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[Prevailing rate of wage for workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services on property owned ~~or leased~~ by the City and County of San Francisco.]

Ordinance adding Section 21.25-3 to the San Francisco Administrative Code to require that workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services for shows on property owned ~~or leased~~ by the City and County of San Francisco be paid the prevailing rate of wage and that such workers will have job protection with the ~~successor contractor for a transition period after a contract, lease, franchise, permit management agreement or other contractual arrangement is terminated.~~

Note: Additions are *single-underline italics Times New Roman*;
deletions are *strikethrough italics Times New Roman*.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Administrative Code is hereby amended by adding Section 21.25-3, to read as follows:

Sec. 21.25-3. PREVAILING RATE OF WAGES AND DISPLACED WORK PROTECTION REQUIRED FOR THEATRICAL WORKERS.

Every Contract, Lease, Franchise, Permit, or ~~Other~~ Agreement awarded, let, issued, or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco must require that any individual Employee engaged in theatrical or technical services related to the presentation of a show shows, plays, and exhibits, including, but not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services be paid not less than the Prevailing Rate of

1 Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for
2 similar work in the area in which the Contract, Lease, Franchise, Permit or ~~Other~~ Agreement is being
3 performed, as determined by the Civil Service Commission. ~~All Contracts and other~~
4 agreements All Contracts, Leases, Franchises, Permits or Agreements subject to this Section
5 shall include a provision in which the Contractor agrees to comply with, and to require
6 Subcontractors to comply with, the obligations imposed by this Section.

7 (a) Definitions. For purposes of this Section, the following definitions shall apply to the
8 terms used herein:

9 (1) "Contracting Officer" shall mean any officer or employee of the City and County of San
10 Francisco authorized to enter into a Contract, Lease, Franchise, Permit, or ~~Other~~ Agreement for the
11 operation of property owned by the City and County of San Francisco.

12 (2) "Contract, Lease, Franchise, Permit, or ~~Other~~ Agreement " shall mean an agreement
13 with the City and County of San Francisco for the use of property owned by the City and County of San
14 Francisco, but shall not include any contract, lease, franchise, permit or agreement for:

- 15 A. Celebration of a marriage, domestic partnership, or similar civil union,
16 B. The presentation of a show to which the public has free access when the show is
17 in a public park, on a public street, or on property under the jurisdiction of the Port
18 Commission ~~the use of any unenclosed public park or public street when the~~
19 public has free access to the show, play or exhibit, to,
20 C. Any ~~any~~ permit or agreement of any kind to engage in film production pursuant to
21 Chapter 57 of this Code or under the circumstances set forth in Section 57.7 of
22 this Code (relating to film productions),
23 D. Any show on property under the jurisdiction of the Arts Commission, or
24 E. In ~~in~~ any circumstance where application of this Section would be preempted by
25 federal or state law.

1 F. Any show for which the time required for the set-up is three hours or less and the
2 number of individuals working on the set-up is no more than two.

3 (3) "Contractor" shall mean any Person who submits a bid and/or enters into a Contract,
4 Lease, Franchise, Permit, or ~~Other~~ Agreement with the City and County of San Francisco for the use
5 of property owned by the City and County of San Francisco as set forth in this Section.

6 (4) "Employee" shall mean any individual engaged in theatrical or technical services
7 related to the presentation of shows, ~~plays, and exhibits,~~ including, but not limited to, workers engaged
8 in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects,
9 and motion picture services on property owned by the City and County of San Francisco for a
10 Contractor or a subcontractor. "Employee" does not include a person who is (a) a managerial,
11 supervisory, or confidential employee, including those employees who would be so defined under the
12 Fair Labor Standards Act; or (b) does not possess or has not maintained a required occupational
13 license; or (c) ~~is~~ employed less than 15 hours per week.

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

17 (6) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe
18 benefits or the matching equivalents thereof, being paid to a majority of workers engaged in theatrical
19 or technical services related to the presentation of shows, ~~plays, and exhibits,~~ including, but not
20 limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers,
21 draping, carpentry, special effects, and motion picture services, if a majority of such workers are paid
22 at a single rate; if there is no single rate being paid to a majority, then the prevailing rate shall be that
23 single rate being paid to the greatest number of workers.

24 (7) "Show" shall mean any live act, play, review, pantomime, scene, music, song,
25 dance act, song and dance act, or poetry recitation provided in front of a live audience or

1 recorded for the purpose of later presentation, but shall not include an event where a person
2 solely plays pre-recorded music or pre-recorded performances so long as no other live
3 performance is provided.

4 (8) (7) "Subcontract" shall mean and include any agreement under or subordinate to a prime
5 Contract, Lease, Franchise, Permit, or Other Agreement. "Subcontractor" shall mean any Person
6 who enters into a Subcontract.

7 (b) Determination of Prevailing Rate of Wage. It shall be the duty of the Board of
8 Supervisors, from time to time and at least once during each calendar year, to fix and determine the
9 Prevailing Rate of Wages paid in private employment in the City and County of San Francisco for
10 individuals engaged in theatrical or technical services related to the presentation of shows, ~~plays, and~~
11 exhibits, including, but not limited to, workers engaged in rigging, sound, projection, theatrical
12 lighting, videos, computers, draping, carpentry, special effects, and motion picture services, including
13 such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be
14 fixed and determined as follows:

15 The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after
16 the effective date of this Section, and on or before the first Monday in November of each
17 subsequent year, data as to the Prevailing Rate of Wages for individuals engaged in theatrical or
18 technical services related to the presentation of shows, ~~plays, and~~ exhibits, including, but not limited
19 to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping,
20 carpentry, special effects, and motion picture services, including such rate of wages paid for overtime
21 and holiday work, and the Board of Supervisors shall, upon receipt of such data, fix and determine the
22 Prevailing Rate of Wages for individuals engaged in theatrical or technical services related to the
23 presentation of shows, ~~plays, and~~ exhibits, including, but not limited to, workers engaged in rigging,
24 sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and
25 motion picture services, including such rate of wages paid for overtime and holiday work, as paid for

1 similar work in the City and County of San Francisco in private employment. Such Prevailing Rate of
2 Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be
3 deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the same
4 is changed by the Board of Supervisors.

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

9 (e) ~~Transition Employment Period. All Contracts, Leases, Franchises, Permits, or~~
10 ~~Other Agreements covered by this Section shall impose the following obligations on the~~
11 ~~Contractor.~~

12 (1) ~~Where the awarding authority Contracting Officer has given notice that a~~
13 ~~Contract, Lease, Franchise, Permit or Other Agreement has been terminated or ended, or~~
14 ~~where a Contractor has given notice of such termination, upon giving or receiving such notice,~~
15 ~~as the case may be, the terminated or ending Contractor shall, within ten days thereafter,~~
16 ~~provide to the successor Contractor, the name, date of hire, and employment occupation~~
17 ~~classification of each employee employed at the site or sites covered by the prospective~~
18 ~~Contractor at the time of the Contract, Lease, Franchise, Permit or Other Agreement~~
19 ~~termination. This provision shall also apply to the subcontractors of the terminated~~
20 ~~Contractor.~~

21 ~~If the terminated Contractor has not learned the identity of the successor Contractor, if~~
22 ~~any, by the time that notice was given of the Contract, Lease, Franchise, Permit, or Other~~
23 ~~Agreement termination, the terminated Contractor shall obtain such information from the~~
24 ~~Contracting Officer. If a successor Contract Contractor has not been awarded by the end of~~
25 ~~the 10 day period, the employment information referred to earlier in this subsection shall be~~

1 provided to the Contractor Contracting Officer at such time. Where a subcontractor has been
2 terminated prior to the termination of the Contract, the terminated Subcontractor shall for the
3 purposes of this Section be deemed a terminated Contractor.

4 (2) — A successor Contractor shall retain, for a 90 day transition employment period of
5 the original Contract, Lease, Franchise, Permit, or Other Agreement, employees who have
6 been employed by the terminated Contractor or its subcontractors, if any, for the preceding
7 eight months or longer at the site or sites covered by the Contract, Lease, Franchise, Permit,
8 or Other Agreement, providing that just cause does not exist to terminate such employee.
9 The predecessor contractor's employees shall be employed in order of their seniority with the
10 predecessor. This requirement shall be stated by the City in all initial bid packages involving a
11 Contract, Lease, Franchise, Permit, or Other Agreements governed by this section.

12 (3) — If at any time a successor Contractor determines that fewer employees are
13 required to perform the new Contact than were required by the terminated Contractor (and
14 subcontractors, if any), the successor Contractor shall retain employees by seniority within job
15 classification.

16 (4) — During such 90 day period, the successor Contractor (or subcontractor, where
17 applicable) shall maintain a preferential hiring list of eligible covered employees not retained
18 by the successor Contractor (or subcontractor) from which the successor Contractor (or
19 subcontractor) shall hire additional employees.

20 (5) — Except as provided in Subsection (3) of above, during such 90 day period, the
21 successor Contractor (or subcontractor, where applicable) shall not discharge without cause
22 an employee retained pursuant to this Section. "Cause," for this purpose, shall include, but
23 not be limited to, the employee's conduct while in the employ of the terminated Contractor or
24 subcontractor that contributed to any decision to terminate the Contract or subcontract for
25 fraud or poor performance, excluding permissible union-related activity.

1 (6) — At the end of such 90 day period, a successor Contractor (or subcontractor,
2 where applicable) shall perform a written performance evaluation for each employee retained
3 pursuant to this Section. If the employee's performance during such 90 day period is
4 satisfactory, the successor Contractor (or subcontractor) shall offer the employee continued
5 employment under the terms and conditions established by the successor Contractor (or
6 subcontractor) or as required by law.

7 (7) — All contracts subject to this Section include a provision in which the contractor
8 agrees to require subcontractor to comply with, the obligation imposed by this Section.

9 (d) — Enforcement.

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

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

18 (ii) — The final regular rate received by the eEmployee.

19 (2) — If the Employee is the prevailing party in any such legal action, the Court shall
20 award reasonable attorney's fees and costs as part of the costs recoverable.

21 (3) — This Section Article is not intended to create a private right of action against the
22 City and County of San Francisco.

23 (4) — Successor's Prior Employees. Notwithstanding the provisions of Subsection (c)
24 above, a successor Contractor or subcontractor may replace an Employee otherwise entitled
25 to be retained pursuant to this Section with a person employed by the Contractor or

1 subcontractor continuously for eight months prior to the commencement of the successor
2 Contract or subcontract in a capacity similar to that proposed under the successor Contract or
3 subcontract. This Section shall apply only where the existing Employee of the successor
4 Contractor or subcontractor would otherwise be laid off work as a result of the award of the
5 successor contract.

6 (c) (e) Noncompliance with Wage Provisions; Termination; Penalty. Where the Contracting
7 Officer determines that a Contractor for use of property owned by the City and County of San
8 Francisco, or a subcontractor, may have violated the prevailing wage requirements of this Section,
9 the Contracting Officer shall send written notice to the Contractor of the possible violation (a
10 "violation notice"). In addition to and without prejudice to any other remedy available, the
11 Contracting Officer may terminate the Contract, Lease, Franchise, Permit, or Other Agreement, in
12 which case the Contractor shall not be entitled to any additional payment thereon unless within 30 days
13 of receipt of the violation notice the Contractor has either (i) cured the violation or (ii) has established
14 by documentary evidence, including but not limited to payroll records, the truth and accuracy of which
15 is attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this
16 Section, where a Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to
17 Employees as required by this Section to individuals working in public off-street parking lots or
18 garages, the Contractor shall have "cured the violation" once the Contractor or Subcontractor
19 reimburses such individuals by paying each individual the balance of what he or she should have
20 earned in accordance with the requirements of this Section. In addition to, or instead of terminating
21 the Contract, Lease, Management Contract, Lease, Franchise, Permit, or Other Agreement, where
22 the Contracting Officer finds that the Contractor has willfully violated the requirements of this Section,
23 the Contracting Officer or the Labor Standards Enforcement Officer of the Office of Contract
24 Administration may assess a penalty (a "willful violation penalty") in an amount of not more than 10
25 percent of the dollar amount of the Contract, Lease, Franchise, Permit, or Other Agreement, such

1 sums to be deposited in the fund out of which the Contract, Lease, Franchise, Permit, or ~~Other~~
2 Agreement is awarded or, if none exists, the General Fund. The Contracting Officer or Labor
3 Standards Enforcement Officer may impose such willful violation penalty regardless of whether the
4 Contractor has cured the violation.

5 (d) (f) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this
6 Section, if a Contract, Lease, Franchise, Permit, or ~~Other~~ Agreement conflicts with an existing
7 collective bargaining agreement to which a Contractor or Subcontractor is a party, the collective
8 bargaining agreement shall prevail. However, the Contractor or Subcontractor will be obligated to
9 make good faith efforts to comply with the requirements of its Contract, Lease, Franchise, Permit, or
10 ~~Other~~ Agreement that do not conflict with the collective bargaining agreement.

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

13 (f) (h) Effective Date and Application. This Section shall become effective 30 days after it is
14 enacted, is intended to have prospective effect only, and shall not be interpreted to impair the
15 obligations of any pre-existing Contract, Lease, Franchise, Permit, or ~~Other~~ Agreement issued or
16 entered into by to which the City and County of San Francisco.

17 (g) (i) Applicability to Existing Contracts, Leases, Franchises, Permits, or ~~Other~~ Agreements.
18 This Section Article shall only apply to Contracts, Leases, Franchises, Permits, or ~~Other~~ Agreements
19 entered into on or after the effective date of this Section Article.

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1 (h) (i) Severability. If any severable provision or provisions of this Section Article or any
2 application thereof is held invalid, such invalidity shall not affect any other provisions or applications
3 of the Section Article.

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

7
8 By: _____
9 PAULA JESSON
 Deputy City Attorney