

EXHIBIT B

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 42, OF THE SAN DIEGO MUNICIPAL CODE IS AMENDED BY AMENDING SECTIONS 22.4205, 22.4215, 22.4225, 22.4230, AND 22.4235, ALL RELATING TO THE LIVING WAGE ORDINANCE.

This ordinance makes changes to Chapter 2, Article 2, Division 42 of the San Diego Municipal Code by amending sections 22.4205, 22.4215, 22.4225, 22.4230, and 22.4235 relating to the Living Wage Ordinance. The City's Living Wage Ordinance has been in force since 2005, and the Council has studied its implementation. The Budget and Finance Committee has held multiple hearings on Living Wage Ordinance implementation issues, and has forwarded proposed revisions for consideration of the full Council. These amendments are designed to enhance enforcement and clarify provisions of the Living Wage Ordinance, in order to advance the purposes it was intended to serve.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, since a written or printed copy will be available to the City Council and the public a day prior to its final passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

Exhibit B

(O-2009-50-b)
(COR.COPY)

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

SRS:pev
10/03/08
10/15/08 COR.COPY
Or.Dept:City Atty
O-2009-50-a

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 42, OF THE SAN DIEGO MUNICIPAL CODE IS AMENDED BY AMENDING SECTIONS 22.4205, 22.4215, 22.4225, 22.4230, AND 22.4235, ALL RELATING TO THE LIVING WAGE ORDINANCE.

WHEREAS, the City's Living Wage Ordinance has been in force since 2005, and the Council has studied its implementation; and

WHEREAS, the Council finds that enhanced enforcement and clarification will advance the purposes that the original Living Wage Ordinance was intended to serve; and

WHEREAS, the Budget and Finance Committee has held multiple hearings on Living Wage Ordinance implementation issues and has forwarded proposed revisions for consideration of the full Council; and

WHEREAS, the Council finds that revision of the Living Wage Ordinance is necessary to effectuate its purposes; NOW THEREFORE.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, Division 42, of the San Diego Municipal Code is amended by amending sections 22.4205, 22.4215, 22.4225, 22.4230, and 22.4235 to read as follows:

§22.4201 Purpose and Intent

[No change in text.]

§22.4202 **Citation**

[No change in text.]

§22.4205 **Definitions**

Each word or phrase that is defined in this division appears in the text of this division in italicized letters. For purposes of this division, the following definitions shall apply:

Business through City [No change in text.]

City facility means any of the following facilities that are owned, operated, managed, or leased by the *City*:

(a) through (c) [No change in text.]

(d) San Diego Convention Center;

(e) San Diego City Concourse; or

(f) Civic Theatre, including the portion of the Civic Center Plaza directly adjacent to the Civic Theatre when theatre-related activities are held there. This subsection is not intended to extend to the Living Wage Ordinance to other structures located in the Civic Center Plaza.

City facility agreement means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility* that generates \$350,000 or more in

annual gross receipts to the *business*. *City facility agreement* includes (a) subleases or other agreements for use of the *City facility* for 30 days or more in any calendar year; and (b) subcontracts and concession agreements for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire.

City facility employer and *City Manager* [No change in text.]

Covered employee means any individual employed on a full-time, part-time, temporary, or seasonal basis by (a) a *service contractor* with regard to any hours worked in performance of a *service contract*; (b) a *financial assistance recipient* who works at least 20 hours a month at the site that is the subject of the *financial assistance agreement* or at least 20 hours a month on the program that is the subject of the *financial assistance agreement*; or (c) a *City facility employer* with regard to any hours worked at a *City facility*. *Covered employee* does not include: (a) individuals who, in addition to wages, receive academic credit for their work from an accredited educational institution; or (b) individuals who participate in job training and education programs that have as their express purpose the provision of basic job skills or education.

Covered employer through Health benefits rate [No change in text.]

Service contract means a contract between the *City* and a *business* with a combined annual value of payments in excess of \$25,000, and any applicable subcontracts or franchises, to furnish *services*. For the purpose of this division, *service contract* includes all contracts for *services* provided through the managed

competition program under Charter section 117(c).

Service contractor [No change in text.]

Services means the following types of employment activities and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this division and designated in a *City facility agreement, financial assistance agreement, or service contract*:

(a) through (f) [No change in text.]

(g) Janitorial, custodial, street cleaning and housekeeping;

(h) through (n) [No change in text.]

(o) Ticket takers;

(p) [No change in text.]

(q) Service workers in the medical field, such as emergency medical technicians and/or paramedics;

(r) Waste collection and waste disposal, including recycling;

(s) Right-of-way maintenance; and

(t) Water and wastewater maintenance.

§22.4210 Applicability of Living Wage Ordinance

[No change in text.]

§22.4215 Exemptions.

- (a) Except for *City facility agreements*, the following contracts are exempt from the requirements of this division:
 - (1) through (3) [No change in text.]
 - (4) contracts for public works construction;
 - (5) and (6) [No change in text.]
 - (7) contracts for professional services, as described in California Labor Code Section 515(a), such as design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other services. The exemption for medical service contracts does not extend to emergency medical personnel, such as emergency medical technicians and/or paramedics.
 - (8) [No change in text.]
- (b) [No change in text.]
- (c) The definitions of *service contract*, *financial assistance agreement*, or *City facility agreement* shall be liberally interpreted so as to further the policy objectives of this division. The *City Manager* shall establish procedures to implement this section.

§22.4220 Payment of Living Wage and Provision of Benefits

[No change in text.]

§22.4225 Reporting and Notification Requirements

(a) through (c) [No change in text.]

(d) Each *covered employer* shall file with the *City Manager* an annual report documenting compliance with this division. At a minimum, the report shall include each *covered employee's* name, address, date of hire, job classification, rate of pay, cost and amount paid for health benefits, hours worked in each pay period, and paid and unpaid time off (accrued and used). These records shall be maintained for three years after the *City's* final payment on the *service contract, financial assistance agreement, or City facility agreement*, and shall be made available to the *City*, without undue delay, upon request. The records to be maintained shall include all wage records, proof of payments for health benefits, employee name, address, date of hire, job classification, rate of pay, cost and amount paid for health benefits, hours worked in each pay period, and paid and unpaid time off (accrued and used).

§22.4230 Enforcement

(a) A *covered employee* claiming a violation of this division shall have the right to file an action against an employer in the appropriate court within

one year after discovery of the alleged violation. The court may award any employee who files suit pursuant to this subdivision, the following:

(1) through (3) [No change in text.]

(4) For a willful violation of this division, a court shall award as a penalty up to treble the amount of monies to be paid as damages.

(5) The court shall award reasonable attorney's fees and costs to an employee who prevails in any such private action and to an employer who so prevails if the employee's suit is found to be frivolous.

(b) A *business* is prohibited from any retaliation against an employee who alleges non-compliance with this division or cooperates with an investigation regarding compliance with this division. A *business* shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining with regard to the *business's* practices with respect to this division, for opposing any practice proscribed by this division, for participating in proceedings related to this division, for seeking to enforce his or her rights under this division by any lawful means, or for otherwise asserting rights under this division. Any such employee may report any alleged retaliation to the *City Manager*.

(c) A *covered employee* claiming a violation of the division may file a complaint with the *City*. The *City* shall investigate and address any alleged

violation of this division's requirements. However, the *City's* failure to investigate an alleged violation or otherwise enforce any of the provisions of this division shall not create any right of action or right to recover damages from the *City* by any person, including but not limited to an aggrieved employee.

- (d) Whether based upon a complaint or otherwise, where the *City Manager* has determined that a *covered employer* has violated this article, the *City Manager* shall issue a written notice to the *covered employer* that the violation is to be corrected within ten days. In the event that the *covered employer* has not demonstrated to the *City Manager* within such period that it has substantially cured any material violation, the *City Manager* shall then do one or more of the following:
- (1) Declare a material breach of the *service contract, financial assistance agreement, or City facility agreement* and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the *service contract, financial assistance agreement, or City facility agreement* and the return of monies paid by the *City* for services not yet rendered.
 - (2) Institute proceedings under Article 2, Chapter 2, Division 8 to debar the *covered employer* from future *City* contracts for three years or until all penalties and/or restitution have been fully paid, whichever occurs last.

- (3) Request a determination of non-responsibility under Article 2, Chapter 2, Division 32.
- (4) Request that the City Attorney bring a civil action against the *covered employer* seeking any legal remedies, including but not limited to:
 - (i) Where applicable, payment to the *covered employee* of all unpaid wages and/or health premiums prescribed by this division; and/or
 - (ii) A fine payable to the *City* in the amount of up to one hundred dollars (\$100) for each violation for each day the violation remains uncured.
- (e) and (f) [No change in text.]
- (g) The *City* will incur costs to monitor a *service contract* with a business. To defray such costs, each *service contractor* shall, prior to the award of any *service contract*, remit to the *City* any amount equal to the *City's* reasonably anticipated costs of monitoring and enforcing this division with respect to the *service contract*, as determined by the Purchasing Agent. The *City Manager* shall, upon request of the *service contractor*, review and determine the reasonableness of such costs. The amount of such payment, with respect to any *service contract*, shall be stated in any request for bid, request for proposal, or other document through which the

City solicits *service contracts*, which document shall state that the obligation of the *service contractor* to remit such payment as provided in this section is a condition precedent to the award of such *service contract*. Such payments shall be placed in a separate *City* fund, called the Living Wage Enforcement Fund, and shall be used for costs associated with administration, monitoring, enforcement, and other activities necessary to ensure compliance with this division.

§22.4235 Administration

(a) and (b) [No change in text.]

(c) On July 1 of each year, or as soon thereafter as is practicable, the *City Manager* shall submit an annual report to the City Council generally describing the effects of the City of San Diego Living Wage Ordinance upon the *City*.

§22.4240 Collective Bargaining Agreements

[No change in text.]

§22.4245 Severability

[No change in text.]

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Sanna R. Singer
Deputy City Attorney

SRS:pev
10/03/08
10/15/08 COR.COPY
Or.Dept:City Atty
O-2009-50-a

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

OLD LANGUAGE: ~~STRIKEOUT~~
NEW LANGUAGE: DOUBLE UNDERSCORE

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 42, OF THE SAN DIEGO MUNICIPAL CODE IS AMENDED BY AMENDING SECTIONS 22.4205, 22.4215, 22.4225, 22.4230, AND 22.4235, ALL RELATING TO THE LIVING WAGE ORDINANCE.

§22.4201 Purpose and Intent

[No change in text.]

§22.4202 Citation

[No change in text.]

§22.4205 Definitions

Each word or phrase that is defined in this division appears in the text of this division in italicized letters. For purposes of this division, the following definitions shall apply:

Business and City [No change in text.]

City facility means any of the following facilities that are owned, operated, managed, or leased by the *City*:

(a) through (c) [No change in text.]

(d) San Diego Convention Center; ~~or~~

(e) San Diego City Concourse; or

(f) Civic Theatre, including the portion of the Civic Center Plaza directly adjacent to the Civic Theatre when theatre-related activities are held there. This subsection is not intended to extend to the Living Wage Ordinance to other structures located in the Civic Center Plaza.

City facility agreement means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility* that generates \$350,000 or more in annual gross receipts to the *business*. *City facility agreement* includes (a) subleases or other agreements for use of the *City facility* for 30 days or more in any calendar year; and (b) subcontracts and concession agreements for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, ~~and with a term of more than 90~~ days.

City facility employer [No change in text.]

City Manager [No change in text.]

Covered employee means any individual employed on a full-time, part-time, temporary, or seasonal basis by (a) a *service contractor* with regard to any hours worked in performance of a *service contract*; (b) a *financial assistance recipient* who works at least 20 hours a month at the site that is the subject of the *financial assistance agreement* or at least 20 hours a month on the program that is the

subject of the *financial assistance agreement*; or (c) a *City facility employer* with regard to any hours worked at a *City facility*. *Covered employee* does not include: (a) individuals who, in addition to wages, receive academic credit for their work from an accredited educational institution; ~~and~~ or (b) individuals who participate in job training and education programs that have as their express purpose the provision of basic job skills or education.

Covered employer through Health benefits rate [No change in text.]

Service contract means a contract between the *City* and a *business* with a combined annual value of payments in excess of \$25,000, ~~and with a term of more than 90 days~~, and any applicable subcontracts or franchises, to furnish *services*. For the purpose of this division, *service contract* includes all contracts for *services* provided through the managed competition program under Charter section 117(c).

Service contractor [No change in text.]

Services means the following types of employment activities and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this division and designated in a *City facility agreement*, *financial assistance agreement*, or *service contract*:

(a) through (f) [No change in text.]

(g) Janitorial, custodial, street cleaning and housekeeping;

(h) through (n) [No change in text.]

(o) Ticket takers; and

(p) [No change in text.]

(q) Service workers in the medical field, such as emergency medical technicians and/or paramedics;

(r) Waste collection and waste disposal, including recycling;

(s) Right-of-way maintenance; and

(t) Water and wastewater maintenance.

§22.4210 Applicability of Living Wage Ordinance

[No change in text.]

§22.4215 Exemptions.

(a) Except for *City facility agreements*, the following contracts are exempt from the requirements of this division:

(1) through (3) [No change in text.]

(4) contracts for public works construction, ~~recycling or solid waste~~ management franchises;

(5) and (6) [No change in text.]

(7) contracts for professional services, as described in California Labor Code Section 515(a), such as design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other professional services. The exemption for medical service contracts does not extend to emergency medical personnel, such as emergency medical technicians and/or paramedics.

(8) [No change in text.]

(b) [No change in text.]

(c) The definitions of *service contract*, *financial assistance agreement*, or *City facility agreement* shall be liberally interpreted so as to further the policy objectives of this division. The *City Manager* shall establish procedures to implement this section.

§22.4220 Payment of Living Wage and Provision of Benefits

[No change in text.]

§22.4225 Reporting and Notification Requirements

(a) through (c) [No change in text.]

(d) Each *covered employer* shall file with the *City Manager* an annual report regarding documenting compliance with this division. At a minimum, the report shall include each *covered employee's* name, address, date of hire,

job classification, rate of pay, cost and amount paid for health benefits, hours worked in each pay period, and paid and unpaid time off (accrued and used). These records shall be maintained for three years after the City's final payment on the service contract, financial assistance agreement, or City facility agreement, and shall be made available to the City, without undue delay, upon request. The records to be maintained shall include all wage records, proof of payments for health benefits, employee name, address, date of hire, job classification, rate of pay, cost and amount paid for health benefits, hours worked in each pay period, and paid and unpaid time off (accrued and used).

§22.4230 Enforcement

- (a) A covered employee claiming a violation of this division shall have the right to file an action against an employer in the appropriate court within one year after discovery of the alleged violation. The court may award any employee who files suit pursuant to this subdivision, the following:
- (1) through (3) [No change in text.]
 - (4) For a willful violation of this division, a court ~~may~~shall award as a penalty up to treble the amount of monies to be paid as damages.
 - (5) The court ~~may~~shall award reasonable attorney's fees and costs to an employee who prevails in any such private action and to an employer who so prevails if the employee's suit is found to be

frivolous.

- (b) A *business* is prohibited from any retaliation against an employee who alleges non-compliance with this division or cooperates with an investigation regarding compliance with this division. A *business* shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining with regard to the *business*'s practices with respect to this division, for opposing any practice proscribed by this division, for participating in proceedings related to this division, for seeking to enforce his or her rights under this division by any lawful means, or for otherwise asserting rights under this division. Any such employee may report any alleged retaliation to the *City Manager*.
- (c) A *covered employee* claiming a violation of the division may file a complaint with the *City*. The *City* ~~may, in its sole discretion, shall~~ investigate and address any alleged violation of this division's requirements. However, the *City's* failure to investigate an alleged violation or otherwise enforce any of the provisions of this division shall not create any right of action or right to recover damages from the *City* by any person, including but not limited to an aggrieved employee.
- (d) ~~The *City* has the discretion to terminate the *service contract, financial assistance agreement, or City facility agreement* and pursue any other legal remedies available to the *City*, including debarment, if the *covered employer* fails to comply with this division.~~ Whether based upon a

complaint or otherwise, where the *City Manager* has determined that a *covered employer* has violated this article, the *City Manager* shall issue a written notice to the *covered employer* that the violation is to be corrected within ten days. In the event that the *covered employer* has not demonstrated to the *City Manager* within such period that it has substantially cured any material violation, the *City Manager* shall then do one or more of the following:

- (1) Declare a material breach of the *service contract, financial assistance agreement, or City facility agreement* and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the *service contract, financial assistance agreement, or City facility agreement* and the return of monies paid by the *City* for services not yet rendered.
- (2) Institute proceedings under Article 2, Chapter 2, Division 8 to debar the *covered employer* from future *City* contracts for three years or until all penalties and/or restitution have been fully paid, whichever occurs last.
- (3) Request a determination of non-responsibility under Article 2, Chapter 2, Division 32.
- (4) Request that the *City Attorney* bring a civil action against the *covered employer* seeking any legal remedies, including but not limited to:

(i) Where applicable, payment to the *covered employee* of all unpaid wages and/or health premiums prescribed by this division; and/or

(ii) A fine payable to the *City* in the amount of up to one hundred dollars (\$100) for each violation for each day the violation remains uncured.

(e) and (f) [No change in text.]

(g) The *City* will incur costs to monitor a *service contract* with a business. To defray such costs, each *service contractor* shall, prior to the award of any *service contract*, remit to the *City* any amount equal to the *City's* reasonably anticipated costs of monitoring and enforcing this division with respect to the *service contract*, as determined by the Purchasing Agent. The *City Manager* shall, upon request of the *service contractor*, review and determine the reasonableness of such costs. The amount of such payment, with respect to any *service contract*, shall be stated in any request for bid, request for proposal, or other document through which the *City* solicits *service contracts*, which document shall state that the obligation of the *service contractor* to remit such payment as provided in this section is a condition precedent to the award of such *service contract*. Such payments shall be placed in a separate *City* fund, called the Living Wage Enforcement Fund, and shall be used for costs associated with administration, monitoring, enforcement, and other activities necessary to

ensure compliance with this division.

§22.4235 Administration

(a) and (b) [No change in text.]

(c) On July 1, ~~2007~~ of each year, or as soon thereafter as is practicable, the *City Manager* shall submit a an annual report to the City Council generally describing the effects of the City of San Diego Living Wage Ordinance upon the *City*.

§22.4240 Collective Bargaining Agreements

[No change in text.]

§22.4245 Severability

[No change in text.]

SRS:pev
10/03/08
10/15/08 COR.COPY
Or.Dept:City Atty
SO-2009-50-a

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2,
DIVISION 32, OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 22.3224 RELATING TO
CONTRACTOR STANDARDS.

This ordinance makes changes to Chapter 2, Article 2, Division 32 of the City of San Diego Municipal Code by amending section 22.3224 relating to Contractor Standards. These amendments are designed to enhance the effectiveness of the City's various ordinances related to contracting by establishing procedures for public determinations of non-responsibility and other mechanisms for ensuring contractor compliance with all local, state and federal laws.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, since a written or printed copy will be available to the City Council and the public a day prior to its final passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

SRS:pev
10/03/08
10/15/08 COR.COPY
Or.Dept:City Atty
O-2009-49

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2,
DIVISION 32, OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 22.3224 RELATING TO
CONTRACTOR STANDARDS.

WHEREAS, Chapter 2, Article 2, Division 32 of the City of San Diego Municipal Code sets forth general procedures for services, goods, and consultant contracts; and

WHEREAS, on July 9, 2008, the Budget and Finance Committee voted to forward amendments to Chapter 2, Article 2 , Division 32, Section 22.3224 (“Contractor Standards”) to the full City Council for consideration, in conjunction with various amendments to the City’s Living Wage Ordinance, codified at Chapter 2, Article 2, Division 42; and

WHEREAS, the City Council finds that these amendments to Chapter 2, Article 2 , Division 32, Section 22.3224, will enhance the effectiveness of the City’s various ordinances relating to contracting by establishing procedures for public determinations of non-responsibility and other mechanisms for ensuring contractor compliance with all local, state and federal laws;
NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, Division 32, of the San Diego Municipal Code is amended by amending Section 22.3224 to read as follows:

§ 22.3224 Contractor Standards

- (a) Prior to awarding a *contract* greater than \$50,000, the City shall make a determination that the *bidder* has the capability to fully perform the

contract requirements and the business integrity to justify the award of public tax dollars. Among the factors to be considered are: (1) financial resources, including financial sufficiency under California Labor Code Section 2810; (2) technical qualifications; (3) experience; (4) material, equipment, and expertise necessary to carry out the work; (5) a satisfactory record of performance; and (6) a satisfactory record of compliance with applicable statutes and regulations.

- (b) As part of its bid, proposal, or other application for a *contract*, a *bidder* will be required to submit a response, under penalty of perjury, that will seek to determine if the *bidder* meets the standards set forth in paragraph (a) of this Section.

- (c) During the term of a *contract*, the contractor shall comply with all applicable local, state and federal laws, including health and safety, labor and employment, and licensing laws, that affect the employees, worksite or performance of the *contract*. Each contractor shall notify the Purchasing Agent within fifteen calendar days upon receiving notification that a government agency has begun an investigation of the contractor that may result in a finding that the contractor is or was not in compliance with said laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by the contractor. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by an awarding authority.

- (d) Upon *award*, amendment, renewal, or extension of a *contract*, contractors shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with this section. Contractors shall ensure that their subcontractors whose subcontracts are greater than \$50,000 in value complete a Pledge of Compliance attesting under penalty of perjury to compliance with this section.
- (e) Violations of this Article may be reported to the City Manager who shall investigate such complaint. Whether based upon such complaint or otherwise, if the City has determined that the contractor has violated any provision of this Article, the City shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the City Manager may do one or both of the following:
- (1) Declare a material breach of the *contract* and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the *contract*; or
 - (2) Declare the contractor to be non-responsible in accordance with the procedures set forth in subsection (f) of this section.
- (f) Before declaring a contractor non-responsible, the City Manager shall notify the contractor of the proposed determination of non-responsibility, serve a summary of the information upon which the determination is

based, and provide the contractor with an opportunity to be heard in accordance with applicable law. Upon request, the contractor is entitled to a hearing before the Audit Committee. At such hearing, the contractor will be allowed to rebut adverse information and to present evidence that the contractor has the necessary quality, fitness and capacity to perform the work. The Audit Committee shall make a determination upholding or rejecting the City Manager's declaration, and shall forward its determination to the City Council for review and approval or rejection. A determination by the City Council shall be final and constitute exhaustion of the contractor's administrative remedies.

- (g) The Purchasing Agent shall maintain a list of contractors that have been determined to be non-responsible by the City. After two years from the date the contractor has been determined to be non-responsible, the contractor may request removal from the list by the City Manager. If the contractor can satisfy the City Manager that the contractor has the necessary quality, fitness, and capacity to perform work in accordance with the criteria set forth in subsection (a) of this section, its name shall be removed from the list. Unless otherwise removed from the list by the City Manager, names shall remain on the list for five years from the date of declaration of non-responsibility.
- (h) This section applies to all *contracts*, *Consultant* agreements, *Maintenance Contracts* and *Public Works Contracts*.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Sanna R. Singer
Deputy City Attorney

SRS:pev
10/03/08
10/15/08 COR.COPY
Or.Dept:City Atty
O-2009-49

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

OLD LANGUAGE: ~~STRIKEOUT~~
NEW LANGUAGE: DOUBLE UNDERSCORED

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2,
DIVISION 32, OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTION 22.3224 RELATING TO
CONTRACTOR STANDARDS.

§ 22.3224 **Contractor Standards**

- (a) Prior to awarding a *contract* ~~for Services~~ greater than \$50,000, the City shall make a determination that the *bidder* has the capability to fully perform the contract requirements and the business integrity to justify the award of public tax dollars. Among the factors to be considered are: (1) financial resources, including financial sufficiency under California Labor Code Section 2810; (2) technical qualifications; (3) experience; (4) material, equipment, and expertise necessary to carry out the work; (5) a satisfactory record of performance; and (6) a satisfactory record of compliance with applicable statutes and regulations.
- (b) As part of its bid, proposal, or other application for a *contract* ~~for Services~~, a *bidder* will be required to submit a response, under penalty of perjury, that will seek to determine if the *bidder* meets the standards set forth in paragraph (a) of this Section.
- (c) During the term of a *contract* ~~for Services~~, the contractor shall comply with all applicable local, state and federal laws, including health and

safety, labor and employment, and licensing laws, that affect the employees, worksite or performance of the *contract*. Each contractor shall notify the Purchasing Agent within fifteen calendar days upon receiving notification that a government agency has begun an investigation of the contractor that may result in a finding that the contractor is or was not in compliance with said laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by the contractor. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by an awarding authority.

(d) Upon award, amendment, renewal, or extension of a contract, contractors shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with this section. Contractors shall ensure that their subcontractors whose subcontracts are greater than \$50,000 in value complete a Pledge of Compliance attesting under penalty of perjury to compliance with this section.

(e) Violations of this Article may be reported to the City Manager who shall investigate such complaint. Whether based upon such complaint or otherwise, if the City has determined that the contractor has violated any provision of this Article, the City shall issue a written notice to the contractor that the violation is to be corrected within ten calendar days from receipt of notice. In the event the contractor has not corrected the violation, or taken reasonable steps to correct the violation within ten calendar days, then the City Manager may do one or both of the following:

- (1) Declare a material breach of the *contract* and exercise its contractual remedies thereunder, which are to include but not be limited to termination of the *contract*; or
- (2) Declare the contractor to be non-responsible in accordance with the procedures set forth in subsection (f) of this section.
- (f) Before declaring a contractor non-responsible, the City Manager shall notify the contractor of the proposed determination of non-responsibility, serve a summary of the information upon which the determination is based, and provide the contractor with an opportunity to be heard in accordance with applicable law. Upon request, the contractor is entitled to a hearing before the Audit Committee. At such hearing, the contractor will be allowed to rebut adverse information and to present evidence that the contractor has the necessary quality, fitness and capacity to perform the work. The Audit Committee shall make a determination upholding or rejecting the City Manager's declaration, and shall forward its determination to the City Council for review and approval or rejection. A determination by the City Council shall be final and constitute exhaustion of the contractor's administrative remedies.
- (g) The Purchasing Agent shall maintain a list of contractors that have been determined to be non-responsible by the City. After two years from the date the contractor has been determined to be non-responsible, the contractor may request removal from the list by the City Manager. If the

contractor can satisfy the City Manager that the contractor has the necessary quality, fitness, and capacity to perform work in accordance with the criteria set forth in subsection (a) of this section, its name shall be removed from the list. Unless otherwise removed from the list by the City Manager, names shall remain on the list for five years from the date of declaration of non-responsibility.

(h) This section applies to all *contracts, Consultant agreements, Maintenance Contracts and Public Works Contracts.*

SRS:pev
10/03/08
10/15/08 COR.COPY
Or.Dept:City Atty
O-2009-49

LIVING WAGE ORDINANCE: SUMMARY OF PROPOSED AMENDMENTS (10/20/08)

SDMC Section	Budget Comm. – 7/9/08 (In Current Draft Revision)	CPI – 7/9/08 (In Current Draft Revision)	Other (Requires Motion to Include)	Notes
Art. 2, Chap. 2, Div. 42				
§ 22.4201	No change	No change	No change	
§ 22.4202	No change	No change	No change	
§ 22.4205	<ul style="list-style-type: none"> Remove 90-day requirement from definition of “City facility agreement” Remove 90-day requirement from definition of “Service contract” Version B (Narrow): Amend list of “Services” to include paramedics and EMTs 	<ul style="list-style-type: none"> Add Civic Theatre to list of “City facilities” Amend definition of “Covered employee” to make non-substantive grammatical correction Amend definition of “Service contract” to expressly include Managed Competition services Amend list of “Services” to include street cleaning, waste collection and waste disposal, recycling, right-of-way maintenance, and water and wastewater maintenance contracts 	<p>No change</p> <p>At the first stakeholders’ meeting, Elite Show Services also proposed eliminating the \$25,000 contract amount requirement from the definitions of “City facility agreement” and “Service contract.”</p>	<p>At the July 9 Budget Comm. hearing, P. McNamara suggested inclusion of Balboa Theatre; however, it cannot legally be included at this time because it is owned by the Redevelopment Agency rather than the City.</p> <p>We have further modified CPI’s proposal to add the Civic Theatre by clarifying that theatre-related</p>

Exhibit D

SDMC Section	Budget Comm. – 7/9/08 (In Current Draft Revision)	CPI – 7/9/08 (In Current Draft Revision)	Other (Requires Motion to Include)	Notes
				activities taking place directly in front of the Civic Theatre would be covered by the LWO.
§ 22.4210	No change	No change	No change	
§ 22.4215(a)(4)	No change	Remove recycling or solid waste management franchises from public works exemption	No change	
§ 22.4215(a)(7)	<ul style="list-style-type: none"> Version A (Broad): Amend professional service exemption to generally remove service workers in professional fields Version B (Narrow): Amend professional services exemption to specifically remove paramedics and EMTs 	Amend professional service exemption to reference Cal. Labor Code section 515(a)	No change	We included CPI's proposal in both Version A and Version B of the ordinance because CPI's proposal would be consistent with either approach.
§ 22.4215(b)	No change	No change	No change	
§ 22.4215(c)	No change	Add presumption against a determination of exempt status	No change	
§ 22.4220	No change	No change	No change	
§ 22.4225(a)-(c)	No change	No change	No change	
§ 22.4225(d)	No change	Amend reporting requirement	After the first	

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SDMC Section	Budget Comm. – 7/9/08 (In Current Draft Revision)	CPI – 7/9/08 (In Current Draft Revision)	Other (Requires Motion to Include)	Notes
		to specify types of records to be kept, and require that records be kept for 3 years	stakeholder's meeting, CPI proposed adding Subdivision(e), which would require businesses to post information regarding the LWO and exempt status.	
§ 22.4230(a)(4)	No change	Impose mandatory, rather than discretionary, duty on courts to fine up to treble damages in the case of willful violations	No change	
§ 22.4230(a)(5)	No change	Impose mandatory, rather than discretionary, duty on courts to award attorneys' fees to the prevailing party in civil actions	No change	
§ 22.4230(b)	No change	Broaden and clarify retaliation provision	No change	
§ 22.4230(c)	No change	Impose mandatory, rather than discretionary, duty on City to investigate complaints	After the first stakeholder's meeting, CPI proposed that the City be required to convey the results of investigations within 60 days, with 30-day extensions permitted on a reasonable basis.	
§ 22.4230(d)	No change	Specify remedies available to the City for violations,	No change	If Council declines to adopt CPI's

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		including: declaring a material breach of contract, initiating debarment, <i>requesting a finding of non-responsibly under Art. 2, Chap. 2, Div. 32 (see “Notes” column),</i> requesting that City Attorney bring a civil action for unpaid wages and/or fines of up to \$100 per day for each violation		proposed amendments to Art. 2, Chap. 2, Div. 32 below, Section 22.4230(d) should be modified to delete the reference to Division 32.
§ 22.4230(e) -(f)	No change	No change	No change	
§ 22.4230(g) (NEW subsection)	Add Subsection (g) imposing a costs on service contractors to be designated for monitoring and enforcement	No change	No change	Although this is included in “Budget Comm.” column, CPI has expressed concurrence with this amendment.
§ 22.4235	No change	Impose annual reporting duty on City Manager	No change	
§ 22.4240	No change	No change	No change	
§ 22.4245	No change	No change	No change	
Art. 2, Chap. 2, Div. 32				
§ 22.3224(a)-(b)	No change	Amend Contractor Standards provisions to apply to all City contracts (as opposed to just service contracts), and include	No change	

Exhibit D

SDMIC Section	Budget Comm. – 7/9/08 (In Current Draft Revision)	CPI – 7/9/08 (In Current Draft Revision)	Other (Requires Motion to Include)	Notes
		financial sufficiency under Cal. Labor Code section 2810 as a factor in determining contractor responsibility		
§ 22.3224(c)	No change	Amend provision to expressly require contractor compliance with local laws	No change	
§ 22.3224(d) (NEW subsection)	No change	Add provision requiring contractors, and subcontractors whose contracts are more than \$50K in value, to complete a “Pledge of Compliance” under penalty of perjury	No change	
§ 22.3224(e) (NEW subsection)	No change	Add provision allowing City Manager to declare material breach of contract or determine contractor to be non-responsible if complaints are not resolved within 10 days	No change	
§ 22.3224(f) (NEW subsection)	No change	Add provision permitting contractors an opportunity to be heard before the Audit Committee; Audit Committee shall make a recommendation upholding or reversing City Manager’s determination of non-responsibility, and forward to City Council for final review	No change	
§ 22.3224(g)	No change	Add provision requiring	No change	

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SDMIC Section	Budget Comm. – 7/9/08 (In Current Draft Revision)	CPI – 7/9/08 (In Current Draft Revision)	Other (Requires Motion to Include)	Notes
<p>(NEW subsection)</p>		<p>Purchasing Agent to maintain list of non-responsible contractors, and permitting contractors to request removal from the list after 2 years; unless otherwise removed, contractors remain on the list for 5 years</p>		
<p>§ 22.3224(h) (NEW subsection)</p>	<p>No change</p>	<p>Add provision specifying that Contractor Standards provisions apply to goods/services contracts, consultant agreements, Maintenance Contracts, and Public Works contracts</p>	<p>No change</p>	