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

(1) "Contracting Officer" shall mean any officer or employee of the City and County of San
Francisco authorized to enter into a 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.

(2) "Contractor" shall mean any Person who submits a bid and/or enters into a Lease,
Management Agreement, or Other Contractual Arrangement with the City and County of San
Francisco 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 as set forth in this
Section.

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

(4) "Lease, Management Agreement, or Other Contractual Arrangement" shall mean an
agreement with the City and County of San Francisco 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.
(5) "Person" shall mean any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts, or any combination thereof.

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

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

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

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

The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after the effective date of this Section, and on or before the first Monday in November of each subsequent year, data as to the Prevailing Rate of Wages for individuals working in off-street parking lots, garages, or automobile storage facilities as paid in private employment in the City and County of San Francisco, including wages for overtime and holiday work, and the Board of Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages for individuals working in off-street parking lots, garages, or automobile storage facilities as paid in private employment in the City and County of San Francisco.
lots, garages, or automobile storage facilities as paid for similar work in the City and County of San Francisco in private employment. Such Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the same is changed by the Board of Supervisors.

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

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

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

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

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

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

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

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

(6) At the end of such 90 day period, a successor Contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each Employee retained pursuant to
this Section. If the Employee's performance during such 90 day period is satisfactory, the successor Contractor (or subcontractor) shall offer the Employee continued employment under the terms and conditions established by the successor Contractor (or subcontractor) or as required by law.

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

(d) Enforcement.

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

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

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

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

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

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

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

(f) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this Section, if a Lease, Management Agreement, or Other Contractual Arrangement conflicts with an
existing collective bargaining agreement to which a Contractor is a party, the collective bargaining agreement shall prevail. However, the Contractor will be obligated to make good faith efforts to comply with the requirements of its Lease, Management Agreement, or Other Contractual Arrangement that do not conflict with the collective bargaining agreement.

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

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

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

(j) **Severability.** If any part or provision of this Section, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Section, including the application of such part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable.
APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By:  

THOMAS S. LAKRITZ
Deputy City Attorney
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
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

Mayor Willie L. Brown Jr.

Date Approved: JAN 24 2003