

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Michael J. Aguirre
CITY ATTORNEY

October 16, 2008

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

LIVING WAGE ORDINANCE: SUPPLEMENTAL REPORT ON BUDGET & FINANCE
COMMITTEE PROPOSALS

INTRODUCTION

On October 6, 2008, the Office of the City Attorney issued its Report to Council, summarizing and analyzing changes proposed to the City's Living Wage Ordinance ["LWO" or "Ordinance"] by the Budget and Finance Committee [Budget Committee]¹ and others [RC-2008-22]. In that Report, we also noted that we had held an informal meeting of stakeholders at the request of Budget Committee members, that we intended to hold a second such meeting, and that we would issue a further report on the results of that meeting. This supplemental report provides that information, updates a few minor matters discussed in our previous report, and attaches corrected draft ordinances.

DISCUSSION

1. Stakeholder Input

A. Second Stakeholder Meeting

On October 8, 2008, the Office of the City Attorney hosted the second of two informal stakeholders' meetings to discuss proposed revisions to the LWO.² The discussion included both the proposals that the Budget Committee had forwarded to the full Council on July 9, 2008, and other proposals from interested stakeholders. Direct invitees to the meeting included representatives of:

¹ It should be noted that the Budget Committee, by motion on March 5, 2008, instructed the Office of the City Attorney to draft a set of proposals to revise the LWO, and then on July 9, 2008, moved to forward those proposals to the full Council. The Committee's July 9, 2008 motion did not include any recommendation regarding passage, however. Thus, when this report refers to the "Budget Committee proposals," it is referring to their origin, rather than to any position for or against the proposals taken by the Committee.

² As noted in our October 6, 2008 Report on this topic, we also met with stakeholders on September 25, 2008.

- the San Diego Regional Chamber of Commerce,
- Sea World,
- the Boon Group,
- Elite Show Services,
- the Center on Policy Initiatives,
- Civic Theatre ushers,
- Civic Theatre management,
- Rural Metro,
- the Interfaith Council on Worker Justice,
- the Maintenance Cooperation Trust Fund,
- the Independent Budget Analyst
- Council Districts 2, 3, and 6, and
- the City's Living Wage Program and Purchasing Department.

In addition, all invitees were encouraged to forward the invitation to whomever they deemed appropriate. Attendees included representatives of:

- the Boon Group,
- Mission Bay Lessees,
- Civic Theatre management,
- Civic Theatre ushers,
- the California Restaurant Association,
- the Center on Policy Initiatives,
- the San Diego Regional Chamber of Commerce,
- Local 127,
- the City's Living Wage Program and Purchasing Department,
- the Independent Budget Analyst, and
- Council District 3.

At the meeting, there was extensive discussion of each aspect of the proposal by the Center on Policy Initiatives [CPI], as forwarded by the Budget Committee to the Council, as well as a brief review of the Budget Committee's proposals, which had been discussed at a previous stakeholders' meeting. Although the stakeholders discussed the various proposals in significant detail, asked many questions, presented rationales, and raised concerns, the group did not reach a consensus regarding either an overall approach to amending the LWO, nor the details of any particular proposal. Several issues did arise in discussion, however, that should be called to the Council's attention.

First, some stakeholders noted that while the LWO provides options to either pay the required wage rate entirely in cash (currently \$12.71 per hour) or to pay a somewhat lower rate (currently \$10.58 per hour) supplemented by health benefits, the Ordinance does not specify

what type of health benefits qualify a covered employer to pay the lower wage rate. In addition, the Ordinance does not expressly address whether employers are permitted to require a co-premium from employees.

Second, some stakeholders suggested that because some of the proposed revisions would specifically affect City facility agreements, that more outreach take place to alert City facility operators and affected contractors and subcontractors to the pending changes.

Third, Don Telford of San Diego Theatres, Inc., suggested that further clarity was needed regarding whether, if the LWO is extended to the Theatre, it would include activities that are run by the Theatre but actually take place outside the Theatre's walls, such as concessions on the Civic Center Plaza.

Fourth, some stakeholders suggested that the interplay of LWO revisions with the Managed Competition program needed further study, and might be illuminated by discussion with other cities that have implemented both programs simultaneously.

Fifth, representatives from CPI suggested the inclusion of mandatory posting requirements in the LWO, noting that dissemination of information to covered employees was a critical concern. CPI also suggested draft language that would require the City to resolve employee complaints within 60 days, with 30-day extensions when reasonable. However, the latter suggestion was not discussed at length by the group.

Finally, the stakeholders discussed CPI's proposal to amend Article 2, Chapter 2, Division 32 of the San Diego Municipal Code ("Contractor Standards") to include a public hearing procedure for determinations of contractor non-responsibility. Ms. Lani Lutar of the San Diego Regional Chamber of Commerce noted that the currently proposed 10-day period to cure reports of non-compliance might not provide contractors with sufficient time to address concerns.

B. Responses and Recommendations

1. Health Benefits

The LWO defines "health benefits rate" as "a minimum dollar amount per hour toward the cost of health and medical care insurance for employees and their dependents." **San Diego Municipal Code [SDMC] section 22.4205**. However, the LWO also authorized implementing rules, which the administration has adopted. See Rules Implementing the Living Wage Ordinance [Rules]. The Rules, Section A, provide greater clarity:

Health benefits may include the following types of insurance:
medical health coverage, dental, vision, mental
health, and disability income. For purposes of the LWO, retirement
benefits, accidental death and dismemberment insurance, life

insurance, and other benefits that do not provide medical or health-related coverage will not be credited toward the cost of providing *covered employees* with health benefits.

In addition, the Rules, Section D.2.d, provide that, “[a] co-premium may be required of a *covered employee* only if the cost of health and medical care insurance is greater than the minimum dollar amount per hour as specified in the LWO” (emphasis in original to indicate defined term).

In light of this, we believe that the Rules provide the greater clarity that some stakeholders sought, and do not recommend amending the Ordinance with regard to this issue.

2. City Facilities Outreach

As discussed above, the proposals affecting City facilities (e.g., the addition of the Civic Theatre as a City facility, and the elimination of the 90-day requirement for City facility agreements), were previously addressed at the July 9 Budget Committee hearing. Management for the Civic Theatre, Mr. Don Telford, was present at both stakeholders’ meetings. In addition, our office has separately informed administrators at the various City facilities of the pending changes.

3. Clarification of Civic Theatre

In light of the concerns raised at the second stakeholder’s meeting, we recommend clarifying SDMC section 22.4205(f), to state explicitly that inclusion of the Civic Theatre as a “City facility” is intended to result in the LWO applying to events occurring at the Civic Theatre, including any activities that occur outside the walls of the building on the plaza directly adjacent to the Theatre itself. We have included our proposed modification to Section 22.4205(f) in both corrected draft versions of the LWO, attached hereto as Exhibit A and Exhibit B.

4. Interplay with Managed Competition

We have not yet been able to identify any California cities that simultaneously implemented new Managed Competition Programs and new or newly revised Living Wage Ordinances. We do not believe any changes to the proposals as previously drafted are necessary to accommodate Managed Competition.

5. Posting Requirements and Timeline for City Investigations

We have included CPI's suggestions for mandatory posting requirements and a timeline for City investigations in the attached matrix (**Exhibit D**), discussed below. Because CPI did not present these proposals to the Budget Committee at the July 9 hearing, they are not included in either version of the draft LWO ordinance; however, Council could move to direct the City Attorney to include these suggestions in the final version of the ordinance. Notably, the Rules, Section D.4 currently require posting.

6. Contractor Standards

We are prepared to assist Council with any revisions to the Contractor Standards ordinance that it may wish to make in response to the comments above. While no stakeholders offered specific proposals in this area, the ordinance could be amended to extend the 10-day compliance period or to ease the administrative transition period by providing a delayed effective date for the revisions.

2. Corrections and Clarifications

This report attaches corrected versions of the LWO (**Exhibit A** and **Exhibit B**) and Contractor Standards ordinance (**Exhibit C**), which make the above-noted change regarding Civic Theatre events, and make other non-substantive typographical corrections.³

In addition, it bears noting that the version of the LWO revisions before the Council includes a reference, at Section 22.4230(d)(3), to a "determination of non-responsibility under division 32." This reference is to a new CPI proposal to amend Division 32 to provide for such a finding, which does not exist under current law. Thus, if the Council chooses not to make the proposed addition to Division 32, this reference will need to be deleted.

3. Attached Matrix

Because of the complex interplay of the various proposals, we have provided a matrix of proposals, attached to this Report. This document is intended to permit the Council to easily identify individual revisions, their origin, and whether they are included in the draft ordinances before the Council.

The matrix presents proposed revisions in three categories, which are shown in the second, third, and fourth columns. The first describes the Budget Committee's proposals arising out of its March 5, 2008 meeting, which our office drafted at the Budget Committee's request

³ One correction of note is that, in the previous versions of the draft LWO, the definition of "Covered employee" appeared in underline indicating that the entire definition was new. In fact, the definition exists in the current LWO. CPI has proposed only a minor, grammatical change to this definition. This change is now accurately reflected.

and presented at the July 9, 2008 hearing. The second describes CPI's proposals, which were presented to the Budget Committee on July 9, 2008, and included in the Committee's motion for forwarding to the full Council. All proposed revisions in these two categories have been included in the draft ordinances as placed on the Council docket, because the Budget Committee so moved. Thus, if the Council approves these ordinances without amendment, these provisions will take effect. Disapproval of any individual provision in these two categories would require a motion to amend the proposed ordinance to remove that provision.

The last category includes proposals to revise the LWO in ways that were not included in the Budget Committee's motion. Such revisions were, therefore, not included in the drafts we provided to the Council for consideration. In response to the Budget Committee's directive that we solicit stakeholder input, we invited such additional proposals, and have included those proposals in the third section of the matrix. As discussed above, proposals in this section are not incorporated into the drafts that we have placed before the Council at the Committee's direction. Therefore, Council would be required to specifically move for their inclusion in the final ordinance. These additional proposals include:

- CPI's proposal to impose a mandatory requirement to post information about the LWO in workplaces;
- CPI's proposal to impose a mandatory deadline for resolution of LWO complaints by City staff; and
- Elite's proposal to eliminate the \$25,000 contract size threshold, below which the LWO does not apply, discussed in our October 6 Report (RC-2008-22, p. 6)

CONCLUSION

With these additions to our previous Report, we stand ready to assist the Council in its decisions on revising the LWO.

Respectfully submitted,

MICHAEL J. AGUIRRE
City Attorney