict between this Section 21C.10 and  
7 any other sections of this Chapter 21C, the other section(s) shall prevail.

8 (e) Operative Date and Application.

9 (1) This Section 21C.10 shall become operative upon the initial setting by the Board of  
10 Supervisors of a Prevailing Rate of Wages for loading, unloading, and driving of Commercial Vehicles  
11 at Special Events on City property. This initial Prevailing Rate of Wages shall be set in accordance  
12 with the process established in Section 21C.7(c)(1), except the Civil Service Commission shall submit  
13 to the Board of Supervisors data as to the Prevailing Rate of Wages no later than 120 days after the  
14 effective date of this Section 21C.10. Thereafter, the Commission shall submit data as to the Prevailing  
15 Rate of Wages for loading, unloading, and driving of Commercial Vehicles at Special Events on City  
16 property, on or before the first Monday in November each year in accordance with Section 21C.7(c)(1).

17 (2) This Section 21C.10 is intended to have prospective effect only, and shall not be  
18 interpreted to impair the obligations of any pre-existing Permit issued or entered into by the City. This  
19 Section shall only apply to Permits entered into on or after the operative date of this Section.

20 (f) Exemptions. This Section 21C.10 shall not apply to the following:

21 (1) any Individual engaged in the loading or unloading of portable toilets, temporary  
22 fencing, or temporary barricades, or any Individual driving a Commercial Vehicle from which portable  
23 toilets, temporary fencing, or temporary barricades are loaded or unloaded;

24 (2) individual vendors at a flea market or farmers market conducted on City property;  
25 provided, however, that this Section shall apply to loading, unloading, or driving of Commercial

1 Vehicles for such events if these events would otherwise be covered by this Section 21C.10 and the  
2 loading, unloading or driving is performed by the operator or management of the flea market or  
3 farmers market;

4 (3) work that is covered under a collective bargaining agreement; or

5 (4) work that is performed by a City employee.

6 (g) Severability. If any provision or provisions of this Section 21C.10 or any application  
7 thereof is held invalid, such invalidity shall not affect any other provisions or applications of the  
8 Section.

9 Section 2. Effective Date. This ordinance shall become effective 30 days after  
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
12 of Supervisors overrides the Mayor's veto of the ordinance. However, as indicated in  
13 Administrative Code Section 21C.10(e), Section 21C.10 shall become operative only upon the  
14 initial setting of a Prevailing Rate of Wages for the categories of work covered by that section.

15 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
19 additions, and Board amendment deletions in accordance with the "Note" that appears under  
20 the official title of the ordinance.

21 APPROVED AS TO FORM:  
22 DENNIS J. HERRERA, City Attorney

23 By:   
24 FRANCESCA GESSNER  
25 Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Administrative Code - Prevailing Wages for Commercial Vehicle Loading and Unloading on Park Property]

**Ordinance amending the Administrative Code to require that prevailing wages be paid for work loading or unloading materials, goods, or products for special events on City park property, and the driving of commercial vehicles for that purpose.**

Existing Law

In addition to prevailing wage requirements governing public works projects, several City ordinances require the payment of prevailing wages for certain types of work connected with City property, including, among others, janitorial services, parking garage attendant services, theatrical workers services, moving services, trade show work, and broadcast services. See Admin. Code §§ 21C.1-21C.9. There is no prevailing wage ordinance governing work loading, unloading, or driving commercial vehicles for special events on City property.

Amendments to Current Law

The ordinance would require that permits for special events on City property under the jurisdiction of the Recreation and Park Commission include a requirement that prevailing wage be paid to (1) any individual performing work loading or unloading on City property materials, goods, or products into or from a Commercial Vehicle for the special event, and (2) any individual driving a Commercial Vehicle from which materials, goods, or products are loaded or unloaded for such special event. The ordinance would apply to temporary events on park property with an anticipated attendance of 150 or more persons.

The ordinance defines "Commercial Vehicle" as a vehicle that (1) is used primarily for the transportation of materials, goods, or products, (2) has six wheels or more, and (3) is required to be registered as a commercial vehicle with the California Department of Motor Vehicles. Commercial Vehicle does not include a vehicle being used exclusively for food catering purposes.

The ordinance exempts the following types of events or activities from the prevailing wage requirement for loading, unloading or driving of Commercial Vehicles on City property:

1. Weddings
2. Film production pursuant to Chapter 57 of this Code
3. Work for which the payment of prevailing wage rates applicable to public works projects is required

4. A street fair, block party, parade, festival, or any celebration directly associated with such street fair, block party, parade, festival, or any other expressive activity such as a protest, demonstration, or similar public assembly, that is free and open to the public and does not advertise or promote a commercial product or service
5. Events for which the permit fee to be paid to the City is \$1,000 or less
6. A concert in a public park to which the public has free access
7. A special event that is sponsored by a non-profit entity where the primary purpose of the event is fundraising for that non-profit entity and/or other non-profit entities; or
8. A special event that is sponsored by a primary or secondary educational institution or by a youth athletic league
9. Loading or unloading of portable toilets, temporary fencing, and/or temporary barricades, or driving a Commercial Vehicle from which goods are loaded or unloaded
10. Work performed by individual vendors at a flea market or farmers market on City property, unless such work is performed by the operator or management of the flea market or farmers market
11. Work that is covered under a collective bargaining agreement
12. Work that is performed by a City employee

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