

(O-98-137)

ORDINANCE NUMBER O- 18552 (NEW SERIES)

ADOPTED ON AUG 03 1998

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 2, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION
28 PERTAINING TO SERVICE WORKER RETENTION

WHEREAS, the City of San Diego awards many contracts to private firms, to provide services at City facilities, and leases City facilities to private firms to operate on behalf of the City; and

WHEREAS, the competitive process involved in the award of such contracts and leases sometimes results in replacing one contractor with a new or different contractor; and

WHEREAS, such a process can sometimes result in the loss of jobs for employees of the former contractor at a facility; and

WHEREAS, the loss of such employees can lead to both decreased efficiency at the City facility, and increased unemployment and demand for social services, neither of which are desirable results for the City; and

WHEREAS, the interests of both the City's taxpayers and the employees are served by the retention of the existing employees, where feasible and commercially reasonable for the new or different contractor; NOW, THEREFORE,

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

Section 1. That Chapter II, Article 2 of the San Diego Municipal Code is hereby

amended by adding Division 28, to read as follows:

DIVISION 28

Service Worker Retention

SEC. 22.2801. Purpose and Intent.

(a) The City awards many contracts to private firms to provide services at City Facilities. The City also leases City Facilities to private firms to operate. These contractors and lessees may subcontract all or a portion of the services to others. At the conclusion of the term of a contract with the City or the expiration of a subcontract, the process of competition sometimes results in the award of the contract to a new or different contractor.

(b) It is the experience of the City that the reasons for changing contractors at a City Facility do not necessarily include a need to replace workers presently performing services who already have useful knowledge about the workplace where the services are performed. Incumbent workers may have invaluable knowledge and experience with the work schedules, practices, patrons or clients that are particular to the City Facility. Replacing these workers could decrease efficiency and result in a disservice to the City, the City Facility and its citizens. Retaining existing service workers could avoid such problems, enhance continuity of service to citizens, and reduce the likelihood of labor disruptions or disputes at the City Facility.

(c) It is unacceptable that contracting decisions involving the expenditure of City funds could result in the immediate loss of employment to workers at a City Facility who did not cause or contribute to the need to change contractors. It is the intent of the Council to provide these incumbent employees with a reasonable opportunity to obtain possible employment with the new contractor at a City Facility. It is the additional intent of the Council to avoid or minimize the

disruption in service at City Facilities which may be caused by a change in contractors.

SEC. 22.2802. Definitions.

As used in this Division:

(a) "City Facility" means sports, entertainment or convention building structures in excess of 17,000 square feet in floor space that are owned, operated or leased by the City.

(b) "Contract" means a contract, subcontract or other agreement let by, or on behalf of, the City to provide Services at a City Facility.

(c) "Contractor" means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a Contract, subcontract or other agreement to provide Services at a City Facility.

(d) "Covered Employee" means an Employee, as defined in this division, who has been employed by the Terminated Contractor for a period of 12 months or longer at the site or sites covered by the Terminated Contractor's contract with the City.

(d) "Employee" means any service employee of a Contractor, including but not limited to: hotel employees; restaurant, food service or banquet employees; concession employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; and clerical employees. "Employee" does not include managerial, supervisory, or confidential employees, or those persons required to possess an occupational license or certificate.

(e) "New Contractor" means the Contractor who has been awarded the Contract to provide Services at a City Facility, who will replace the Terminated Contractor when the Terminated Contractor's contract terminates.

(f) "Services" means those services performed by Covered Employees at or for the City Facility.

(g) "Terminated Contractor" means the Contractor providing services at a City Facility at the point in time that a Contract for such services is awarded to a New Contractor.

SEC. 22.2803. Transition Employment and Notice Period

(a) Within ten days of notice of the termination of a Contract between a Terminated Contractor and the City, or a subcontract thereunder, the Terminated Contractor shall provide to the New Contractor the names, addresses, dates of hire and employment occupation classification of all Covered Employees of the Terminated Contractor.

(b) A New Contractor, awarded a Contract to perform similar services as were provided by the Terminated Contractor, shall retain the Covered Employees for a 90 day transition period. The New Contractor may retain the Covered Employees at the same terms and conditions of employment as existed under the Terminated Contractor; establish new terms and conditions for those Covered Employees; or set them as required by law. At the time the Covered Employees are retained, the New Contractor shall advise them that a written performance evaluation will be provided at the end of the 90 day transition period.

(c) If at any time during the 90 day transition period, the New Contractor determines that fewer employees are required to perform the services under the Contract than were employed by the Terminated Contractor, the New Contractor shall retain such Covered Employees as are necessary, determined by date of hire within job classification. The New Contractor shall maintain a preferential hiring list of those Covered Employees not initially retained, for purposes of hiring those Covered Employees during the 90 day transition period should additional

employees become necessary to perform services under the contract.

(d) Except as provided in subsection (c) of this section, during the 90 day transition period the New Contractor shall not discharge, without cause, a Covered Employee retained pursuant to this division. "Cause" for purposes of this section shall include, but not be limited to, the Covered Employee's conduct while in the employ of the Terminated Contractor that contributed to the termination of the Contract for fraud or poor performance.

(e) At the end of the 90 day transition period, the New Contractor shall provide a written performance evaluation to each Covered Employee. Notwithstanding anything contained in or concluded by the written performance evaluation, the New Contractor shall have no obligation to retain any Covered Employee beyond the end of the 90 day transition period, and the Covered Employees shall have no right or expectation of continued employment with the New Contractor beyond the 90 day transition period by virtue of this division. Any Covered Employee retained by the New Contractor beyond the 90 day transition period shall have no further rights under this division, but shall be governed by other laws applicable to private employment relationships in the State of California and the City.

(f) Nothing in this division shall be construed as creating any employment relationship, either during or beyond the 90 day transition period, between the City and the Covered Employees.

SEC. 22.2804 Enforcement

(a) A Covered Employee who has been discharged by a New Contractor in violation of this division may bring a private cause of action in the state court against the New Contractor and may be awarded:

(1) Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(A) The average regular rate of pay received by the Covered Employee during the last 3 years of the Covered Employee's employment in the same occupation classification; or

(B) The final regular rate received by the Covered Employee from either the Terminated Contractor or the New Contractor.

(2) Costs of benefits, if any, the New Contractor would have incurred for the Covered Employee under the New Contractor's benefit plan.

(b) If the Covered Employee is the prevailing party in any suit brought pursuant to this division, the court shall award reasonable attorney's fees and costs of suit, in addition to any other award of damages.

(c) All Contracts subject to this division shall provide that a violation of this division shall entitle the City to terminate the Contract and to pursue such other legal remedies as may be available.

(d) Notwithstanding any other provision of this Municipal Code or any other ordinance to the contrary, no criminal penalty shall attach for a violation of this division.

SEC. 22.2805 Availability of Other Forms of Relief


(a) This division shall not be construed to limit a Covered Employee's rights against the Terminated Contractor or the New Contractor under other applicable laws, including any right the Covered Employee may have to bring suit for wrongful termination against the Terminated Contractor or the New Contractor.

SEC. 22.2806 Severability

(a) If any severable provision or provisions of this division, or any application thereof, is held invalid, such invalidity shall not affect other provisions or applications of the division that can be given effect notwithstanding such invalidity.

Section 2. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
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Deputy City Attorney

TCM:rc
7/13/98
Or.Dept:Mayor
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