

BOARD of SUPERVISORS



City Hall
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MEMORANDUM

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

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

DATE: April 18, 2016

SUBJECT: LEGISLATION INTRODUCED

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

File No. 160199

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

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

c: Sarah Madland, Recreation and Park Department

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

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

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

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

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

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

19 * * * *

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

22 * * * *

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

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

6 * * * *

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

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

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

23 "Commercial Vehicle" shall mean a vehicle that (1) is used or maintained primarily for the
24 transportation of materials, goods, or products, (2) has six wheels or more, and (3) displays or is
25 required to display a California Department of Motor Vehicles weight decal as required by the

1 Commercial Vehicle Registration Act, California Vehicle Code Section 9400 et seq., as amended.

2 Notwithstanding the foregoing sentence, Commercial Vehicle shall not include a vehicle used
3 exclusively for food catering purposes, meaning its exclusive purpose on a particular trip is for the
4 transport of food and/or beverages to be served at a Special Event, the transport of equipment for the
5 preparation and service of such food and/or beverages at a Special Event, or both.

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

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

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

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

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

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

21 (6) For a concert in a public park to which the public has free access, provided that this
22 exception shall not apply to a permit for an otherwise private or ticketed Special Event that includes a
23 free public concert as an ancillary aspect of the event and such concert is not the primary purpose of
24 the event;

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

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

5 “Special Event” shall mean a temporary event on property under the jurisdiction of the
6 Recreation and Park Commission with anticipated attendance of 150 or more persons. Examples of
7 Special Events include concerts, fairs, festivals, community events, mass participation sports (such as
8 marathons and other running events, bicycle races, or tours), or spectator sports. “Special Event”
9 shall include an event that is funded in whole or in part by City funds.

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

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

14 (e) Operative Date and Application.

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

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

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

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

5 (2) individual vendors at a flea market or farmers market conducted on City property;
6 provided, however, that this Section shall apply to loading, unloading, or driving of Commercial
7 Vehicles for such events if these events would otherwise be covered by this Section 21C.10 and the
8 loading, unloading or driving is performed by the operator or management of the flea market or
9 farmers market;

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

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


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

15
16 Section 2. Effective Date. This ordinance shall become effective 30 days after
17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
19 of Supervisors overrides the Mayor's veto of the ordinance. However, as indicated in
20 Administrative Code Section 21C.10(e), Section 21C.10 shall become operative only upon the
21 initial setting of a Prevailing Rate of Wages for the categories of work covered by that section.
22

23 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2 additions, and Board amendment deletions in accordance with the "Note" that appears under
3 the official title of the ordinance.

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

7 By: 
8 FRANCESCA GESSNER
9 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 4/12/2016)

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

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

Existing Law

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

Amendments to Current Law

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

The ordinance defines "Commercial Vehicle" as a vehicle that (1) is used primarily for the transportation of materials, goods, or products, (2) has six wheels or more, and (3) displays or is required to display a California Commercial Vehicle Registration Act weight decal sticker. Commercial Vehicle does not include a vehicle being used exclusively for food catering purposes.

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

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

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

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