

[Prevailing rate of wages required in contracts for moving services; nonprofit organization exclusion.]

**Ordinance adding Section 21.25-x to the Administrative Code requiring prevailing wages in contracts for moving services, but exempting nonprofit organizations.**

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-x, to read as follows:

**Sec. 21.25-x. PREVAILING RATE OF WAGES REQUIRED IN CONTRACTS FOR MOVING SERVICES; NONPROFIT ORGANIZATIONS EXCLUSION.**

Every Contract issued by the City and County of San Francisco for Moving Services to be performed at any facility owned or leased by the City and County of San Francisco, where such work is to be done directly under the contract awarded (a "prime contract") must require that any individual performing Moving Services thereunder 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 Contract is being performed.

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

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

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

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

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

7        (1) "Contract" shall mean an agreement for Moving Services to be performed at the expense of the City  
8        and County of San Francisco or to be paid out of moneys deposited in the treasury or out of trust  
9        moneys under the control or collected by the City and County of San Francisco.

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

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

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

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

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

24        (6) "Person" shall include any individual, firm, proprietorship, partnership, corporation or  
25        combination thereof.

1        (7) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe benefits or the  
2        matching equivalents thereof, being paid to a majority of workers performing moving services, if a  
3        majority of such workers be paid at a single rate; if there be no single rate being paid to a majority,  
4        then the prevailing rate shall be that single rate being paid the greatest number of workers.

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

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

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

23        (d) Noncompliance with Wage Provisions; Termination; Penalty. Where the Contracting Officer or the  
24        City's Labor Standards Enforcement Officer determines that a Contractor for Moving Services may  
25        have violated the prevailing wage requirements of this Section, the Contracting Officer or the City's

1       *Labor Standards Enforcement Officer shall send written notice to the Contractor of the possible*  
2       *violation (a "violation notice"). In addition to and without prejudice to any other remedy available, the*  
3       *Contracting Officer may terminate the contract, in which case the Contractor shall not be entitled to*  
4       *any additional payment thereon unless within 30 days of receipt of the violation notice the Contractor*  
5       *has either (i) cured the violation or (ii) has established by documentary evidence, including but not*  
6       *limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of*  
7       *compliance with the provisions of this Section. For purposes of this Section, where a Contractor fails to*  
8       *pay at least the Prevailing Rate of Wages to individuals performing Moving Services under a Contract*  
9       *for Moving Services, the Contractor shall have "cured the violation" once the Contractor reimburses*  
10      *such individuals by paying each individual the balance of what he or she should have earned in*  
11      *accordance with the requirements of this Section. In addition to, or instead of terminating the Contract*  
12      *for Moving Services, where the Contracting Officer or the Office of Labor Standards Enforcement finds*  
13      *that the Contractor has willfully violated the requirements of this Section, the Contracting Officer or*  
14      *the City's Labor Standards Enforcement Officer shall assess a penalty (a "willful violation penalty") in*  
15      *the sum of \$50 per day for each Employee for each day the Contractor or Subcontractor fails to pay the*  
16      *Prevailing Rate of Wages, such sums to be deposited in the fund out of which Contract is awarded. The*  
17      *Contracting Officer or the City's Labor Standards Enforcement Officer shall impose such willful*  
18      *violation penalty regardless of whether the Contractor has cured the violation.*

19      *(e) Verification. The Contractor must provide verification of compliance with the provisions of this*  
20      *Ordinance upon request by the Contracting Officer or the City's Labor Standards Enforcement Officer.*

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

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

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

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

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12        APPROVED AS TO FORM:  
13        DENNIS J. HERRERA, City Attorney

14        By: \_\_\_\_\_  
15        Philip A. Ginsburg  
16        Deputy City Attorney