

ORDINANCE NUMBER O- 15809 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 24 2008

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

(r) Right-of-way maintenance; and

(s) 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.

(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. The *covered employer* will maintain records documenting compliance for at least three years, but will not be required to maintain such records for more than seven years, after the *City's* final payment on the *service contract, financial assistance agreement, or City facility agreement*; such records shall be made available to the *City* upon request. The records to be maintained shall include all wage records, proof of payment 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).

(e) *Businesses* shall post a notice to employees informing them of their rights under this division, and any applicable exemptions from the wage rate requirements of this division. The poster must be at the site of work, or a site frequently accessed by workers, in a prominent and accessible place where it can easily be seen by workers.

§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, and shall convey the results of the investigation to the complainant within 60 days, with reasonable 30-day extensions. 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 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 thirty 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.]

§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

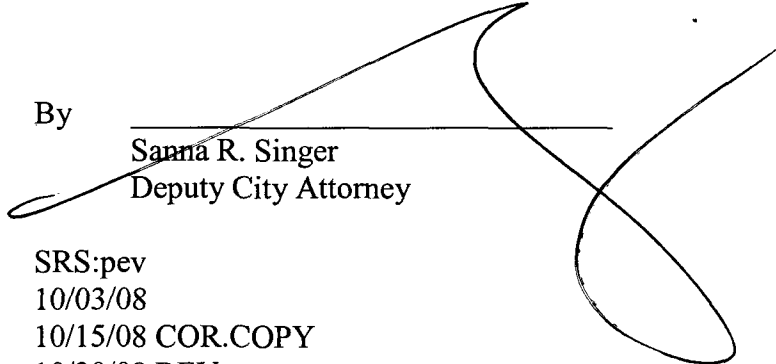
[No change in text.]

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. The amendments to Section 22.4230 shall take effect and be in force on the thirtieth day from and after the ordinance's final passage. The remainder of the amendments shall take effect and be in force on January 1, 2010.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Sanna R. Singer
Deputy City Attorney



SRS:pev
10/03/08
10/15/08 COR.COPY
10/30/08 REV.
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 NOV 18 2008.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 11-24-08
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor