

1 [Administrative Code - Prevailing Wages for Broadcast Services on City Property]

2
3 Ordinance amending the Administrative Code to require that prevailing wages be paid
4 for broadcast services work on City property.

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

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

11 Section 1. The Administrative Code is hereby amended by revising Section 21C.7 and
12 adding Section 21C.9, to read as follows:

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

16 * * * *

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

19 * * * *

20 "Covered Contract" shall mean an agreement between the City and a Contractor for
21 the following services: "Motor Bus Services" as defined in Section 21C.1, subject to the
22 provisions of Section 21C.1; "Janitorial Services" as defined in Section 21C.2; "Public Off-
23 Street Parking Lots, Garages, or Storage Facilities for Automobiles" as defined in Section
24 21C.3; "Theatrical Services" as defined in Section 21C.4; "Solid Waste Generated By The City
25 In Course of City Operations" as defined in Section 21C.5; "Moving Services" as defined in

1 Section 21C.6; *and* "Trade Show and Special Event Work" as defined in Section 21C.8; *and*
2 "Broadcast Services" as defined in Section 21.C.9.

3 * * * *

4 "Permit" shall mean a permit to use City property, and shall include a permit to use a public
5 right of way, including a street or sidewalk encroachment permit or closure permit, including but not
6 limited to an ISCOTT (Interdepartmental Staff Committee on Traffic and Transportation) permit.

7
8 **SECTION 21C.9. PREVAILING RATE OF WAGES REQUIRED FOR BROADCAST**
9 **SERVICES WORKERS ON CITY PROPERTY.**

10 (a) **Prevailing Wage Requirement.** Every Contract, Lease, Franchise, Permit, or Agreement
11 awarded, let, issued, or granted by the City for the use of property owned by the City must require that
12 any Individual engaged in Broadcast Services on City property be paid not less than the Prevailing
13 Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private
14 employment for similar work in the area in which the Contract, Lease, Franchise, Permit, or
15 Agreement is being performed. All Contracts, Leases, Franchises, Permits, or Agreements subject to
16 this Section 21C.9 shall include a provision in which the Contractor agrees to comply with, and to
17 require Subcontractors to comply with, the obligations imposed by this Section.

18 (b) **Definitions.** For purposes of this Section 21C.9, the following definitions shall apply to the
19 terms used herein:

20 "Broadcast Services" shall mean the electronic capture and/or live transmission on-site of
21 video, digital, and/or audio content for Commercial Purposes through the use of a remote production
22 or satellite truck on-site. An individual engaged in Broadcast Services includes, but is not limited to, a
23 technical director, video controller, assistant director, and stage manager, as well as individuals
24 engaged in the following functions: audio; camera; capture and playback; graphics; and utility.

1 "Commercial Purposes" shall mean an operation for profit and shall not include instances
2 where the capture and transmission of video, digital, and/or audio content is performed by or on behalf
3 of a governmental entity.

4 "Contract, Lease, Franchise, Permit, or Agreement" shall mean an agreement with the City for
5 the use of property owned by the City, but shall not include any contract, lease, franchise, permit, or
6 agreement:

7 (1) For any event where the total number of hours of Broadcast Services work
8 being performed for the set-up, the event itself, and the take-down is cumulatively less than 25 ten
9 hours in the aggregate:

10 (2) For celebration of a marriage, domestic partnership, or similar civil union, except
11 where the capture of video, digital and/or audio content of the celebration is for a Commercial
12 Purpose;

13 (3) To engage in film production pursuant to Chapter 57 of this Code or under the
14 circumstances set forth in Section 57.7 of this Code; provided, however, that if the film production
15 involves Broadcast Services, the requirements of this Section 21C.9 shall apply to those persons
16 engaged in Broadcast Services;

17 (4) In any circumstance where application of this Section 21C.9 would be preempted by
18 federal or state law;

19 (5) For a street fair, block party, parade, or festival, or any celebration directly
20 associated with such street fair, block party, parade, or festival, or any other expressive activity such as
21 a protest, demonstration, or similar public assembly, that is free and open to the public and does not
22 have as a primary purpose the advertising or promotion of a commercial product or commercial
23 service;

24 (6) For any event that requires the payment of prevailing wage rates applicable to
25 public works projects;

1 (7) In any circumstances where video and/or audio content is being captured solely for
2 personal use;

3 (8) For a concert in a public park to which the public has free access;

4 (9) For any event sponsored by a nonprofit entity where the primary purpose of the
5 event is fundraising for that nonprofit entity and/or other nonprofit entities; provided, however, that
6 this exemption shall not apply if the event is a collegiate sporting event or a professional sporting
7 event. For purposes of this subsection (b)(9), "professional sporting event" means an event at which
8 athletes receive compensation for their performance;

9 (10) In any circumstance where application of this Section 21C.9 would apply to work
10 covered by a collective bargaining agreement; or

11 (11) For any event sponsored by a primary or secondary educational institution.

12 (c) Preemption. Nothing in this Section 21C.9 shall be interpreted or applied so as to create
13 any right, power, or duty in conflict with any federal or state law.

14 (d) Conflict with Other Sections. In the event of a conflict between this Section 21C.9 and any
15 other section of this Chapter 21C, the other section shall prevail.

16 (e) Operative Date and Application.

17 (1) This Section 21C.9 shall become operative upon the initial setting of a Prevailing
18 Rate of Wages for Broadcast Services Work by the Board of Supervisors. This initial Prevailing Rate
19 of Wages shall be set in accordance with the process established in Section 21C.7(c)(1), except the
20 Civil Service Commission shall submit to the Board of Supervisors data as to the Prevailing Rate of
21 Wages no later than 120 days after the effective date of this Section 21C.9. Thereafter, the Commission
22 shall submit data as to the Prevailing Rate of Wages for Broadcast Services Work on or before the first
23 Monday in November each year in accordance with Section 21C.7(c)(1).

24 (2) This Section 21C.9 is intended to have prospective effect only, and shall not be
5 interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or

1 Agreement issued or entered into by the City. This Section shall only apply to Contracts, Leases,
2 Franchises, Permits, or Agreements issued or entered into on or after the operative date of this Section.

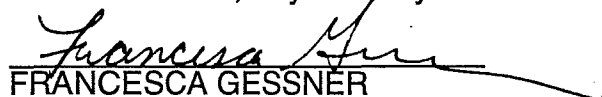
3 (f) Exemption. This Section 21C.9 shall not apply to Broadcast Services being performed by a
4 news service or similar entity engaged in on-the-spot broadcasting of news events that does not require
5 a Contract, Lease, Franchise, Permit, or Agreement.

6 (g) Severability. If any provision or provisions of this Section 21C.9 or any application thereof
7 is held invalid, such invalidity shall not affect any other provisions or applications of the Section.

8
9 Section 2. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor's veto of the ordinance. However, as indicated in
13 Administrative Code Section 21C.9(e), Section 21C.9 shall become operative only upon the
14 initial setting by the Board of Supervisors of a Prevailing Rate of Wages for the categories of
15 work covered by those sections.

16 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
17 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
18 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
19 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
20 additions, and Board amendment deletions in accordance with the "Note" that appears under
21 the official title of the ordinance.

22 APPROVED AS TO FORM:
23 DENNIS J. HERRERA, City Attorney

24 By: 
25 FRANCESCA GESSNER
Deputy City Attorney

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LEGISLATIVE DIGEST
(Substituted November 3, 2015)

[Administrative Code - Prevailing Wages for Broadcast Services on City Property]

Ordinance amending the Administrative Code to require that prevailing wages be paid for broadcast services work on City property.

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, and trade show work. See S.F. Admin. Code §§ 21C.1-21C.8. There is no prevailing wage ordinance governing broadcast services work on City property.

Amendments to Current Law

The ordinance would require the payment of prevailing wages for “Broadcast Services” when a contract, lease, franchise, permit, or other agreement for the use of City-owned property is involved. The ordinance defines such work as “the electronic capture and live transmission on-site of video, digital, and/or audio content for Commercial Purposes through the use of a remote production or satellite truck on-site.” It defines “Commercial Purposes” as “an operation for profit” and does not include instances where the capture and transmission of video, digital, and/or audio content is performed by or on behalf of a governmental entity.

The ordinance exempts the following types of events or activities from the prevailing wage requirement for Broadcast Services on City property:

- (1) Any event where the set-up, the event itself, and the take-down is cumulatively less than 25 hours.
- (2) Weddings, except where the Broadcast Services is performed for a Commercial Purpose.
- (3) Film production subject to Chapter 57 of the Administrative Code (Film Commission), unless the film production involves Broadcast Services.
- (4) A street fair, block party, parade, or festival, or any celebration directly associated with such street fair, block party, parade, or 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 have as a primary purpose the advertising or promotion of a commercial product or commercial service.

- (5) In any circumstances where video and/or audio content is being captured solely for personal use.
- (6) A concert in a public park to which the public has free access.
- (7) Any event sponsored by a nonprofit entity where the primary purpose of the event is fundraising for that nonprofit entity and/or other nonprofit entities, unless the event is a collegiate sporting event or a professional sporting event.
- (8) Work that is covered by a collective bargaining agreement.
- (9) Any event sponsored by a primary or secondary educational institution.

Background

This legislation was originally introduced on September 8, 2015 and included prevailing wage requirements for the loading and unloading of commercial vehicles at special events on City property. The provisions pertaining to loading and unloading of commercial vehicles have been removed from this version.

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| <p>Item 2 File 15-0874 <i>(Continued from December 9, 2015)</i></p> | <p>Department: Office of Labor Standards and Enforcement (OLSE)</p> |
| <p>EXECUTIVE SUMMARY</p> | |
| <p>Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance will amend the Administrative Code to require that prevailing wages be paid for commercial broadcast services work on City property. <p>Key Points</p> <ul style="list-style-type: none"> • The Board of Supervisors annually sets prevailing wage rates for employees of businesses with particular types of City contracts. • Payment of prevailing wages for broadcast services work on City property is not currently included in the Administrative Code. <p>Fiscal Impact</p> <ul style="list-style-type: none"> • The impact on City revenues from event costs associated with the proposed prevailing wage requirement cannot be determined because it is not known whether and to what extent the additional prevailing wage requirements might deter the use of City property for events that involve live broadcast. • The proposed ordinance expands the enforcement responsibilities of the Office of Labor Standards and Enforcement (OLSE). It is unknown how many new complaints for noncompliance would fall under the jurisdiction of OLSE, nor how much additional penalties would be assessed. Therefore, the potential increased costs and revenues to the City cannot be estimated at this time. <p>Recommendation</p> <ul style="list-style-type: none"> • Approval of the proposed ordinance is a policy decision for the Board of Supervisors. | |

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance and shall require two readings at separate meetings of the Board of Supervisors.

The City's Administrative Code requires payment of prevailing wages for certain types of work in private employment connected with City property. These requirements are enforced by the City's Office of Labor Standards Enforcement (OLSE).

BACKGROUND

The Board of Supervisors annually sets prevailing wage rates for employees of businesses which have been awarded particular types of City contracts. Table 1 below identifies the (a) specific Administrative Code Sections, (b) the dates each Administrative Code Section was last amended by the Board of Supervisors, and (c) the types of City contracts, leases, and/or operating agreements in which such businesses are required to pay prevailing wages.

Table 1: List of City Contractors Required to Pay Prevailing Wages

| Administrative Code | Date of Most Recent Amendment | Type of Contract |
|---------------------|-------------------------------|--|
| Section 6.22 (E) | May 19, 2011 | Public works or construction |
| Section 21C.2 | February 2, 2012 | Janitorial and window cleaning services |
| Section 21C.3 | February 2, 2012 | Public off-street parking lots, garages and vehicle storage facilities |
| Section 21C.4 | February 2, 2012 | Theatrical performances |
| Section 21C.5 | February 2, 2012 | Solid waste hauling services |
| Section 21C.6 | February 2, 2012 | Moving services |
| Section 21C.8 | June 29, 2014 | Trade show and special event work |

Payment of prevailing wages for broadcast services work on City property is not currently included in the Administrative Code.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance will amend the Administrative Code to add Section 21C.9 to require that prevailing wages be paid for broadcast services work on City property. Broadcast services include the electronic capture and live transmission of video, digital, and/or audio content for commercial purposes through the use of a remote production or satellite truck on site. The proposed ordinance only applies to for-profit operations and events that are not performed on behalf of a government entity lasting longer than 25 hours (including set-up and take-down).

Under the proposed ordinance, the following types of activities would be exempt from the prevailing wage requirement:

1. Weddings, except where broadcast services are performed for profit;
2. Film productions, unless the film production involves live transmission of content;
3. Street fairs, block parties, parades, festivals, concerts in a public park, or any other expressive activity that is free and open to the public and does not serve to advertise or promote a commercial product or service;
4. Capture of video and/or audio content solely for personal use;

5. Events sponsored by nonprofits for the purpose of fundraising, except where the event is a collegiate sporting event or a professional sporting event; and
6. Events sponsored by primary or secondary educational institutions.

FISCAL IMPACT

Potential Impact on City Agreements

Under the proposed ordinance, prevailing wage requirements for commercial broadcast services work will be added to contracts, leases, franchises, permits, or other agreements for use of City property. It is not known at this time whether and to what extent the additional prevailing wage requirements would deter the use of City property for events that involve live broadcast. As a result, the Budget and Legislative Analyst cannot estimate the impact on City revenues from a change in the number of lease events due to the proposed prevailing wage requirement.

Expanded Scope of Enforcement

The proposed ordinance would expand enforcement responsibility of the OLSE over commercial broadcast services work on City property, with OLSE responsible for addressing complaints and imposing penalties as required. According to Ms. Donna Levitt, Manager of OLSE, the prevailing wage requirement will be limited in application due to the event exemptions and 25-hour event threshold. Therefore, while the number of newly covered broadcast events is unknown at this time, it is expected to be small.

Since it is unknown how many new complaints for noncompliance would fall under the jurisdiction of OLSE, and how much additional penalties would be assessed, the potential increased costs and revenues to the City cannot be estimated at this time.

RECOMMENDATION

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



Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [150874]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):

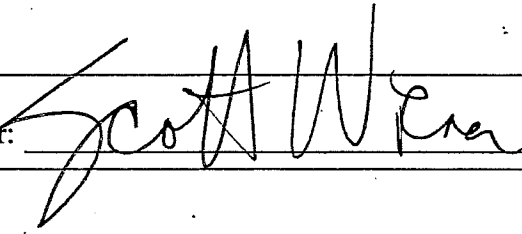
Supervisor Wiener

Subject:

Administrative Code - Prevailing Wages for Broadcast Services on City Property

The text is listed below or attached:

Ordinance amending the Administrative Code to require that prevailing wages be paid for broadcast services work on City property.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: