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

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

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

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

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

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

"Covered Contract" shall mean an agreement between the City and a Contractor for the following services: "Motor Bus Services" as defined in Section 21C.1, subject to the 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
21.C.3; "Theatrical Services" as defined in Section 21.C.4; "Solid Waste Generated By The City In Course of City Operations" as defined in Section 21.C.5; "Moving Services" as defined in Section 21.C.6; and "Trade Show and Special Event Work" as defined in Section 21.C.8; "Broadcast Services" as defined in Section 21.C.9; and "Loading, Unloading, and Driving of Commercial Vehicles" under Section 21.C.10.

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

(a) Prevailing Wage Requirement. Every Contract, Lease, Franchise, Permit, or Agreement awarded, let, issued, or granted Permit issued or granted by the City for the use of property owned by the City for a Special Event as defined in subsection (b), below, must require that (1) any Individual engaged in loading or unloading on City property of materials, goods, or products into or from a Commercial Vehicle in connection with the presentation of a Show or for the Special Event 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 loading or unloading is being performed, and (2) any Individual driving a Commercial Vehicle from which materials, goods, or products are loaded or unloaded on City property in connection with the presentation of a Show or for such a Special Event shall be paid not less than the Prevailing Rate of Wages for hours driven within the City limits. All Contracts, Leases, Franchises, Permits or Agreements subject to this Section 21.C.10 shall include a provision in which require that the permittee Contractor agrees to comply with, and to require Subcontractors to comply with, the obligations imposed by this Section.

(b) Definitions. For purposes of this Section 21.C.10, the following definitions shall apply to the terms used herein:
“Commercial Vehicle” shall mean a vehicle that (1) is used or maintained 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 Department of Motor Vehicles weight decal as required by the Commercial Vehicle Registration Act, California Vehicle Code Section 9400 et seq., as amended. Notwithstanding the foregoing sentence, Commercial Vehicle shall not include a vehicle used exclusively for food catering purposes, meaning its exclusive purpose on a particular trip is for the transport of food and/or beverages to be served at a Show or Special Event, the transport of equipment for the preparation and service of such food and/or beverages at a Show or Special Event, or both.

“Contract, Lease, Franchise, Permit, or Agreement” shall have the meanings set forth in Section 21 C.4(b) of this Code with regard to Shows, and in Section 21C.8(b) of this Code with regard to Special Events, including the exemptions stated therein.

“Mass Participation Sports Event” shall mean a participatory sporting event such as a marathon, running race, or bicycle race or tour with anticipated participation by 150 participants or more.

“Show” shall have the meaning set forth in Section 21C.4 of this Code.

“Special Event” shall have the meaning set forth in Section 21C.8 of this Code, and shall also include a Mass Participation Sports Event.

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

— (1) For celebration of a marriage, domestic partnership, or similar civil union;
— (2) Which involves engaging in film production pursuant to Chapter 57 of this Code or under the circumstances set forth in Section 57.7 of this Code;
— (3) For which the payment of prevailing wage rates applicable to public works projects is required;
(4) For a Special Event that is 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; provided, however, that a commercial entity's sponsorship of such an event shall not, by itself, constitute advertising or promotion for purposes of this exclusion so long as the entity does not engage in the sale of products or services at the event;

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

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

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

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

(c) Preemption. Nothing in this Section 21C.10 shall be interpreted or applied so as to create any right, power, or duty in conflict with any federal or state law.
(d) **Conflict with Other Sections.** In the event of a conflict between this Section 21C.10 and any other sections of this Chapter 21C, the other section(s) shall prevail.

(e) **Operative Date and Application.**

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

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

(f) **Exemptions.** In addition to the exemptions set forth in Section 21C.4(b) of this Code for certain Shows and set forth in Section 21C.8(b) of this Code for certain Special Events, this Section 21C.10 shall not apply to the following:

(1) any Individual engaged in the loading or unloading of portable toilets, temporary fencing, temporary barricades, or temporary tents or canopies of less than 700 square feet when erected, or any Individual driving a Commercial Vehicle from which portable toilets, temporary fencing, temporary barricades, or temporary tents or canopies of less than 700 square feet when erected, are loaded or unloaded.
(2) individual vendors at a flea market or farmers market conducted on City property; provided, however, that this Section shall apply to loading, unloading, or driving of Commercial Vehicles for such events if these events would otherwise be covered by this Section 21C.10 and the loading, unloading or driving is performed by the operator or management of the flea market or farmers market;

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

(4) work that is performed by a City employee; or

(5) a Mass Participation Sports 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.

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

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

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

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

By: 

FRANCESCA GESSNER
Deputy City Attorney
City and County of San Francisco

Tails

Ordinance

File Number: 160199  Date Passed: October 04, 2016

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

April 20, 2016 Budget and Finance Committee - CONTINUED TO CALL OF THE CHAIR

September 14, 2016 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

September 14, 2016 Budget and Finance Committee - CONTINUED AS AMENDED

September 21, 2016 Budget and Finance Committee - RECOMMENDED

September 27, 2016 Board of Supervisors - PASSED ON FIRST READING
  Ayes: 10 - Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee
  Excused: 1 - Avalos

October 04, 2016 Board of Supervisors - FINALLY PASSED
  Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Peskin, Tang, Wiener and Yee

File No. 160199

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 10/4/2016 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved

10/14/2016