

FILE NO. 021504

ORDINANCE NO. 3-03

[Prevailing rate of wage and displaced worker protection for workers employed in public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by the City and County of San Francisco.]

Ordinance adding Section 21.25-2 to the Administrative Code to require that workers employed in public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by the City and County of San Francisco be paid the prevailing rate of wage and that such workers will have job protection with the successor contractor for a transition period after a lease, management agreement or other contractual arrangement is terminated.

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

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

Section 1. The San Francisco Administrative Code is hereby amended by adding Section 21.25-2, to read as follows:

Sec. 21.25-2. PREVAILING RATE OF WAGES AND DISPLACED WORK PROTECTION REQUIRED FOR WORKERS IN PUBLIC OFF-STREET PARKING LOTS, GARAGES, OR STORAGE FACILITIES FOR AUTOMOBILES.

Every Lease, Management Agreement, or Other Contractual Arrangement for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco must require that any Employee working in such public off-street parking lot, garage, or storage facility for automobiles be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the Lease, Management Agreement, or Other Contractual Arrangement is being performed, as determined by the Civil Service Commission.

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

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

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

12 (3) "Employee" shall mean any individual performing work in one of the following
13 classifications: Washing; Polishing; Lubrication; Rent-Car Service; Parking Vehicles; Cashiers;
14 Attendants; Checking Coin Boxes; Non-Attendant Parking Lot Checking; Daily Ticket Audit; Traffic
15 Directors; Shuttle Drivers; and all other incidental duties, whose primary place of employment is in
16 public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by
17 the City and County of San Francisco for the Contractor. "Employee" does not include a person who is
18 (a) a managerial, supervisory, or confidential employee, including those employees who would be so
19 defined under the Fair Labor Standards Act; or (b) does not possess or has not maintained a required
20 occupational license.

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

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

4 (6) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe
5 benefits or the matching equivalents thereof, being paid to a majority of workers engaged in the area in
6 which the Lease, Management Agreement, or Other Contractual Arrangement is being performed, if a
7 majority of such workers are paid at a single rate; if there is no single rate being paid to a majority,
8 then the prevailing rate shall be that single rate being paid to the greatest number of workers.

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

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

14 (b) Determination of Prevailing Rate of Wage. It shall be the duty of the Board of
15 Supervisors, from time to time and at least once during each calendar year, to fix and determine the
16 Prevailing Rate of Wages paid in private employment in the City and County of San Francisco for
17 individuals working in off-street parking lots, garages, or automobile storage facility, including such
18 rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed
19 and determined as follows:

20 The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after the
21 effective date of this Section, and on or before the first Monday in November of each subsequent year,
22 data as to the Prevailing Rate of Wages for individuals working in off-street parking lots, garages, or
23 automobile storage facilities as paid in private employment in the City and County of San Francisco,
24 including wages for overtime and holiday work, and the Board of Supervisors shall, upon receipt of
25 such data, fix and determine the Prevailing Rate of Wages for individuals working in off-street parking

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

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

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

12 (1) Where the Contracting Officer has given notice that a Lease, Management Agreement,
13 or Other Contractual Arrangement has been terminated or ended, or where a Contractor has given
14 notice of such termination, upon giving or receiving such notice, as the case may be, the terminated or
15 ending Contractor shall, within ten days thereafter, provide to the successor Contractor, the name, date
16 of hire, and employment occupation classification of each Employee who work at least 15 hours per
17 week employed at the site or sites covered by the prospective Contractor at the time of the Lease,
18 Management Agreement, or Other Contractual Arrangement termination. This provision shall also
19 apply to the subcontractors of the terminated Contractor.

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

1 Contract, the terminated Subcontractor shall for the purposes of this Section be deemed a terminated
2 Contractor.

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

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

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

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

24 (6) At the end of such 90 day period, a successor Contractor (or subcontractor, where
25 applicable) shall perform a written performance evaluation for each Employee retained pursuant to

1 this Section. If the Employee's performance during such 90 day period is satisfactory, the successor
2 Contractor (or subcontractor) shall offer the Employee continued employment under the terms and
3 conditions established by the successor Contractor (or subcontractor) or as required by law.

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

6 (d) Enforcement.

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

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

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

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

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

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

3 (e) Noncompliance with Wage Provisions; Termination; Penalty. Where the Contracting
4 Officer determines that a Contractor for the operation of a public off-street parking lot, garage, or
5 automobile storage facility may have violated the prevailing wage requirements of this Section, the
6 Contracting Officer shall send written notice to the Contractor of the possible violation (a "violation
7 notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer
8 may terminate the Lease, Management Agreement, or Other Contractual Arrangement, in which case
9 the Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt
10 of the violation notice the Contractor has either (i) cured the violation or (ii) has established by
11 documentary evidence, including but not limited to payroll records, the truth and accuracy of which is
12 attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this
13 Section, where a Contractor fails to pay at least the Prevailing Rate of Wages to Employees working in
14 public off-street parking lots or garages, the Contractor shall have "cured the violation" once the
15 Contractor reimburses such Employees by paying each individual the balance of what he or she should
16 have earned in accordance with the requirements of this Section. In addition to, or instead of
17 terminating the Lease, Management Agreement, or Other Contractual Arrangement, where the
18 Contracting Officer finds that the Contractor has willfully violated the requirements of this Section, the
19 Contracting Officer shall assess a penalty (a "willful violation penalty") in the sum of \$50 per day for
20 each Employee for each day the Contractor or Subcontractor fails to pay the Prevailing Rate of Wages,
21 such sums to be deposited in the fund out of which the Lease, Management Agreement, or Other
22 Contractual Arrangement is awarded. The Contracting Officer ~~may~~ shall impose such willful
23 violation penalty regardless of whether the Contractor has cured the violation.

24 (f) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this
25 Section, if a Lease, Management Agreement, or Other Contractual Arrangement conflicts with an

1 existing collective bargaining agreement to which a Contractor is a party, the collective bargaining
2 agreement shall prevail. However, the Contractor will be obligated to make good faith efforts to
3 comply with the requirements of its Lease, Management Agreement, or Other Contractual Arrangement
4 that do not conflict with the collective bargaining agreement.

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

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

13 (i) Public Entities with Coterminous Boundaries with the City and County of San
14 Francisco. It is the policy of the City and County of San Francisco that all public entities with
15 coterminous boundaries with the City and County of San Francisco, including but not limited to the
16 Parking Authority of the City and County of San Francisco, adopt this prevailing wage and employee
17 transition period policy. The Board of Supervisors of the City and County of San Francisco urges all
18 public entities with coterminous boundaries with the City and County of San Francisco, including but
19 not limited to the Parking Authority of the City and County of San Francisco, to adopt this prevailing
20 wage and employee transition period policy.

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

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: Thomas S. Lakritz
4 THOMAS S. LAKRITZ
5 Deputy City Attorney
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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 021504

Date Passed:

Ordinance adding Section 21.25-2 to the Administrative Code to require that workers employed in public off-street parking lots, garages, or storage facilities for automobiles on property owned or leased by the City and County of San Francisco be paid the prevailing rate of wage and that such workers will have job protection with the successor contractor for a transition period after a lease, management agreement or other contractual arrangement is terminated.

December 16, 2002 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Ammiano, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom,
Peskin, Sandoval

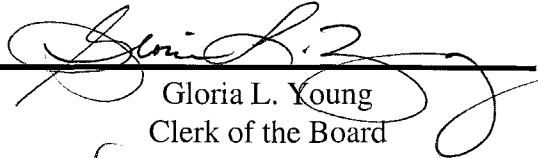
Absent: 1 - Daly

January 13, 2003 Board of Supervisors — FINALLY PASSED

Ayes: 11 - Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom,
Peskin, Ammiano, Sandoval

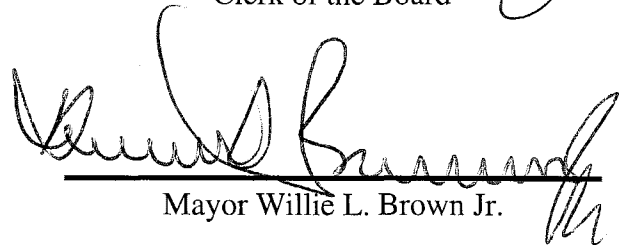
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I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on January 13, 2003
by the Board of Supervisors of the City and
County of San Francisco.


Gloria L. Young
Clerk of the Board

JAN 24 2003

Date Approved


Mayor Willie L. Brown Jr.