

File No. 111190

Committee Item No. 11  
Board Item No. 5

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: January 4, 2012

Board of Supervisors Meeting

Date: 1/24/2012

**Cmte Board**

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget & Legislative Analyst Report          |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |

**OTHER**

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Completed by: Victor Young

Date: December 30, 2011

Completed by: Victor Young

Date: 1-5-12

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Administrative Code, Police Code - Prevailing Rate of Wages Under City Contracts for  
Specified Services]

2 Ordinance amending the San Francisco Administrative Code by amending  
3 Sections 21C.2 through 21C.6 and adding Section 21C.7, to: 1) specify the City  
4 contracts for services that are subject to the City's prevailing rate of wage requirement  
5 ("Covered Contracts"); 2) consolidate consistent standards for determining and  
6 enforcing prevailing rate of wage requirements in all Covered Contracts; 3) provide an  
7 employment transition period for workers under successor contracts to all Covered  
8 Contracts; 4) provide that all work on Covered Contracts be performed by employees  
9 and not independent contractors; and 5) amending the San Francisco Police Code by  
10 amending Section 3300C.1, to make conforming changes.

11 NOTE: Additions are *single-underline italics Times New Roman*;  
12 deletions are *strike-through italics Times New Roman*.  
13 Board amendment additions are double-underlined;  
Board amendment deletions are ~~strikethrough normal~~.

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

15 Section 1. The San Francisco Administrative Code is hereby amended by amending  
16 Sections 21C.2 through 21C.6 to read as follows:

17 **SEC. 21C.2. PREVAILING RATE OF WAGES REQUIRED IN CONTRACTS FOR**  
18 **JANITORIAL SERVICES; ~~NONPROFIT ORGANIZATIONS EXCLUSION; SMALL BUSINESS~~**  
19 **~~EXCLUSION~~ NON-PROFIT ORGANIZATIONS EXCLUSION.**

20 (a) Prevailing Wage Requirement. Every Contract issued by the City and County of San  
21 Francisco for Janitorial Services to be performed at any facility owned or leased by the City  
22 and County of San Francisco, where such work is to be done directly under the contract  
23 awarded (a "prime contract") must require that any Individual ~~individual~~ performing Janitorial  
24 Services thereunder be paid not less than the Prevailing Rate of Wages, including fringe  
25

1 benefits or the matching equivalents thereof, paid in private employment for similar work in the  
2 area in which the Contract is being performed, as determined by the Civil Service  
3 Commission. This Section does not extend to contracts beyond those entered into by the City  
4 specifically for janitorial services on property owned or leased by the City.

5 (a) Exclusion. This Section shall not apply to a Contract for Janitorial Services with a  
6 non-profit organization to provide work experience for persons with disabilities.

7 ~~(a) Exclusions. This Section shall not apply to the following:~~

8 ~~(1) Non Profit Exclusion. This Section shall not apply to a Contract where the~~  
9 ~~Janitorial Services are to be performed by a non profit organization that provides job training and~~  
10 ~~work experience for disadvantaged individuals in need of such training.~~

11 ~~(2) Small Business Exclusion. This Section shall not apply to any contracting party~~  
12 ~~employing fewer than 10 employees. For purposes of this exclusion, the term "employees" excludes~~  
13 ~~owner operators and members of an owner operator's Immediate Family.~~

14 (b) **Definitions.** For purposes of this Section, the following definitions shall apply to  
15 the terms used herein:

16 (1) "Contract" shall mean an agreement for Janitorial Services to be performed  
17 at the expense of the City and County of San Francisco or to be paid out of moneys deposited  
18 in the treasury or out of trust moneys under the control or collected by the City and County of  
19 San Francisco, and does not include ~~property contracts~~, contracts for the sale of goods,  
20 ~~subcontracts~~, contracts issued by the San Francisco Airport Commission or to be performed  
21 at any facility owned, leased or otherwise under the jurisdiction of the San Francisco Airport  
22 Commission, agreements entered into before the effective date of this Section, or contracts  
23 for a cumulative amount of \$10,000 or less per janitorial service provider in each fiscal year.

24 ~~(2) "Contracting Officer" shall mean any officer or employee of the City and County of~~  
25 ~~San Francisco authorized to enter into a Contract on behalf of the City and County of San Francisco.~~

1           ~~(3) "Contractor" shall mean any Person who submits a bid and/or enters into a~~  
2 ~~Contract with the City and County of San Francisco.~~

3           ~~(4) "Immediate Family" shall mean grand parents, grandchildren, parents, children,~~  
4 ~~brothers and sisters, spouses and domestic partners, nieces and nephews, and aunts and uncles.~~

5           (2) ~~(5)~~ "Janitorial Services" shall mean maintenance and cleaning services on  
6 property owned or leased by the City and County of San Francisco.

7           ~~(6) "Person" shall include any individual, firm, proprietorship, partnership,~~  
8 ~~corporation or combination thereof.~~

9           (7) ~~(3)~~ "Prevailing Rate of Wages" shall mean that rate of compensation as  
10 determined under Section 21C.7. ~~being paid to a majority of workers engaged in a specified category~~  
11 ~~of personal services, if a majority of such workers be paid at a single rate; if there be no single rate~~  
12 ~~being paid to a majority, then the prevailing rate shall be that single rate being paid the greatest~~  
13 ~~number of workers.~~

14           ~~(8) "Subcontract" shall mean and include any agreement under or subordinate to a~~  
15 ~~prime contract or lease.~~

16           ~~(e) Determination of Prevailing Rate of Wage. It shall be the duty of the Board of Supervisors,~~  
17 ~~from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate~~  
18 ~~of Wages paid in private employment in the City and County of San Francisco for Janitorial Services,~~  
19 ~~including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages~~  
20 ~~shall be fixed and determined as follows:~~

21           ~~The Civil Service Commission shall furnish to the Board of Supervisors, on or before the first~~  
22 ~~Monday in November of each year, data as to the Prevailing Rate of Wages for Janitorial Services as~~  
23 ~~paid in private employment in the City and County of San Francisco, including wages for overtime and~~  
24 ~~holiday work, and the Board of Supervisors shall, upon receipt of such data, fix and determine the~~  
25 ~~Prevailing Rate of Wages for Janitorial Services as paid for similar work in the City and County of San~~

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

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

8 *(d) ~~Noncompliance with Wage Provisions; Termination; Penalty.~~ Where the Contracting*  
9 *Officer determines that a Contractor for Janitorial Services may have violated the prevailing wage*  
10 *requirements of this Section, the Contracting Officer shall send written notice to the Contractor of the*  
11 *possible violation (a "violation notice"). In addition to and without prejudice to any other remedy*  
12 *available, the Contracting Officer may terminate the contract, in which case the Contractor shall not*  
13 *be entitled to any additional payment thereon unless within 30 days of receipt of the violation notice the*  
14 *Contractor has either (i) cured the violation or (ii) has established by documentary evidence, including*  
15 *but not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of*  
16 *compliance with the provisions of this Section. For purposes of this Section, where a Contractor fails*  
17 *to pay at least the Prevailing Rate of Wages to individuals performing Janitorial Services under a*  
18 *Contract for Janitorial Services, the Contractor shall have "cured the violation" once the Contractor*  
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, where the Contracting Officer finds that the Contractor has willfully violated the*  
22 *requirements of this Section, the Contracting Officer may assess a penalty (a "willful violation*  
23 *penalty") in an amount not more than 10 percent of the dollar amount of the contract, such sums to be*  
24 *deposited in the fund out of which the Contract is awarded. The Contracting Officer may impose such*  
25 *willful violation penalty regardless of whether the Contractor has cured the violation.*

1 ~~(e) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this~~  
2 ~~Section, if a Contract for Janitorial Services conflicts with an existing collective bargaining agreement~~  
3 ~~to which a Contractor is a party, the collective bargaining agreement shall prevail. However, the~~  
4 ~~Contractor will be obligated to make good faith efforts to comply with the requirements of its Contract~~  
5 ~~for Janitorial Services that do not conflict with the collective bargaining agreement.~~

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

8 (g) (d) **Effective Date and Application.** This Section shall become effective 30 days  
9 after it is enacted, is intended to have prospective effect only, and shall not be interpreted to  
10 impair the obligations of any pre-existing agreement to which the City is a party, unless such  
11 pre-existing agreement has been amended after the effective date of this Section.

12 (h) (e) **Severability.** If any part or provision of this Section, or the application thereof  
13 to any Person or circumstance, is held invalid, the remainder of this Section, including the  
14 application of such part or provisions to other Persons or circumstances, shall not be affected  
15 thereby and shall continue in full force and effect. To this end, the provisions of this Section  
16 are severable.

17  
18 **SEC. 21C.3. PREVAILING RATE OF WAGES AND DISPLACED WORK PROTECTION**  
19 **REQUIRED FOR WORKERS IN PUBLIC OFF-STREET PARKING LOTS, GARAGES, OR**  
20 **STORAGE FACILITIES FOR AUTOMOBILES.**

21 (a) Prevailing Wage Requirement. Every Lease, Management Agreement, or Other  
22 Contractual Arrangement for the operation of a public off-street parking lot, garage, or storage  
23 facility for automobiles on property owned or leased by the City and County of San Francisco  
24 must require that any Individual Employee working in such public off street parking lot, garage,  
25 or storage facility for automobiles, including but not limited to individuals engaged in Washing,

1 Polishing, Lubrication, Rent-Car Service, Parking Vehicles, Cashiers, Attendants, Checking Coin  
2 Boxes, Non-Attendant Parking Lot Checking, Daily Ticket Audit, Traffic Directors and Shuttle Driver,  
3 shall be paid not less than the Prevailing Rate of Wages, including fringe benefits or the  
4 matching equivalents thereof, paid in private employment for similar work in the area in which  
5 the Lease, Management Agreement, or Other Contractual Arrangement is being performed,  
6 as determined by the Civil Service Commission.

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

9 ~~(1) "Contracting Officer" shall mean any officer or employee of the City and County of~~  
10 ~~San Francisco authorized to enter into a Lease, Management Agreement, or Other Contractual~~  
11 ~~Arrangement for the operation of a public off street parking lot, garage, or storage facility for~~  
12 ~~automobiles on property owned or leased by the City and County of San Francisco.~~

13 ~~(2) "Contractor" shall mean any Person who submits a bid and/or enters into a Lease,~~  
14 ~~Management Agreement, or Other Contractual Arrangement with the City and County of San~~  
15 ~~Francisco for the operation of a public off street parking lot, garage, or storage facility for~~  
16 ~~automobiles on property owned or leased by the City and County of San Francisco as set forth in this~~  
17 ~~Section.~~

18 ~~(3) "Employee" shall mean any individual performing work in one of the following~~  
19 ~~classifications: Washing; Polishing; Lubrication; Rent Car Service; Parking Vehicles; Cashiers;~~  
20 ~~Attendants; Checking Coin Boxes; Non-Attendant Parking Lot Checking; Daily Ticket Audit; Traffic~~  
21 ~~Directors; Shuttle Drivers; and all other incidental duties, whose primary place of employment is in~~  
22 ~~public off street parking lot, garage, or storage facility for automobiles on property owned or leased by~~  
23 ~~the City and County of San Francisco for the Contractor. "Employee" does not include a person who is~~  
24 ~~(a) a managerial, supervisory, or confidential employee, including those employees who would be so~~  
25

1 ~~defined under the Fair Labor Standards Act; or (b) does not possess or has not maintained a required~~  
2 ~~occupational license.~~

3 (4) (2) "Lease, Management Agreement, or Other Contractual Arrangement"  
4 shall mean an agreement with the City and County of San Francisco for the operation of a  
5 public off-street parking lot, garage, or storage facility for automobiles on property owned or  
6 leased by the City and County of San Francisco.

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

10 (6) (3) "Prevailing Rate of Wages" shall mean that rate of compensation as  
11 determined in Section 21C.7, ~~including fringe benefits or the matching equivalents thereof, being paid~~  
12 ~~to a majority of workers engaged in the area in which the Lease, Management Agreement, or Other~~  
13 ~~Contractual Arrangement is being performed, if a majority of such workers are paid at a single rate; if~~  
14 ~~there is no single rate being paid to a majority, then the prevailing rate shall be that single rate being~~  
15 ~~paid to the greatest number of workers.~~

16 (7) (4) "Public Off-Street Parking Lot, Garage, or Automobile Storage Facility"  
17 shall mean any off-street parking lot, garage, or automobile storage facility that is operated on  
18 property owned or leased by the City and County of San Francisco.

19 ~~(8) "Subcontract" shall mean and include any agreement under or subordinate to a~~  
20 ~~prime Lease, Management Agreement, or Other Contractual Arrangement.~~

21 ~~(b) Determination of Prevailing Rate of Wage. It shall be the duty of the Board of Supervisors,~~  
22 ~~from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate~~  
23 ~~of Wages paid in private employment in the City and County of San Francisco for individuals working~~  
24 ~~in off-street parking lots, garages, or automobile storage facility, including such rate of wages paid for~~  
25



1 ~~overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as~~  
2 ~~follows:~~

3 ~~The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after the~~  
4 ~~effective date of this Section, and on or before the first Monday in November of each subsequent year,~~  
5 ~~data as to the Prevailing Rate of Wages for individuals working in off street parking lots, garages, or~~  
6 ~~automobile storage facilities as paid in private employment in the City and County of San Francisco,~~  
7 ~~including wages or overtime and holiday work, and the Board Supervisors shall, upon receipt of such~~  
8 ~~data, fix and determine the Prevailing Rate of Wages for individuals working in off street parking lots,~~  
9 ~~garages, or automobile storage facilities as paid for similar work in the City and County of San~~  
10 ~~Francisco in private employment. Such Prevailing Rate of Wages as so fixed and determined by the~~  
11 ~~Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages~~  
12 ~~Maid in private employment for similar work, until the same is changed by the Board of Supervisors.~~

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

17 ~~(e) Transition Employment Period. All Leases, Management Agreements, or Other Contractual~~  
18 ~~Arrangements covered by this Section shall impose the following obligations on the Contractor for~~  
19 ~~Employees who work at least 15 hours per week~~

20 ~~(1) Where the Contracting Officer has given notice that a Lease, Management Agreement, or~~  
21 ~~Other Contractual Arrangement has been terminated or ended, or where a Contractor has given notice~~  
22 ~~of such termination, upon giving or receiving such notice, as the case may be, the terminated or ending~~  
23 ~~Contractor shall, within ten days thereafter, provide to the successor Contractor, the name, date of~~  
24 ~~hire, and employment occupation classification of each Employee who work at least 15 hours per week~~  
25 ~~employed at the site or sites covered by the prospective Contractor at the time of the Lease,~~

Supervisor Wiener  
BOARD OF SUPERVISORS

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1 ~~Management Agreement, or Other Contractual Arrangement termination. This provision shall also~~  
2 ~~apply to the subcontractors of the terminated Contractor.~~

3 ~~If the terminated Contractor has not learned the identity of the successor Contractor, if any, by~~  
4 ~~the time that notice was given of the Lease, Management Agreement, or Other Contractual~~  
5 ~~Arrangement termination, the terminated Contractor shall obtain such information from the~~  
6 ~~Contracting Officer. If a successor Contractor has not been awarded by the end of the 10 day period,~~  
7 ~~the employment information referred to earlier in this subsection shall be provided to the Contracting~~  
8 ~~officer at such time. Where a subcontractor has been terminated prior to the termination of the~~  
9 ~~Contract, the terminated Subcontractor shall for the purposes of this Section be deemed a terminated~~  
10 ~~Contractor.~~

11 ~~(2) A successor Contractor shall retain, for a 90 day transition employment period,~~  
12 ~~Employees who have worked at least 15 hours per week and have been employed by the terminated~~  
13 ~~Contractor or its subcontractors, if any, for the preceding twelve months or longer at the site or sites~~  
14 ~~covered by the Lease, Management Agreement, or Other Contractual Arrangement, providing that just~~  
15 ~~cause does not exist to terminate such Employee. The predecessor contractor's Employees who worked~~  
16 ~~at least 15 hours per week shall be employed in order of their seniority with the predecessor. This~~  
17 ~~requirement shall be stated by the City in all initial bid packages involving Leases, Management~~  
18 ~~Agreements, or Other Contractual Arrangements governed by this section.~~

19 ~~(3) If at any time a successor Contractor determines that fewer Employees are required~~  
20 ~~to perform the new Contact than were required by the terminated Contractor (and subcontractors, if~~  
21 ~~any), the successor Contractor shall retain Employees by seniority within job classification.~~

22 ~~(4) During such 90 day period the successor Contractor (or subcontractor, where~~  
23 ~~applicable) shall maintain a preferential hiring list of eligible covered Employees not retained by the~~  
24 ~~successor Contractor (or subcontractor) from which the successor Contractor (or subcontractor) shall~~  
25 ~~hire additional Employees.~~

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

7           ~~(6) At the end of such 90 day period, a successor Contractor (or subcontractor, where~~  
8 ~~applicable) shall perform a written performance evaluation for each Employee retained pursuant to~~  
9 ~~this Section. If the Employee's performance during such 90 day period is satisfactory, the successor~~  
10 ~~Contractor (or subcontractor) shall offer the Employee continued employment under the terms and~~  
11 ~~conditions established by the successor Contractor (or sub-contractor) or as required by law.~~

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

14           ~~(d) Enforcement.~~

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

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

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

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

1           ~~(3) This Section is not intended to create a private right of action against the City and~~  
2 ~~County of San Francisco.~~

3           ~~(4) Successor's Prior Employees. Notwithstanding the provisions of Subsection (c)~~  
4 ~~above, a successor Contractor or subcontractor may replace an Employee otherwise entitled to be~~  
5 ~~retained pursuant to this Section with a person employed by the Contractor or subcontractor~~  
6 ~~continuously for twelve months prior to the commencement of the successor Contract or subcontract in~~  
7 ~~a capacity similar to that proposed under the successor Contract or subcontract. This Section shall~~  
8 ~~apply only where the existing Employee of the successor Contractor or subcontractor would otherwise~~  
9 ~~be laid off work as a result of the award of the successor contract.~~

10           ~~(e) Noncompliance with Wage Provisions; Termination; Penalty. Where the Contracting~~  
11 ~~Officer determines that a Contractor for the operation of a public off street parking lot, garage, or~~  
12 ~~automobile storage facility may have violated the prevailing wage requirements of this Section, the~~  
13 ~~Contracting Officer shall send written notice to the Contractor of the possible violation (a "violation~~  
14 ~~notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer~~  
15 ~~may terminate the Lease, Management Agreement, or Other Contractual Arrangement, in which case~~  
16 ~~the Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt~~  
17 ~~of the violation notice the Contractor has either (i) cured the violation or (ii) has established by~~  
18 ~~documentary evidence, including but not limited to payroll records, the truth and accuracy of which is~~  
19 ~~attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this~~  
20 ~~Section, where a Contractor fails to pay at least the Prevailing Rate of Wages to Employees working in~~  
21 ~~public off street parking lots or garages, the Contractor shall have "cured the violation" once the~~  
22 ~~Contractor reimburses such Employees by paying each individual the balance of what he or she should~~  
23 ~~have earned in accordance with the requirements of this Section. In addition to, or instead of~~  
24 ~~terminating the Lease, Management Agreement, or Other Contractual Arrangement, where the~~  
25 ~~Contracting Officer finds that the Contractor has willfully violated the requirements of this Section, the~~

1 ~~Contracting Officer shall assess a penalty (a "willful violation penalty") in the sum of \$50 per day for~~  
2 ~~each Employee for each day the Contractor or Subcontractor fails to pay the Prevailing Rate of Wages,~~  
3 ~~such sums to be deposited in the fund out of which the Lease, Management Agreement, or Other~~  
4 ~~Contractual Arrangement is awarded. The Contracting Officer shall impose such willful violation~~  
5 ~~penalty regardless of whether the Contractor has cured the violation.~~

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

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

14 ~~(h) (d) Effective Date and Application.~~ This Section shall become effective 30 days  
15 after it is enacted, is intended to have, prospective effect only, and shall not be interpreted to  
16 impair the obligations of any pre-existing Lease, Management Agreement, or Other  
17 Contractual Arrangement to which the City and County of San Francisco is a party, unless  
18 such pre-existing Lease, Management Agreement, or Other Contractual Arrangement has  
19 been amended after the effective date of this Section.

20 ~~(i) (e) Public Entities with Coterminous Boundaries with the City and County of~~  
21 **San Francisco.** It is the policy of the City and County of San Francisco that all public entities  
22 with coterminous boundaries with the City and County of San Francisco, including but not  
23 limited to the Parking Authority of the City and County of San Francisco, adopt this prevailing  
24 wage and employee transition period policy. The Board of Supervisors of the City and County  
25 of San Francisco urges all public entities with coterminous boundaries with the City and

1 County of San Francisco, including but not limited to the Parking Authority of the City and  
2 County of San Francisco, to adopt this prevailing wage and employee transition period policy.

3 ~~(f)~~ **Severability.** If any part or provision of this Section, or the application thereof to  
4 any Person or circumstance, is held invalid, the remainder of this Section, including the  
5 application of such part or provisions to other Persons or circumstances, shall not be affected  
6 thereby and shall continue in full force and effect. To this end, the provisions of this Section  
7 are severable.

8  
9 **SEC. 21C.4. PREVAILING RATE OF WAGES REQUIRED FOR THEATRICAL WORKERS.**

10 (a) Prevailing Wage Requirement. Every Contract, Lease, Franchise, Permit, or  
11 Agreement awarded, let, issued, or granted by the City and County of San Francisco for the  
12 use of property owned by the City and County of San Francisco must require that any  
13 Individual Employee engaged in theatrical or technical services related to the presentation of a  
14 show, including, but not limited to, workers engaged in rigging, sound, projection, theatrical  
15 lighting, videos, computers, draping, carpentry, special effects, and motion picture services be  
16 paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching  
17 equivalents thereof, paid in private employment for similar work in the area in which the  
18 Contract, Lease, Franchise, Permit or Agreement is being performed. All Contracts, Leases,  
19 Franchises, Permits or Agreements subject to this Section shall include a provision in which  
20 the Contractor agrees to comply with, and to require Subcontractors to comply with, the  
21 obligations imposed by this Section.

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

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

4                   (2) (1) "Contract, Lease, Franchise, Permit, or Agreement" shall mean an  
5 agreement with the City and County of San Francisco for the use of property owned by the  
6 City and County of San Francisco, but shall not include any contract, lease, franchise, permit,  
7 or agreement for:

8                   A. Celebration of a marriage, domestic partnership, or similar civil union,  
9                   B. The presentation of a show to which the public has free access when  
10 the show is in a public park, on a public street, or on property under the jurisdiction of the Port  
11 Commission.

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

14                   D. Any show on property under the jurisdiction of the Arts Commission,  
15 or

16                   E. In any circumstance where application of this Section would be  
17 preempted by federal or state law,

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

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

23                   (4) ~~"Employee" shall mean any individual engaged in theatrical or technical services~~  
24 ~~related to the presentation of shows, including, but not limited to, workers engaged in rigging, sound,~~  
25 ~~projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion~~

1 ~~picture services on property owned by the City and County of San Francisco for a Contractor or a~~  
2 ~~subcontractor. "Employee" does not include a person who is (a) a managerial, supervisory, or~~  
3 ~~confidential employee, including those employees who would be so defined under the Fair Labor~~  
4 ~~Standards Act; or (b) does not possess or has not maintained a required occupational license; or (c)~~  
5 ~~employed less than 15 hours per week.~~

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

9 ~~(6) (2) "Prevailing Rate of Wages" shall mean that rate of compensation as~~  
10 ~~determined in Section 21C.7 including fringe benefits or the matching equivalents thereof, being paid~~  
11 ~~to a majority of workers engaged in theatrical or technical services related to the presentation of~~  
12 ~~shows, including, but not limited to, workers engaged in rigging, sound, projection, theatrical lighting,~~  
13 ~~videos, computers, draping, carpentry, special effects, and motion picture services, if a majority of such~~  
14 ~~workers are paid at a single rate; if there is no single rate being paid to a majority, then the prevailing~~  
15 ~~rate shall be that single rate being paid to the greatest number of workers.~~

16 ~~(7) (3) "Show" shall mean any live act, play, review, pantomime, scene, music,~~  
17 ~~song, dance act, song and dance act, or poetry recitation provided in front of a live audience~~  
18 ~~or recorded for the purpose of later presentation, but shall not include an event where a~~  
19 ~~person solely plays pre-recorded music or pre-recorded performances so long as no other live~~  
20 ~~performance is provided.~~

21 ~~(8) "Subcontract" shall mean and include any agreement under or subordinate to a~~  
22 ~~prime Contract, Lease, Franchise, Permit, or Agreement. "Subcontractor" shall mean any Person who~~  
23 ~~enters into a Subcontract.~~

24 ~~(b) Determination of Prevailing Rate of Wage. It shall be the duty of the Board of Supervisors,~~  
25 ~~from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate~~



1 ~~of Wages paid in private employment in the City and County of San Francisco for individuals engaged~~  
2 ~~in theatrical or technical services related to the presentation of shows, including, but not limited to,~~  
3 ~~workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping,~~  
4 ~~carpentry, special effects, and motion picture services, including such rate of wages paid for overtime~~  
5 ~~and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:~~

6 ~~The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after the~~  
7 ~~effective date of this Section, and on or before the first Monday in November of each subsequent year,~~  
8 ~~data as to the Prevailing Rate of Wages for individuals engaged in theatrical or technical services~~  
9 ~~related to the presentation of shows, including, but not limited to, workers engaged in rigging, sound,~~  
10 ~~projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion~~  
11 ~~picture services, including such rate of wages paid for overtime and holiday work, and the Board of~~  
12 ~~Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages for~~  
13 ~~individuals engaged in theatrical or technical services related to the presentation of shows, including,~~  
14 ~~but not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos,~~  
15 ~~computers, draping, carpentry, special effects, and motion picture services, including such rate of~~  
16 ~~wages paid for overtime and holiday work, as paid for similar work in the City and County of San~~  
17 ~~Francisco in private employment. Such Prevailing Rate of Wages as so fixed and determined by the~~  
18 ~~Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages~~  
19 ~~paid in private employment for similar work, until the same is changed by the Board of Supervisors.~~

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

24 ~~(c) Noncompliance with Wage Provisions; Termination; Penalty. Where the Contracting~~  
25 ~~Officer determines that a Contractor for use of property owned by the City and County of San~~

1 ~~Francisco, or a subcontractor, may have violated the prevailing wage requirements of this Section, the~~  
2 ~~Contracting Officer shall send written notice to the Contractor of the possible violation (a "violation~~  
3 ~~notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer~~  
4 ~~may terminate the Contract, Lease, Franchise, Permit, or Agreement, in which case the Contractor~~  
5 ~~shall not be entitled to any additional payment thereon unless within 30 days of receipt of the violation~~  
6 ~~notice the Contractor has either (i) cured the violation or (ii) established by documentary evidence,~~  
7 ~~including but not limited to payroll records, the truth and accuracy of which is attested to by affidavit,~~  
8 ~~proof of compliance with the provisions of this Section. For purposes of this Section, where a~~  
9 ~~Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to Employees as~~  
10 ~~required by this Section, the Contractor shall have "cured the violation" once the Contractor or~~  
11 ~~Subcontractor reimburses such individuals by paying each individual the balance of what he or she~~  
12 ~~should have earned in accordance with the requirements of this Section. In addition to, or instead of~~  
13 ~~terminating the Contract, Lease, Franchise, Permit, or Agreement, where the Contracting Officer finds~~  
14 ~~that the Contractor has willfully violated the requirements of this Section, the Contracting Officer or~~  
15 ~~the Labor Standards Enforcement Officer may assess a penalty (a "willful violation penalty") of not~~  
16 ~~more than 10 percent of the dollar amount of the Contract, Lease, Franchise, Permit, or Agreement,~~  
17 ~~such sums to be deposited in the fund out of which the Contract, Lease, Franchise, Permit, or~~  
18 ~~Agreement is awarded or, if none exists, the General Fund. The Contracting Officer or Labor~~  
19 ~~Standards Enforcement Officer may impose such willful violation penalty regardless of whether the~~  
20 ~~Contractor has cured the violation.~~

21 ~~(d) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this~~  
22 ~~Section, if a Contract, Lease, Franchise, Permit, or Agreement conflicts with an existing collective~~  
23 ~~bargaining agreement to which a Contractor or Subcontractor is a party, the collective bargaining~~  
24 ~~agreement shall prevail. However, the Contractor or Subcontractor will be obligated to make good~~  
25

1 ~~faith efforts to comply with the requirements of its Contract, Lease, Franchise, Permit, or Agreement~~  
2 ~~that do not conflict with the collective bargaining agreement.~~

3 ~~(e)~~ (c) **Preemption.** Nothing in this Section shall be interpreted or applied so as to  
4 create any power or duty in conflict with any federal or State law.

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

9 ~~(g)~~ (e) **Applicability to Existing Contracts, Leases, Franchises, Permits, or**  
10 **Agreements.** This Section shall only apply to Contracts, Leases, Franchises, Permits, or  
11 Agreements entered into on or after the effective date of this Section.

12 ~~(h)~~ (f) **Severability.** If any severable provision or provisions of this Section or any  
13 application thereof is held invalid, such invalidity shall not affect any other provisions or  
14 applications of the Section.

15  
16 **SEC. 21C.5. PREVAILING RATE OF WAGES AND WORKER RETENTION REQUIRED**  
17 **FOR WORKERS ENGAGED IN HAULING OF SOLID WASTE GENERATED BY THE CITY**  
18 **IN THE COURSE OF CITY OPERATIONS.**

19 (a) **Prevailing Wage Requirement.** Every Contract awarded by the City for the hauling of  
20 solid waste generated by the City in the course of City operations must require that any Individual  
21 engaged in the hauling of solid waste be paid not less than the Prevailing Rate of Wages, including  
22 fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the  
23 area in which the Contract is being performed.

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

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

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

4 ~~(3) (1) "Contract" shall mean an agreement with the City for the hauling of solid~~  
5 ~~waste, generated by the City in the course of City operations, to be performed at the expense~~  
6 ~~of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under~~  
7 ~~the control or collected by the City. For purposes of this Section, "Contract" shall not include~~  
8 ~~(a) a permit issued under the Refuse Collection and Disposal Ordinance, Appendix 1 of the~~  
9 ~~San Francisco Administrative Code, or (b) a contract governed by the provisions of Chapter 6~~  
10 ~~of the San Francisco Administrative Code. Should the the Administrative Code be amended to~~  
11 ~~change the permit process contained in Appendix 1 to a franchise process, or any other process for~~  
12 ~~authorizing refuse collection and disposal within the City, it shall be City policy to require refuse~~  
13 ~~companies to pay the prevailing wage to any individual engaged in the hauling of refuse, recyclables,~~  
14 ~~compostables and solid waste within the City.~~

15 ~~(4) "Contractor" shall mean any Person who submits a bid and/or enters into a~~  
16 ~~Contract with the City for the hauling of solid waste generated by the City in the course of City~~  
17 ~~operations.~~

18 ~~(5) "Employee" shall mean any individual engaged in the hauling of solid waste,~~  
19 ~~generated by the City in the course of City operations, for a Contractor or Subcontractor. For purposes~~  
20 ~~of this Section, "Employee" shall not include a Person who (a) is a managerial, supervisory, or~~  
21 ~~confidential employee, including those employees who would be so defined under the Fair Labor~~  
22 ~~Standards Act; or (b) does not possess or has not maintained a required occupational license.~~

23 ~~(6) (2) "Hauling" of solid waste shall mean collection and transport of solid waste~~  
24 ~~generated by the City in the course of City operations. For purposes of this Section, "hauling"~~  
25

1 shall not include "solid waste disposal" or "disposal" as defined in Section 40192 of the  
2 California Public Resources Code.

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

6 ~~(8) (3) "Prevailing Rate of Wages" shall mean that rate of compensation as~~  
7 ~~determined in Section 21C.7. including fringe benefits or the matching equivalents thereof, being paid~~  
8 ~~to a majority of workers engaged in the hauling of solid waste, if a majority of such workers are paid at~~  
9 ~~a single rate; if there is no single rate being paid to a majority, then the prevailing rate shall be that~~  
10 ~~single rate being paid to the greatest number of workers.~~

11 ~~(9) (4) "Solid Waste" shall mean "solid waste" as defined in Section 40191 of~~  
12 ~~the California Public Resources Code and includes material collected for "recycling" as~~  
13 ~~defined in Section 40180 of the California Public Resources Code.~~

14 ~~(10) "Subcontract" shall mean any agreement under or subordinate to a prime~~  
15 ~~Contract.~~

16 ~~(11) "Subcontractor" shall mean any Person who enters into a Subcontract with a~~  
17 ~~Contractor.~~

18 ~~(b) Prevailing Wage Rate Requirements.~~

19 ~~(1) Basic Prevailing Wage Rate Requirement. Every Contract awarded by the City for~~  
20 ~~the hauling of solid waste generated by the City in the course of City operations must require that any~~  
21 ~~Employee engaged in the hauling of solid waste be paid not less than the Prevailing Rate of Wages,~~  
22 ~~including fringe benefits or the matching equivalents thereof, paid in private employment for similar~~  
23 ~~work in the area in which the Contract is being performed.~~

24 ~~(2) Contractual Provision Concerning Prevailing Wage Rate Requirement. All~~  
25 ~~Contracts subject to this Section shall include a provision in which the Contractor agrees to comply~~

1 ~~with, and to require Subcontractors to comply with, the prevailing wage rate requirement imposed by~~  
2 ~~this Section.~~

3 ~~(3) Determination of Prevailing Rate of Wages. It shall be the duty of the Board of~~  
4 ~~Supervisors, from time to time and at least once during each calendar year, to fix and determine the~~  
5 ~~Prevailing Rate of Wages paid in private employment in the City for individuals engaged in the hauling~~  
6 ~~of solid waste, including such rate of wages paid for overtime and holiday work, which said Prevailing~~  
7 ~~Rate of Wages shall be fixed and determined as follows:~~

8 ~~The Civil Service Commission shall furnish to the Board of Supervisors, within 15 days~~  
9 ~~after the effective date of this Section, and on or before the first Monday in November of each year,~~  
10 ~~data as to the Prevailing Rate of Wages for individuals engaged in the hauling of solid waste, including~~  
11 ~~such rate of wages paid for overtime and holiday work, and the Board of Supervisors shall, upon~~  
12 ~~receipt of such data, fix and determine the Prevailing Rate of Wages for individuals engaged in the~~  
13 ~~hauling of solid waste, including such rate of wages paid for overtime and holiday work, as paid for~~  
14 ~~similar work in the City in private employment. Such Prevailing Rate of Wages as so fixed and~~  
15 ~~determined by the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing~~  
16 ~~Rate of Wages paid in private employment for similar work, until the same is changed by the Board of~~  
17 ~~Supervisors.~~

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

22 ~~(4) Enforcement of Prevailing Wage Rate Requirements. Where the Contracting Officer~~  
23 ~~determines that a Contractor for the hauling of solid waste, or a Subcontractor, may have violated the~~  
24 ~~prevailing wage requirements of this Section, the Contracting Officer shall send written notice to the~~  
25 ~~Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to any~~

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

16 ~~(c) Worker Retention Requirements.~~

17 ~~(1) Purpose. The City has an important proprietary interest in maintaining the stability of the~~  
18 ~~workforce engaged by a Contractor in the hauling of solid waste generated by the City in the course of~~  
19 ~~City operations. Turnover of experienced workers resulting from a change in the City's Contractor~~  
20 ~~jeopardizes the quality, efficiency, and cost effectiveness of service provided to the City under the~~  
21 ~~successor Contract.~~

22 ~~(2) Worker Retention Requirements. All Contracts covered by this Section shall impose the~~  
23 ~~following obligations on the Contractor for Employees who work at least 15 hours per week under the~~  
24 ~~Contract.~~

1 ~~(i) Where the Contracting Officer has given notice that a Contract has been terminated or~~  
2 ~~ended, or where a Contractor has given notice of such termination, upon giving or receiving such~~  
3 ~~notice, as the case may be, the terminated or ending Contractor shall, within ten days thereafter,~~  
4 ~~provide to the successor Contractor, the name, date of hire, and employment occupation classification~~  
5 ~~of each Employee who works at least 15 hours per week under the Contract. This provision shall also~~  
6 ~~apply to the Subcontractors of the terminated Contractor.~~

7 ~~If the terminated Contractor has not learned the identity of the successor Contractor, if any, by~~  
8 ~~the time that notice was given of the Contract termination, the terminated Contractor shall obtain such~~  
9 ~~information from the Contracting Officer. If a successor Contractor has not been awarded by the end of~~  
10 ~~the 10-day period, the employment information referred to in subsection (c)(2)(i) shall be provided to~~  
11 ~~the Contracting Officer at such time. Where a Subcontractor has been terminated prior to the~~  
12 ~~termination of the Contract, the terminated Subcontractor shall for the purposes of this provision be~~  
13 ~~deemed a terminated Contractor.~~

14 ~~(ii) A successor Contractor shall retain, for a 90-day transition employment period. Employees~~  
15 ~~who have worked at least 15 hours per week and been employed by the terminated Contractor or its~~  
16 ~~Subcontractors, if any, for the preceding twelve months or longer under the Contract, providing that~~  
17 ~~just cause does not exist to terminate such Employee. The predecessor Contractor's Employees who~~  
18 ~~worked at least 15 hours per week shall be employed in order of their seniority with the predecessor.~~  
19 ~~This requirement shall be stated by the City in all initial bid packages, Requests for Proposals, and~~  
20 ~~Requests for Qualifications involving Contracts governed by this Section.~~

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

24 ~~(iv) During such 90-day period the successor Contractor (or Subcontractor, where applicable)~~  
25 ~~shall maintain a preferential hiring list of eligible covered Employees not retained by the successor~~



1 ~~Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire~~  
2 ~~additional Employees.~~

3 ~~(v) Except as provided in subsection (c)(2)(iii), during such 90-day period, the successor~~  
4 ~~Contractor (or Subcontractor, where applicable) shall not discharge without cause an Employee~~  
5 ~~retained pursuant to this Section. "Cause," for this purpose, shall include, but not be limited to, the~~  
6 ~~Employee's conduct while in the employ of the terminated Contractor or Subcontractor that contributed~~  
7 ~~to any decision to terminate the Contract or Subcontract for fraud or poor performance, excluding~~  
8 ~~permissible union-related activity.~~

9 ~~(vi) At the end of such 90-day period, a successor Contractor (or Subcontractor, where~~  
10 ~~applicable) shall perform a written performance evaluation for each Employee retained pursuant to~~  
11 ~~this Section. If the Employee's performance during such 90-day period is satisfactory, the successor~~  
12 ~~Contractor (or Subcontractor) shall offer the Employee continued employment under the terms and~~  
13 ~~conditions established by the successor Contractor (or Subcontractor) or as required by law.~~

14 ~~(3) Contractual Provision Concerning Worker Retention Requirements. All Contracts subject~~  
15 ~~to this Section shall include a provision in which the Contractor agrees to comply with, and to require~~  
16 ~~Subcontractors to comply with, the obligations imposed by this Section.~~

17 ~~(4) Enforcement of Worker Retention Requirements. An Employee who has not been hired or~~  
18 ~~has been discharged in violation of this Section by a successor Contractor or its Subcontractor may~~  
19 ~~bring an action in the Superior Court of the State of California, as appropriate, against the successor~~  
20 ~~Contractor and, where applicable, its Subcontractor, and shall be awarded back pay, including the~~  
21 ~~value of benefits for each day during which the violation continues, which shall be calculated at a rate~~  
22 ~~of compensation not less than the higher of (i) the average regular rate of pay received by the~~  
23 ~~Employee during the last three years of the Employee's employment in the same occupation~~  
24 ~~classification or (ii) the final regular rate received by the Employee. If the Employee is the prevailing~~  
25

1 ~~party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the~~  
2 ~~costs recoverable.~~

3 ~~(5) Successor's Prior Employees. Notwithstanding the provisions of subsection (c), a~~  
4 ~~successor Contractor or Subcontractor may replace an Employee otherwise entitled to be retained~~  
5 ~~pursuant to this Section with a person employed by the Contractor or Subcontractor continuously for~~  
6 ~~twelve months prior to the commencement of the successor Contract or Subcontract in a capacity~~  
7 ~~similar to that proposed under the successor Contract or Subcontract. This Section shall apply only~~  
8 ~~where the existing Employee of the successor Contractor or Subcontractor would otherwise be laid off~~  
9 ~~work as a result of the award of the successor Contract.~~

10 ~~(d) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this~~  
11 ~~Section, if a Contract conflicts with an existing collective bargaining agreement to which a Contractor~~  
12 ~~or Subcontractor is a party, the collective bargaining agreement shall prevail. However, the~~  
13 ~~Contractor or Subcontractor will be obligated to make good faith efforts to comply with the~~  
14 ~~requirements of its Contract that do not conflict with the collective bargaining agreement.~~

15 ~~(e) (c) Preemption.~~ Nothing in this Section shall be interpreted or applied so as to  
16 create any power or duty in conflict with any federal or state law.

17 ~~(f) No Cause of Action Against City. This Section is not intended to create a private right of~~  
18 ~~action against the City.~~

19 ~~(g) (d) Prospective Application.~~ This Section is intended to have prospective effect  
20 only, and shall not be interpreted to impair the obligations of any pre-existing Contract entered  
21 into by the City. This Section shall only apply to Contracts entered into on or after the  
22 effective date of this Section.

23 ~~(h) (e) Severability.~~ If any part or provision of this Section, or the application thereof  
24 to any Person or circumstance, is held invalid, the remainder of this Section, including the  
25 application of such part or provisions to other Persons or circumstances, shall not be affected

1 thereby and shall continue in full force and effect. To this end, the provisions of this Section  
2 are severable.

3  
4 **SEC. 21C.6. PREVAILING RATE OF WAGES REQUIRED IN CONTRACTS FOR MOVING**  
5 **SERVICES; NONPROFIT ORGANIZATIONS EXCLUSION.**

6 (a) Prevailing Wage Requirement. Every Contract issued by the City and County of San  
7 Francisco for Moving Services to be performed at any facility owned or leased by the City and  
8 County of San Francisco, where such work is to be done directly under the contract awarded  
9 (a "prime contract") must require that any *Individual Employee* performing Moving Services  
10 thereunder be paid not less than the Prevailing Rate of Wages, including fringe benefits or the  
11 matching equivalents thereof, paid in private employment for similar work in the area in which  
12 the Contract is being performed.

13 ~~(a)~~ (b) Exclusions. This Section shall not apply to the following:

14 (1) **Non-profits.** This Section shall not apply to a Contract where the Moving  
15 Services are to be performed by a non-profit organization that provides job training and work  
16 experience for disadvantaged individuals in need of such training.

17 (2) **Prior Agreements.** This Section shall not apply to agreements entered into  
18 before the effective date of this Section.

19 (3) **Contracts for \$1000 or less.** This Section shall not apply to contracts for  
20 \$1000 or less per moving service provider. Contracts may not be split for purposes of  
21 evading the requirements of this Section.

22 (c) (b) Definitions. For purposes of this Section, the following definitions shall apply  
23 to the terms used herein:

24 (1) "Contract" shall mean an agreement for Moving Services to be performed at  
25 the expense of the City and County of San Francisco or to be paid out of moneys deposited in

1 the treasury or out of trust moneys under the control or collected by the City and County of  
2 San Francisco.

3 ~~(2) "Contracting Officer" shall mean any officer or employee of the City and County of~~  
4 ~~San Francisco authorized to enter into a Contract on behalf of the City and County of San Francisco.~~

5 ~~(3) "Contractor" shall mean any Person who submits a bid and/or enters into a~~  
6 ~~Contract with the City and County of San Francisco.~~

7 ~~(4) "Employee" shall mean any individual performing moving services as defined~~  
8 ~~herein. "Employee" does not include a person who is (a) a managerial, supervisory, or confidential~~  
9 ~~employee, including those employees who would be so defined under the Fair Labor Standards Act.~~

10 ~~(5) (2) "Moving Services" shall mean moving or handling of goods being~~  
11 ~~relocated under a contract for commercial moving services to relocate City offices, facilities~~  
12 ~~and institutions.~~

13 ~~(6) (3) "Non-profit" shall mean a non-profit corporation, duly organized, validly~~  
14 ~~existing and in good standing under the laws of the jurisdiction of its incorporation and (if a~~  
15 ~~foreign corporation) in good standing under the laws of the State of California, which~~  
16 ~~corporation has established and maintains a valid non-profit status under Section 501(c)(3) of~~  
17 ~~the United States Internal Revenue Code of 1986, as amended, and all rules and regulations~~  
18 ~~promulgated under such Section.~~

19 ~~(6) "Person" shall include any individual, firm, proprietorship, partnership,~~  
20 ~~corporation or combination thereof.~~

21 ~~(7) (4) "Prevailing Rate of Wages" shall mean that rate of compensation as~~  
22 ~~determined in Section 2C.7. , including fringe benefits or the matching equivalents thereof, being paid~~  
23 ~~to a majority of workers performing moving services, if a majority of such workers be paid at a single~~  
24 ~~rate; if there be no single rate being paid to a majority then the prevailing rate shall be that single rate~~  
25 ~~being paid the greatest number of workers.~~

1 ~~(c) Determination of Prevailing Rate of Wage. It shall be the duty of the Board of Supervisors,~~  
2 ~~from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate~~  
3 ~~of Wages paid in private employment in the City and County of San Francisco for Moving Services,~~  
4 ~~including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages~~  
5 ~~shall be fixed and determined as follows:~~

6 ~~The Civil Service Commission shall furnish to the Board of Supervisors, on or before the first~~  
7 ~~Monday in November of each year, data as to the Prevailing Rate of Wages for Moving Services as~~  
8 ~~paid in private employment in the City and County of San Francisco, including wages for overtime and~~  
9 ~~holiday work. The Board of Supervisors shall, upon receipt of such data, fix and determine the~~  
10 ~~Prevailing Rate of Wages for Moving Services, including such rate of wages for overtime and holiday~~  
11 ~~work, as paid for similar work in the City and County of San Francisco in private employment. Such~~  
12 ~~Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force~~  
13 ~~and shall be deemed to be the Prevailing Rate of Wages paid in private employment for similar work,~~  
14 ~~until the same is changed by the Board of Supervisors.~~

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

19 ~~(d) Noncompliance with Wage Provisions; Termination; Penalty. Where the Contracting~~  
20 ~~Officer of the City's Labor Standards Enforcement Officer determines that a Contractor for Moving~~  
21 ~~Services may have violated the prevailing wage requirements of this Section, the Contracting Officer or~~  
22 ~~the City's Labor Standards Enforcement Officer shall send written notice to the Contractor of the~~  
23 ~~possible violation (a "violation notice"). In addition to and without prejudice to any other remedy~~  
24 ~~available, the Contracting Officer may terminate the contract, in which case the Contractor shall not~~  
25 ~~be entitled to any additional payment thereon unless within 30 days of receipt of the violation notice the~~

1 ~~Contractor has either (i) cured the violation or (ii) has established by documentary evidence, including~~  
2 ~~but not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of~~  
3 ~~compliance with the provisions of this Section. For purposes of this Section, where a Contractor fails~~  
4 ~~to pay at least the Prevailing Rate of Wages to individuals performing Moving Services under a~~  
5 ~~Contract for Moving Services, the Contractor shall have "cured the violation" once the Contractor~~  
6 ~~reimburses such individuals by paying each individual the balance of what he or she should have~~  
7 ~~earned in accordance with the requirements of this Section. In addition to, or instead of terminating~~  
8 ~~the Contract for Moving Services, where the Contracting Officer or the Office of Labor Standards~~  
9 ~~Enforcement finds that the Contractor has willfully violated the requirements of this Section, the~~  
10 ~~Contracting Officer or the City's Labor Standards Enforcement Officer shall assess a penalty (a~~  
11 ~~"willful violation penalty") in the sum of \$50 per day for each Employee for each day the Contractor or~~  
12 ~~Subcontractor fails to pay the Prevailing Rate of Wages, such sums to be deposited in the fund out of~~  
13 ~~which Contract is awarded. The Contracting Officer or the City's Labor Standards Enforcement~~  
14 ~~Officer shall impose such willful violation penalty regardless of whether the Contractor has cured the~~  
15 ~~violation.~~

16 ~~(e) Verification. The Contractor must provide verification of compliance with the provisions of~~  
17 ~~this Ordinance upon request by the Contracting officer or the City's Labor Standards Enforcement~~  
18 ~~Officer.~~

19 ~~(f) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this Section,~~  
20 ~~if a Contract conflicts with an existing collective bargaining agreement to which a Contractor is a~~  
21 ~~party, the collective bargaining agreement shall prevail. However, the Contractor will be obligated to~~  
22 ~~make good faith efforts to comply with the requirements of its Contract that do not conflict with the~~  
23 ~~collective bargaining agreement.~~

24 ~~(g) (d) Preemption. Nothing in this Section shall be interpreted or applied so as to~~  
25 ~~create any power or duty in conflict with any federal or state law.~~

1           ~~(h)~~ (e) Effective Date and Application. This Section shall become effective 30 days  
2 after it is enacted. This Section is intended to have prospective effect only, and shall not be  
3 interpreted to impair the obligations of any pre-existing agreement to which the City is a party,  
4 unless such pre-existing agreement has been amended after the effective date of this Section.

5           ~~(i)~~ (f) Severability. If any part or provision of this Section, or the application thereof to  
6 any Person or circumstance, is held invalid, the remainder of this Section, including the  
7 application of such part or provisions to other Persons or circumstances, shall not be affected  
8 thereby and shall continue in full force and effect. To this end, the provisions of this Section  
9 are severable.

10  
11           Section 2. The San Francisco Administrative Code is hereby amended by adding  
12 Section 21C.7, to read as follows.

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

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

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

21           *(1) "City" shall mean the City and County of San Francisco.*

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

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

1                   (4) "Covered Contract" shall mean an agreement between the City and a Contractor  
2 for the following services:

3                   (i) "Motor Bus Services" as defined in Section 21C.1, subject to the provisions  
4 of Section 21C.1;

5                   (ii) "Janitorial Services" as defined in Section 21C.2;

6                   (iii) "Public Off-Street Parking Lots, Garages, or Storage Facilities for  
7 Automobiles" as defined in Section 21C.3;

8                   (iv) "Theatrical Services" as defined in Section 21C.4;

9                   (v) "Solid Waste Generated By The City In Course of City Operations" as  
10 defined in Section 21C.5; and

11                   (vi) "Moving Services" as defined in Section 21C.6.

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

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

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

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

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

24                   (c) Prevailing Wage Rate Requirements.  
25



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

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

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

18                   For purposes of this Section, the Civil Service Commission shall provide data on and the  
19 Board shall certify two components for each craft, classification, and type of work, which together shall  
20 be deemed the "Prevailing Rate of Wages": (1) the basic hourly wage rate and (2) the hourly rate of  
21 each fringe benefit, which together equal the hourly prevailing rate of wages. The Civil Service  
22 Commission shall provide this data to the Board of Supervisors within 90 days of the effective date of  
23 this Section.

24                   (2) Contracting Officers. Each bid or proposal for a Contract shall include, on a form  
25 provided by the Contracting Officer, the (a) basic hourly rate of wages to be paid by the Contractor

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

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

13 (4) Enforcement of Prevailing Wage Rate Requirements. Where the Contracting  
14 Officer or the Labor Standards Enforcement Officer determines that a Contractor or a Subcontractor  
15 may have violated the prevailing wage rate requirements of this Section, the Contracting Officer or  
16 Labor Standards Enforcement Officer shall send written notice to the Contractor of the possible  
17 violation (a "violation notice"). In addition to and without prejudice to any other remedy available,  
18 the Contracting Officer may terminate the Contract, in which case the Contractor shall not be entitled  
19 to any additional payment thereon unless within thirty (30) days of receipt of the violation notice the  
20 Contractor has either (i) cured the violation or (ii) established by documentary evidence, including but  
21 not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of  
22 compliance with the provisions of this Section. For purposes of this Section, where a Contractor or  
23 Subcontractor fails to pay at least the Prevailing Rate of Wages to Individuals as required by this  
24 Section, the Contractor shall have "cured the violation" once the Contractor or Subcontractor  
25 reimburses such Individuals by paying each individual the balance of what he or she should have

1 earned in accordance with the requirements of this Section, plus an annualized rate of interest of ten  
2 percent (10%). In addition to, or instead of terminating the Contract, if the Contracting Officer or the  
3 Labor Standards Enforcement Officer finds that the Contractor has willfully violated the requirements  
4 of this Section, the Contracting Officer or the Labor Standards Enforcement Officer, shall assess a  
5 penalty (a "willful violation penalty") of not more than ten (10%) percent of the dollar amount of the  
6 Contract, such sums to be deposited in the fund out of which the Contract is awarded or, if none exists,  
7 the General Fund. The Contracting Officer or Labor Standards Enforcement Officer may impose such  
8 willful violation penalty regardless of whether the Contractor has cured the violation

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

15 (1) Where the Contracting Officer has given notice that a Covered Contract has been  
16 terminated or ended will be bid, or where a Contractor has given notice of such termination, upon  
17 giving or receiving such notice, as the case may be, the Contractor ("ending Contractor") shall, within  
18 ten days thereafter, provide to the Contracting Officer and the Purchaser successor  
19 Contractor, for each Employee who worked at least 15 hours per week for the ending  
20 Contractor, the name, date of hire, number of hours and months worked in total for the  
21 employer, wage rate, and employment occupation classification, of each Employee who worked  
22 at least 15 hours per week. This provision shall also apply to the subcontractors of the ending  
23 Contractor.

24 If the ending Contractor has not learned the identity of the successor Contractor,  
25 if any, by the time that notice was given of the Contract termination or ending, the ending

1 Contractor shall obtain such information from the Contracting Officer. If a successor  
2 Contractor has not been awarded by the end of the 10 day period, the employment  
3 information referred to earlier in this subsection shall be provided to the Contracting Officer at  
4 such time. Where a Subcontractor has been terminated prior to the termination or ending of the  
5 Contract, the Subcontractor shall for the purposes of this Section be deemed an ending Contractor.

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

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

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

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

24 (5) During the six-month period, the successor Contractor (or Subcontractor, where  
25 applicable) shall not discharge without cause an Employee retained pursuant to this Subsection.

1 "Cause," for this purpose, shall include, but not be limited to, the Employee's conduct while in the  
2 employ of the ending Contractor or Subcontractor that contributed to any decision to terminate the  
3 Contract or Subcontract for fraud or poor performance, excluding permissible union-related activity.

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

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

13 (8) Successor's Prior Employees. Notwithstanding the provisions of this Subsection  
14 (d), a successor Contractor or Subcontractor may replace an Employee otherwise entitled to be  
15 retained with a person employed by the Contractor or Subcontractor continuously for twelve months  
16 prior to the commencement of the successor Contract or Subcontract in a capacity similar to that  
17 proposed under the successor Contract or Subcontract. This provision shall apply only where the  
18 existing Employee of the successor Contractor or Subcontractor would otherwise be laid off work as a  
19 result of the award of the successor Contract.

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

24 (10) For the purposes of this Subsection (d) on Transition Employment Requirements  
25 only, the term "Employee" shall include any person who performs work under a Covered Contract but

1 shall not include an individual who serves in a managerial, supervisory, or confidential capacity,  
2 including those individuals who would be defined as such under the Fair Labor Standards Act.

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

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

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

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

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

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

20 (e) Requirement of Employer-Employee Relationship.

21 (1) The City has an important proprietary interest in maintaining the stability of the  
22 workforce engaged by a Contractor for a Covered Contract by ensuring that individuals working  
23 pursuant to City contracts have the protections afforded by state and municipal laws governing  
24 employment. In order for the City to maintain the integrity of its contracting process, the city's  
25 prevailing wage laws ensure contractors a level playing field on which to bid for contracts. When

1 contractors are allowed to classify workers as independent owner operators, contractors can appear to  
2 pay the prevailing wage when in reality, after the owner operator's operating costs are taken into  
3 account, the owner operator receives less than the prevailing wage for his or her labor. This outcome  
4 contradicts one of the goals of the prevailing wage law, which is to provide for fair competition among  
5 contractors, all of whom must pay workers, at a minimum, the same prevailing rate of wages and  
6 benefits. The City's proprietary interest is such that employment of Employees in an Employer-  
7 Employee relationship shall be required for all work done under any Covered Contract.

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

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

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

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

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

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

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

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

8  
9           Section 3. The San Francisco Police Code is hereby amended by amending  
10 Section 3300C.1, to read as follows:

11 **SEC. 3300C.1. DEFINITIONS.**

12           The following definitions shall apply throughout this Article:

13           (a) "Awarding authority" means any person that awards or otherwise enters into  
14 contracts for security and janitorial or building maintenance services performed within the City  
15 and County of San Francisco, except that the City and County of San Francisco is not an "awarding  
16 authority" under this Section with respect to City contracts for janitorial services as defined in  
17 Administrative Code Section 21C.2, because the worker retention prevailing wage requirements for  
18 those City contracts are governed by Section 21C.2 and 21C.7 of the Administrative Code.

19           (b) "Contractor" means any person that enters into a service contract with the  
20 awarding authority and who employs 25 or more persons.

21           (c) "Employee" means any person employed as a service employee of a contractor or  
22 subcontractor who works at least 15 hours per week and whose primary place of employment  
23 is in the City and County of San Francisco under a contract to provide security services,  
24 janitorial services, or building maintenance services for the awarding authority. "Employee"  
25 does not include a person who is (1) a managerial, supervisory, or confidential employee,



1 including those employees who would be so defined under the Fair Labor Standards Act; or  
2 (2) does not possess or has not maintained a required occupational license; or (3) is  
3 employed less than 15 hours per week.

4 (d) "Person" means any individual, proprietorship, partnership, joint venture,  
5 corporation, limited liability company, trust, association, or other entity that may employ  
6 individuals or enter into contracts.

7 (e) "Public sector contractor" means any person or persons, firm, partnership,  
8 corporation, or combination thereof, who enters into a contract with officers or employees  
9 empowered by law to enter into contracts for the City and County of San Francisco for the  
10 services governed by this Article.

11 (f) "Service contract" means a contract let to a contractor by the awarding authority for  
12 the furnishing of service (as opposed to the purchase of goods or other property) and that  
13 involves an expenditure or receipt in excess of \$25,000 per contract and a contract term of at  
14 least three months.

15 (g) "Subcontractor" means any person not an employee who enters into a contract  
16 with the contractor to assist the contractor in performing a service contract and that employs  
17 employees for such person.

18 (h) "Successor service contract" means a service contract with the awarding authority  
19 where the services to be performed have previously been rendered to the awarding authority  
20 as part of the same program or at the same facility under another substantially similar service  
21 contract that recently has been terminated or has ended.

22  
23 Section 4. Effective Date. This ordinance shall become effective 30 days from the  
24 date of passage.  
25

1 Section 5. This section is uncodified. In enacting this Ordinance, the Board intends to  
2 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
3 punctuation, charts, diagrams, or any other constituent part of the Name of Code here Code  
4 that are explicitly shown in this legislation as additions, deletions, Board amendment  
5 additions, and Board amendment deletions in accordance with the "Note" that appears under  
6 the official title of the legislation.  
7

8 APPROVED AS TO FORM:  
9 DENNIS J. HERRERA, City Attorney

10 By:

  
11 LINDA M. ROSS  
12 Deputy City Attorney  
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## LEGISLATIVE DIGEST

[Administrative, Police Codes - Prevailing Rate of Wages Under City Contracts For Specified Services]

**Ordinance amending the San Francisco Administrative Code by amending Sections 21C.2 through 21C.6 and adding Section 21C.7, to: 1) specify the City contracts for services that are subject to the City's prevailing rate of wage requirement ("Covered Contracts"); 2) consolidate and create consistent standards for determining and enforcing prevailing rate of wage requirements in all Covered Contracts, 3) provide an employment transition period for workers under successor contracts to all Covered Contracts, and 4) provide that all work on Covered Contracts be performed by employees and not independent contractors; and amending the San Francisco Police Code by amending Section 3300C.1, to make conforming changes.**

### Existing Law

The City's Administrative Code requires City contracts to require contractors to pay the "prevailing rate of wages" in contracts with the City for Motor Bus Services; Janitorial Services; Public Off-street Parking Lots, Garages or Storage Facilities for Automobiles; Theatrical Workers; Hauling of Solid Waste Generated By The City In The Course Of City Operations; and Moving Services. (Admin. Code Sections 21C.1 through 21C.6.)

Each type of contract has its own duplicative Administrative Code section. For each type of contract, the governing Code section sets forth the prevailing wage requirement, defines the contracts to which it applies, establishes a method for determining the prevailing rate of wages, and provides for penalties against contractors who do not pay the prevailing rate of wages. For some types of contracts, but not all, the Code includes worker retention requirements for successor contracts.

### Amendments to Current Law

The proposed amendments would (1) in some cases broaden the types of City contracts ("Covered Contracts") under which prevailing wages would be required, (2) consolidate in a new section consistent standards for establishing and enforcing prevailing wages in Covered Contracts, (3) provide an employment transition period of six months for workers under all successor Covered Contracts, and (4) require that all work on Covered Contracts be performed by employees and not by independent contractors.

Sec. 21C.1, Motor Bus Service Contracts. Under the proposed amendments, the contracts covered by this section would be unchanged, but would be governed by the general standards

set forth the in new Section 21C.7 for prevailing wage establishment, enforcement, employment transition period and employee requirements.

Sec. 21C.2, Janitorial Services Contracts. Under the proposed amendments, the contracts covered by this section would remain unchanged except that the amendments would eliminate the exceptions for non-profit and small business contractors. Accordingly, these contractors would be subject to the prevailing rate of wage requirements. But there is no intent to broaden the contracts covered beyond contracts entered into by the City specifically for janitorial services on property owned or leased by the City. For example, there is no intent to include contracts entered into by the City with non-profits to provide shelter for the homeless even if the shelter provider is required to keep the premises clean by using janitors or others. Also, the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage in City janitorial contracts to new Section 21C.7, where those sections would be consistent for all Covered Contracts. The proposed amendments also would make these janitorial contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months, and that all contractors and subcontractor use employees, not independent contractors.

Sec. 21C.3, Public Off-Street Parking Lots, Garages, Or Storage Facilities For Automobiles. Under the proposed amendments, the contracts covered by this section would remain unchanged. But the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage for these contracts to new Section 21C.7, and change the penalty for willful violation from \$50/day per employee to not more than 10% of the dollar amount of the contract. The proposed amendments also would make these contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months (as opposed to 90 days under the current 21C.3), and that all contractors and subcontractors use employees not independent contractors.

Sec. 21C.4. Theatrical Workers. Under the proposed amendments, the contracts covered by this section would remain unchanged. But the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage to new Section 21C.7, where those sections would be consolidated for all Covered Contracts. The proposed amendments also would make these contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months, and that all contractors and subcontractor use employees, not independent contractors. The

requirements on worker retention, however, may have limited application because they do not apply where there is no successor contract, for example, where a contract is for a one time theatrical or music production.

Sec. 21C.5. Workers Engaged In Hauling Of Solid Waste Generated By The City. Under the proposed amendments, the contracts covered by this section would remain unchanged. But the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage. In addition, the proposed amendments include a statement of policy that any change to the Administrative Code permit process for residential refuse collection should be accompanied by the requirement that any refuse hauler under a franchise or other process must pay the prevailing wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage to new Section 21C.7. The proposed amendments also would make these contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months (as opposed to 90 days under the current 21C.3), and that all contractors and subcontractor use employees not independent contractors.

Sec. 21C.6. Moving Services. Under the proposed amendments, the contracts covered by this section would remain unchanged. But the proposed amendments would eliminate the exception for contractors with conflicting collective bargaining agreements that specify a lower wage.

The proposed amendments would move the sections on establishment and enforcement of the prevailing wage to new Section 21C.7, and change the penalty for willful violation from \$50/day per employee to not more than 10% of the dollar amount of the contract. The proposed amendments also would make these contracts subject to Section 21C.7's requirements that successor contracts retain workers for at least six months and that all contractors and subcontractor use employees not independent contractors.

Sec. 21C.7. Standard Provisions Governing The Prevailing Rate of Wages, Worker Retention, And Use Of Employees Not Independent Contractors. The proposed amendments would consolidate in this new section the standards applicable to all Covered Contracts for: determining and enforcing prevailing wages, worker retention during a transition period under a successor contractor, and the use of employees and not independent contractors to do the work.

"Individual." Under the proposed amendments, all Covered Contracts would require that the contractor pay the prevailing wage to all individuals who perform work under the Covered Contract. Therefore, a contractor or subcontractor could not claim that they are not required to pay the prevailing rate of wages to individuals working on the contract because they are owner-operators.

"Prevailing Rate of Wages." The proposed amendments require that the Civil Service Commission provide data for, and the Board of Supervisors set, a prevailing rate of wages that includes both an hourly wage rate and an hourly rate attributable to each fringe benefit. The Civil Service Commission has 90 days from the effective date of the ordinance to provide this information to the Board of Supervisors. Once the Board adopts the prevailing rate of wages that includes the two components, contracting officers must require prospective contractors to specify the hourly wage rates, including hourly cost of fringe benefits, that the contractor will be paying for work on the contract.

Enforcement. The proposed amendments provide that either the Contracting Officer or the Labor Standards Officer may enforce the prevailing rate of wages. The proposed amendments also specify a penalty of up to 10% of the amount of the contract for a willful violation, whereas for some types of contracts the existing penalty is \$50 per day.

Transition Employment Requirements. The proposed amendments contain transition employment requirements for all successor Covered Contracts. Under the proposed amendments, the transition employment requirements apply to all employees, with the exception of managerial, supervisory and confidential employees.

Currently only City janitorial, parking lot/garage, and solid waste hauling contracts have worker transition requirements for successor contractors. The proposed amendments would require successor contractors on all Covered Contracts to continue the employment of workers who worked for the ending contractor for at least 15 hours per week for the prior 12 months. The proposed amendments require that the successor contractors continue to employ these workers for six months (up from the 90 days specified in the janitorial, parking lot/garage, and solid waste hauling contracts) provided there is not just cause to terminate the worker's employment.

The proposed amendments would continue the requirement that at the end of six months, the successor contractor perform a written performance evaluation of the employee and offer continued employment if the employee's performance has been satisfactory. The proposed amendments would continue the exception that permits the successor contractor to use its existing employees if they would otherwise be laid off as a result of the award of the successor contract.

To be certain that all prospective contractors are aware of the worker retention requirements, and the wage rates of the workers to be covered, when a contract is put out to bid, the "ending Contractor" must provide information on the ending Contractor's employees to the Contracting Officer and Purchaser, who must include the information with the request for bids.

The proposed amendments continue the provision that permits employees to enforce the worker retention provisions by bringing an action in the Superior Court. The proposed

amendments add a provision that permits the Contracting Officer or Labor Standards Officer to enforce the worker retention provisions, including the levying of monetary penalties.

Requirement of Employer-Employee Relationship. The proposed amendments would require that all work on a Covered Contract be done by employees and not by independent contractors. Accordingly, the proposed amendments would require all contractors and subcontractors to use employees to do the work under the contract.

Under the proposed amendments, if a contractor uses an independent contractor for 3 or more days, the City may terminate the contract and/or impose penalties for a willful violation.

Police Code Sec. 3300C. The Police Code currently requires the payment of prevailing wages for all contracts within the City for "security and janitorial and building maintenance" services. The proposed amendments would clarify that the prevailing wage requirements for City janitorial service contracts are set in the Administrative Code.

#### Background Information

The Administrative Code currently contains separate sections that require the prevailing rate of wages to be paid for certain City contracts for services. These sections are repetitive and in some cases inconsistent.

The proposed amendments create a consistent set of standards for establishing and enforcing the prevailing wage requirements on Covered Contracts. The proposed amendments also extend the worker transition requirement to all Covered Contracts. And the proposed amendments make it clear that all individuals who work on a Covered Contract are to be paid the prevailing rate of wages, and that contractors and subcontractors are to use employees and not independent contractors to do work under Covered Contracts.

The City is acting in its proprietary capacity and interest in imposing these requirements. It is in the City's interest to establish a level playing field among prospective city contractors, and to have services provided by adequately compensated and experienced personnel who are in an employer-employee relationship with the contractor or subcontractor.

**Item 11**  
**File 11-1190**

**Department:**  
Office of Labor Standards and Enforcement (OLSE)

## EXECUTIVE SUMMARY

### Legislative Objective

- The proposed ordinance would amend the San Francisco Administrative Code to standardize prevailing wage requirements for all City contracts covered by prevailing wages, consolidate specific provisions into a new Administrative Code Section 21C.7, and amend San Francisco Police Code Section 3300C.1 to make corresponding changes. The proposed ordinance would not revise existing Administrative Code provisions for public works and construction contracts' prevailing wage requirements.

### Key Points

- Currently, the City's Administrative Code requires specified City contractors to pay a prevailing wage rate to their employees. This includes City contracts for (a) public works and construction, (b) motor bus service, (c) janitorial and window cleaning services, (d) public off-street parking lots, garages, and vehicle storage facilities, (e) theatrical workers, (e) solid waste hauling services, and (f) moving services. Each of these types of contracts has separate Administrative Code sections with different definitions, provisions, and exclusions.
- The proposed ordinance would revise the Administrative Code as follows:
  - Currently, City contractors for janitorial and window cleaning services, public off-street parking lots, garages, and vehicle storage facilities, theatrical workers, solid waste hauling services, and moving services that are covered by collective bargaining agreements may pay their employees less than prevailing wages if the collective bargaining agreement provides for lower wages. Under the proposed ordinance, all City contracts covered by the prevailing wage ordinance would be required to pay prevailing wages, even if the City contracts are covered by collective bargaining agreements that provide for lower wages.
  - Currently, City contracts for public off-street parking lots, garages, and vehicle storage facilities, and solid waste hauling services require new City contractors for these services to offer employment to the employees of the previous contractors for up to 90 days, or three months. Under the proposed ordinance, all new City contractors covered by the prevailing wage, except for public works and construction contracts, would be required to offer employment to the employees of the previous contractors for up to six months, instead of up to three months.
  - Currently, City contracts for janitorial and window cleaning services and moving services do not require non-profit contractors to pay prevailing wages. In addition, currently contracts for janitorial and window cleaning services do not require small businesses, defined as businesses with less than ten employees, to pay their employees prevailing wages. Under the proposed ordinance, small businesses and non-profit organizations that have City contracts for janitorial and window cleaning services would be required to pay prevailing wages. Non-profit organizations that have City contracts for moving services would continue to not have to meet the prevailing wage requirement.
  - Currently, City contracts have different penalties for violating prevailing wage requirements. Under the proposed ordinance, all City contractors required to pay prevailing wages would be subject to the same penalties for willful violations of prevailing wage requirements. Such penalties would be up to ten percent of the contracted dollar amount.



- e. The Administrative Code does not require City contractors covered by prevailing wage requirements to hire employees in an employer-employee relationship, as defined by California law. Currently, independent contractors may be retained by the City contractor to perform work under the City contracts. Under the proposed ordinance, all City contractors covered by prevailing wages would be required to hire permanent employees, rather than retain independent contractors to perform work on such City contracts.
- f. Currently, Administrative Code 21C.5 establishes the permit process for solid waste hauling services. Under the proposed ordinance, Administrative Code Section 21C.5 would be amended to contain a policy statement that any future changes to the Administrative Code permit process for residential solid waste hauling services, including creating a franchise process, would require solid waste hauling companies to pay prevailing wages.

#### **Fiscal Impact**

- The proposed ordinance could result in estimated increased annual costs to the City of approximately \$1,114,672 if contractors passed through the costs of the new prevailing wage requirements to the City. This includes requiring (a) \$630,072 for solid waste haulers that hire independent contractors rather than employees to pay prevailing wage; and (b) \$484,599 for non-profit organizations that provide janitorial services to pay prevailing wage.
- However, these estimated increased annual costs are conservative because they only compare direct wage increases. They do not include other salary or benefit costs that are based on a percentage of wage costs, such as payroll taxes or workers' compensation insurance, or indirect costs that will result from paying the higher prevailing wage.
- Under the proposed ordinance, new City contractors covered by the prevailing wage would be required to offer employees of the previous contractor six months of employment in order of their seniority. The City would incur increased costs if the new contractor hires the previous contractor's more senior employees with higher wage rates in lieu of less senior employees with lower wage rates. The potential increased costs to the City cannot be quantified because the number of potential contracts and affected employees is not known.

#### **Policy Consideration**

- According to the legislative digest, provided by the City Attorney's Office, the proposed legislation does not intend to broaden the contracts covered by the prevailing wage beyond contracts entered into by the City specifically for janitorial services on property owned or leased by the City. For example, there is no intent to include contracts entered into by the City with non-profits to provide shelter for the homeless even if the shelter provider is required to keep the premises clean by using janitors or others. However, under the proposed ordinance, Department of Public Health and Human Services Agency non-profit contractors that provide janitorial services as part of a training program or to Human Services Agency programs would be required to pay prevailing wages.

#### **Recommendation**

- Approval of the proposed ordinance is a policy decision for the Board of Supervisors.

**MANDATE STATEMENT / BACKGROUND****Mandate Statement**

In accordance with Section 2.105 of the City's Charter, any amendments to the Administrative Code must be approved by ordinance of the Board of Supervisors.

**Background**

Currently, Administrative Code Section 21C requires City contracts for certain services to pay prevailing wages to their employees. These contracts include services for:

1. Motor bus services (Administrative Code Section 21C.1);
2. Janitorial and window cleaning services (Administrative Code Section 21C.2);
3. Public off-street parking lots, garages, and vehicle storage facilities (Administrative Code Section 21C.3);
4. Theatrical workers (Administrative Code Section 21C.4);
5. Solid waste hauling services (Administrative Code Section 21C.5); and
6. Moving services (Administrative Code Section 21C.6).

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance would amend the Administrative Code by modifying Administrative Code Sections 21C.2 through 21C.6, and adding a new 21C.7.<sup>1</sup> The proposed ordinance would not amend Administrative Code Section 6.22(E) covering public works and construction contracts.

Under the current Administrative Code Section 21C, requirements for setting prevailing wage rates, reporting and compliance, enforcement and penalties, and other related matters are contained in the separate subsections for each of the contract services. The proposed ordinance would standardize definitions and prevailing wage requirements, and consolidate these provisions into a new Administrative Code Section 21C.7. San Francisco Police Code Section 3300C.1 would also be amended to reflect the proposed new Administrative Code Section 21C.7, setting the prevailing wage requirements for janitors who are covered under the Police Code.

**Collective Bargaining Agreements**

Currently, Administrative Code Sections 21C.2 through 21C.6 allow City contracts for janitorial and window cleaning services, public off-street parking lots, garages, and vehicle storage facilities, theatrical workers, solid waste hauling services, and moving services, to pay their

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<sup>1</sup> Administrative Code Section 21C.1 allows the Purchaser to require motor bus service contractors to pay prevailing wages if directed to do so by the Mayor or City commissions in charge of the department receiving the services. If the Purchaser requires payment of prevailing wages by motor bus contractors, then the contractors must be notified of the requirements of Administrative Code Section 21C when bidding on the contract services.

employees less than the prevailing wage if the City contracts are covered by collective bargaining agreements with wage rates lower than prevailing wage rates.

Under the proposed ordinance, the new section of the Administrative Code, Section 21C.7, would require all businesses having City contracts covered by prevailing wage requirements to pay prevailing wages to their employees, regardless of whether or not the City contract is covered by a collective bargaining agreement that provides for lower wages.

### **Transitional Employment**

Currently, Administrative Code Sections 21C.3 and 21C.5 require new City contractors for public off-street parking lots, garages, and vehicle storage facilities, and solid waste hauling services to offer employment to the employees of the previous City contractor for up to 90 days, or approximately three months.

Under the proposed ordinance, the new Administrative Code Section 21C.7 would require all businesses having new City contracts covered by prevailing wage requirements, except for public works and construction contracts, to offer employment to the employees of the previous City contracts for up to six months, instead of up to three months.

### **Non Profit Exclusion and Small Business Exclusion**

Currently, Administrative Code Sections 21C.2 and 21C.6 allow City contracts for janitorial and window cleaning services and moving services to be excluded from the prevailing wage rates if services are performed by a non-profit organization. In addition, Administrative Code 21C.2 also currently allows City contracts for janitorial and window cleaning services to be excluded from the prevailing wage rates if performed by a small business defined as having less than ten employees.

Under the proposed ordinance, the new Administrative Code Section 21C.7 would require businesses having City contracts covered by prevailing wage requirements to pay prevailing wages, including contracts with non-profit organizations and small businesses. However, City contracts with non-profit organizations for moving services would continue to be excluded from these prevailing wage requirements.

### **Penalties**

Currently, penalties, imposed on businesses having City contracts for willful violation of not paying prevailing wages to their employees, are either \$50 per employee per day for public off-street parking lots, garages, and vehicle storage facilities, and moving services; or up to ten percent of the contracted amount in dollars for janitorial and window cleaning services, theatrical workers, and solid waste hauling services. Administrative Code Section 21C.1 for motor bus services currently does not include specified penalties for such willful violation.

Under the proposed ordinance, the new Administrative Code Section 21C.7 would subject all businesses having City contracts covered by prevailing wage requirements, to the same penalties as a result of willful violations of not paying employees the prevailing wage rates. Such penalties would be up to ten percent of the contracted dollar amount.

### Independent Contractors

Currently, there are no provisions in the Administrative Code that require work performed under City contracts, covered by prevailing wages, to be performed by employees of the business that was awarded the City contract. Therefore, such work can be performed by independent contractors retained by the business which has a City contract.

Under the proposed ordinance, the new Administrative Code Section 21C.7 would require businesses having City contracts covered by prevailing wages to hire employees to perform the work under the contract in an employer-employee relationship, as defined by California law, rather than permit the City contractors to retain independent contractors to perform such work under the City contract. Under the proposed ordinance, if the City contractor uses an independent contractor for three or more days, the City may terminate the contract and/or impose penalties of up to ten percent of the contracted dollar amount for willful violation.

Currently, Administrative Code 21C.5 establishes the permit process for solid waste hauling services. Under the proposed ordinance, Administrative Code Section 21C.5 would be amended to contain a policy statement that any future changes to the Administrative Code permit process for residential solid waste hauling services, including creating a franchise process, would require solid waste hauling companies to pay prevailing wages.

### FISCAL IMPACTS

The proposed ordinance could result in estimated increased annual costs to the City of approximately \$1,114,672 if contractors passed through the costs of the new prevailing wage requirements to the City as follows:

- \$484,599 for non-profit contracts providing janitorial services to the Department of Public Health, Human Services Agency, and Division of Real Estate. Currently, non-profit contractors for these services may pay the non-profit minimum wage rate. The proposed ordinance requires non-profit contractors for janitorial services to pay the prevailing wage.
- \$630,072 for solid waste hauling contractors that hire independent contractors rather than employees to provide services. The proposed ordinance requires contractors to pay prevailing wages to all individuals providing City contract services. Therefore, a contractor or subcontractor could not claim that they are not required to pay the prevailing rate of wages to individuals working on the contract because they are owner-operators.<sup>2</sup>

However, these estimated increased annual costs are conservative because they only compare direct wage increases. They do not include other salary or benefit costs that are based on a

<sup>2</sup> The Budget and Legislative Analyst estimated the increased costs for solid waste hauling contractors based on the per unit cost of hauling solid waste by S and S Trucking, which retains independent contractors, compared to Recology's wage rates, which hires employees to provide services.

percentage of wage costs, such as payroll taxes or workers' compensation insurance, or indirect costs that may result from paying the higher prevailing wages.

### **Transitional Employment**

Under the proposed ordinance, new City contractors covered by the prevailing wage would be required to offer employees of the previous contractor six months of employment in order of their seniority. The City would incur increased costs if the new contractor hires the previous contractor's more senior employees with higher wage rates in lieu of less senior employees with lower wage rates. The potential increased costs to the City cannot be quantified because the number of potential contracts and the number of affected employees is not known.

## **POLICY ISSUE**


**The proposed ordinance would apply to non-profit contractors that provide janitorial services but not to non-profit contractors that provide shelter and other services**

According to the legislative digest, provided by the City Attorney's Office, the proposed legislation does not intend to broaden the contracts covered by the prevailing wage beyond contracts entered into by the City specifically for janitorial services on property owned or leased by the City. For example, there is no intent to include contracts entered into by the City with non-profits to provide shelter for the homeless even if the shelter provider is required to keep the premises clean by using janitors or others.

However, under the proposed ordinance, Department of Public Health and Human Services Agency non-profit contractors that provide janitorial services as part of a training program or to Human Services Agency programs would be required to pay prevailing wages.

## **RECOMMENDATIONS**

Approval of the proposed ordinance is a policy decision for the Board of Supervisors.



Harvey M. Rose

cc: Supervisor Chu  
Supervisor Mirkarimi  
Supervisor Kim  
President Chiu  
Supervisor Avalos  
Supervisor Campos  
Supervisor Cohen  
Supervisor Elsbernd  
Supervisor Farrell  
Supervisor Mar  
Supervisor Wiener  
Clerk of the Board  
Cheryl Adams  
Controller  
Rick Wilson