

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

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

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

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

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

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

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

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

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

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

11 (2) "Contract, Lease, Franchise, Permit, or ~~Other~~ Agreement " shall mean an agreement  
12 with the City and County of San Francisco for the use of property owned by the City and County of San  
13 Francisco, but shall not include any contract, lease, franchise, permit or agreement for the use  
14 of any unenclosed public park or public street when the public has free access to the show,  
15 play or exhibit, to any permit or agreement of any kind issued pursuant to Chapter 57 of this  
16 Code (relating to film productions), or in any circumstance where application of this Section  
17 would be preempted by federal or state law.

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

21 (4) "Employee" shall mean any individual engaged in theatrical or technical services  
22 related to the presentation of shows, plays, and exhibits, including, but not limited to, workers engaged  
23 in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects,  
24 and motion picture services on property owned by the City and County of San Francisco for a  
25 Contractor or a subcontractor. "Employee" does not include a person who is (a) a managerial,

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

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

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

14 (7) "Subcontract" shall mean and include any agreement under or subordinate to a prime  
15 Contract, Lease, Franchise, Permit, or ~~Other~~ Agreement. "Subcontractor" shall mean any Person  
16 who enters into a Subcontract.

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

1           The Civil Service Commission shall furnish to the Board of Supervisors, on or before the first  
2 Monday in November of each year, data as to the Prevailing Rate of Wages for individuals engaged in  
3 theatrical or technical services related to the presentation of shows, plays, ~~and~~ exhibits, including, but  
4 not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers,  
5 draping, carpentry, special effects, and motion picture services, including such rate of wages paid for  
6 overtime and holiday work, and the Board of Supervisors shall, upon receipt of such data, fix and  
7 determine the Prevailing Rate of Wages for individuals engaged in theatrical or technical services  
8 related to the presentation of shows, plays,~~and~~ exhibits, including, but not limited to, workers engaged  
9 in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects,  
10 and motion picture services, including such rate of wages paid for overtime and holiday work, as paid  
11 for similar work in the City and County of San Francisco in private employment. Such Prevailing Rate  
12 of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be  
13 deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the same  
14 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           (c) Transition Employment Period. All Contracts, Leases, Franchises, Permits, or ~~Other~~  
20 Agreements covered by this Section shall impose the following obligations on the Contractor.

21           (1) Where the ~~awarding authority~~ Contracting Officer has given notice that a Contract,  
22 Lease, Franchise, Permit or ~~Other~~ Agreement has been terminated or ended, or where a Contractor  
23 has given notice of such termination, upon giving or receiving such notice, as the case may be, the  
24 terminated or ending Contractor shall, within ten days thereafter, provide to the successor Contractor,  
25 the name, date of hire, and employment occupation classification of each employee employed at the site

1 or sites covered by the prospective Contractor at the time of the Contract, Lease, Franchise, Permit or  
2 ~~Other~~ Agreement termination. This provision shall also apply to the subcontractors of the terminated  
3 Contractor.

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

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

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

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

3 (5) Except as provided in Subsection (3) of above, 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 (6) 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 this  
11 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 ~~(7) All contracts subject to this Section include a provision in which the contractor~~  
15 ~~agrees to require subcontractor to comply with, the obligation imposed by this Section.~~

16 (d) Enforcement.

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

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

25 (ii) The final regular rate received by the eEemployee.

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

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

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

12           (e) Noncompliance with Wage Provisions; Termination; Penalty. Where the Contracting  
13 Officer determines that a Contractor for use of property owned by the City and County of San  
14 Francisco, or a subcontractor, may have violated the prevailing wage requirements of this Section,  
15 the Contracting Officer shall send written notice to the Contractor of the possible violation (a  
16 "violation notice"). In addition to and without prejudice to any other remedy available, the  
17 Contracting Officer may terminate the Contract, Lease, Franchise, Permit, or ~~Other~~ Agreement, in  
18 which case the Contractor shall not be entitled to any additional payment thereon unless within 30 days  
19 of receipt of the violation notice the Contractor has either (i) cured the violation or (ii) ~~has~~ established  
20 by documentary evidence, including but not limited to payroll records, the truth and accuracy of which  
21 is attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this  
22 Section, where a Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to  
23 Employees as required by this Section to individuals working in public off-street parking lots or  
24 garages, 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. In addition to, or instead of terminating  
2 the ~~Contract, Lease, Management Contract, Lease, Franchise, Permit, or Other Agreement~~, where  
3 the Contracting Officer finds that the Contractor has willfully violated the requirements of this Section,  
4 the Contracting Officer or the Labor Standards Enforcement Officer of the Office of Contract  
5 Administration may assess a penalty (a "willful violation penalty") in an amount of not more than 10  
6 percent of the dollar amount of the Contract, Lease, Franchise, Permit, or ~~Other Agreement~~, such  
7 sums to be deposited in the fund out of which the Contract, Lease, Franchise, Permit, or ~~Other~~  
8 Agreement is awarded or, if none exists, the General Fund. The Contracting Officer may impose  
9 such willful violation penalty regardless of whether the Contractor has cured the violation.

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

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

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

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

4            (j) Severability. If any severable provision or provisions of this ~~Section Article~~ or any  
5    application thereof is held invalid, such invalidity shall not affect any other provisions or applications  
6    of the ~~Section Article~~.

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

10    By: \_\_\_\_\_  
11        PAULA JESSON  
          Deputy City Attorney

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