

ORDINANCE NUMBER O- 20352 (NEW SERIES)

DATE OF FINAL PASSAGE FEB 26 2014

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 42 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 22.4201, 22.4202, 22.4205, 22.4210, 22.4215, 22.4220, 22.4225, 22.4230, 22.4235, 22.4240, AND 22.4245, ALL PERTAINING TO THE CITY OF SAN DIEGO LIVING WAGE ORDINANCE.

WHEREAS, the City's Living Wage Ordinance has been in effect since 2005; and

WHEREAS, the primary purpose of the City's Living Wage Ordinance is to ensure that businesses with whom the City contracts provide their employees with a living wage and either health benefits or a payment towards the costs of health insurance, thus creating jobs that help keep employees and their families out of poverty; and

WHEREAS, the proposed amendments provide for enhanced enforcement and clarification of the City's Living Wage Ordinance and advance the ordinance's intended purposes; and

WHEREAS, the Committee on Economic Development and Intergovernmental Relations held a public hearing on January 15, 2014 and considered the proposed amendments to the City's Living Wage Ordinance; and

WHEREAS, the Committee on Economic Development and Intergovernmental Relations has forwarded the proposed amendments for consideration of the full Council; 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 22.4201, 22.4202, 22.4205, 22.4210, 22.4215, 22.4220, 22.4225, 22.4230, 22.4235, 22.4240, and 22.4245, to read as follows:

§22.4201 Purpose and Intent

The *City* awards many taxpayer-funded agreements to *businesses* that provide *services* to the public and to the *City* or that are intended to promote economic development, job creation, and retention. The *City* also owns, operates, manages, or leases sports, entertainment, or convention facilities and contracts with *businesses* to use these facilities or provide *services* at these locations to the public. It is the experience of the *City* that many of these *services* to the public and to the *City* are provided by workers who live at or below the poverty line. This Division provides that when agreements, including *service contracts*, *financial assistance agreements*, and *City facilities agreements* are extended by the *City* to *businesses* these taxpayer funded benefits are used in a way that advances the interests of the *City* as a whole, by creating jobs that keep workers and their families out of poverty. This Division therefore requires *covered employers* and their subcontractors to pay their employees a wage that will enable a full-time worker to meet basic needs and avoid economic hardship. Paying *services* employees a living wage is intended to improve the quality of *services* provided to the *City* and to the public by reducing high turnover, absenteeism, and instability in the workplace. This Division also promotes the *City's* policies and programs that seek to meet the employment and economic development needs of

the *City* and its workforce. *Businesses* that do not fall into any of the above described categories are not required to comply with this Division.

§22.4202 Citation

This Division shall be cited as the City of San Diego Living Wage Ordinance.

§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:

Affordable Care Act means the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, and any subsequent federal legislation and applicable federal regulations.

Business [No change in text.]

City means the City of San Diego, its organizational subdivisions, agencies, offices, or boards, but does not include independent agencies, such as the Housing Authority and the Retirement Board, each of which is encouraged to adopt its own living wage policy.

City facility [No change in text.]

City facility agreement means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility*. *City facility agreement* includes

(a) subleases or other agreements for use of the *City facility* for thirty 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 ninety days.

City facility employer means any *business* that has entered into a *City facility agreement*. For the purposes of this Division, *City facility employer* includes any sublessee, subcontractor, or concessionaire that retains employees to provide *services* at a *City facility*.

City Manager [No change in text.]

Compensated leave means any paid sick leave, vacation leave, or personal leave provided by a *covered employer* to a *covered employee*. *Compensated leave* does not include paid holidays that are provided by a *covered employer* under the *covered employer's* established policy.

Covered employee [No change in text.]

Covered employer means any *service contractor*, *financial assistance recipient*, *City facility employer*, or any authorized agent thereof.

Financial assistance agreement means an agreement between the *City* and a *business* to provide direct financial assistance with the expressly articulated and identified purpose of encouraging, facilitating, supporting, or enabling: (a) economic development, job creation, or job retention; or (b) tourism, arts, and cultural programs. As to economic development, job creation, or job retention, this Division applies to *financial assistance agreements* with a combined value over a period of five years of \$500,000 or more. As to tourism, arts, and cultural programs, this Division applies to *financial assistance agreements* with a combined annual value of \$750,000 or more. Direct financial assistance includes

funds, below-market loans, rebates, deferred payments, forgivable loans, land write-downs, infrastructure or public improvements, or other action of economic value identified in the *financial assistance agreement*. Financial assistance does not include below-market leases to non-profit organizations or indirect financial assistance, such as that provided through broadly applicable tax reductions or services performed by *City* staff. *Financial assistance agreement* includes subcontracts to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

Financial assistance recipient means any *business* that has entered into a *financial assistance agreement*. For purposes of this Division, *financial assistance recipient* includes all subcontractors retained by a *business* to perform *services* at the site that is the subject of the *financial assistance agreement*, or for the program that is the subject of the *financial assistance agreement*.

Health benefits means benefits related to medical, dental, vision, and other health services, and excludes benefits related to retirement, disability, accidental death and dismemberment insurance, and life insurance.

Health benefits rate means a minimum dollar amount per hour toward the cost of *health benefits* for *covered employees* and their dependents.

Prime service contractor means any *business* that enters into a contract for *services* directly with the *City*.

Service contract means a contract between the *City* and a *business*, and any applicable subcontracts or franchises, to furnish *services*. For purposes of this

Division, *service contract* includes all contracts for *services* provided through the managed competition program under Charter section 117(c).

Service contractor means any *business* that has been awarded a *service contract* subject to this Division. For purposes of this Division, *service contractor* includes all subcontractors or franchisees retained by a *business* to perform any or all of the functions covered by a *service contract*.

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 (s) [No change in text.]

Unfair immigration-related practice has the same meaning as in California Labor Code section 1019(b)(1).

Willful violation means a *covered employer's* intentional failure or refusal to perform an act which is required under this Division. Such failure or refusal need not be based on a deliberate malicious purpose or intent to defraud. A *covered employer's* failure or refusal to comply with this Division is prima facie evidence of a *willful violation* if the contract for *services* states that this Division applies.

§22.4210 Applicability of Living Wage Ordinance

- (a) This Division shall apply to:
- (1) any *service contract*, including any applicable subcontract, except for *service contracts* with a combined value of payments of \$25,000 or less that are entered into, awarded, amended, renewed, or extended before April 1, 2014. Compliance with this Division is required during the term of the *service contract*.
 - (2) any *financial assistance agreement* subject to the \$500,000 threshold, including any applicable subcontract. Compliance with this Division is required for a period of five years after the threshold amount has been received by the *business*.
 - (3) any *financial assistance agreement* subject to the \$750,000 threshold, including any applicable subcontract. Compliance is required for one year after the threshold amount has been received by the *business*.
 - (4) any *City facility agreement*, including any applicable sublease, subcontract, or concession agreement. Compliance with this Division is required during the term of the *City facility agreement*.
- (b) *Service contracts, financial assistance agreements, and City facility agreements* shall not be subdivided into two or more contracts that logically should be made as a single transaction if the purpose of the subdividing is to avoid the requirements of this Division.

- (c) For any contract subject to this Division, the *prime service contractor* must use its own employees to perform at least fifty percent of the work described in the contract.

§22.4215 Exemptions

- (a) The following contracts are exempt from the requirements of this Division:
 - (1) contracts subject to federal or state law or regulations that preclude the applicability of this Division's requirements;
 - (2) contracts that involve programs where the *City* shares management authority with other jurisdictions, unless all the signatory jurisdictions agree to the applicability of this Division's requirements to the contract;
 - (3) through (8) [No change in text.]
- (b) Notwithstanding section 22.4215(a)(1)-(8), *City facility agreements* are not exempt from the requirements of this Division.
- (c) The following *businesses*, even if otherwise qualified as a *covered employer*, are exempt from the requirements of this Division:
 - (1) through (2) [No change in text.]
- (d) 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.

§22.4220 Payment of Living Wage and Provision of Benefits

- (a) *Covered employers* subject to this Division must pay *covered employees* the hourly wage rate and *health benefits rate* posted on the *City's* web site for that fiscal year.
- (b) The hourly wage rates will be upwardly adjusted each July 1 to reflect the change in the Consumer Price Index for All Urban Consumers for the San Diego – Carlsbad – San Marcos Metropolitan Statistical Area for the twelve-month period preceding December 31. The *health benefits rate* will be consistent with the *Affordable Care Act* and any other applicable federal and state law provisions. Prior to April 1 of each year, the *City* will calculate the new rates and provide notice to all *covered employers* by posting on the *City's* web site the rates in effect for the next fiscal year.
- (c) *Covered employers* must provide to each *covered employee* a minimum of ten days per year of *compensated leave*. *Compensated leave* must vest as accrued, in accordance with applicable state law. Part-time employees must accrue *compensated leave* at a rate proportional to full-time employees. *Covered employees* must be eligible to use accrued days off after the first six months of employment or consistent with employer policy, whichever is earlier.
- (d) *Covered employers* must also permit *covered employees* to take a minimum of ten additional days of uncompensated leave per year to be used for sick leave for the illness of the *covered employee* or a member of his or her immediate family, where the *covered employee* has exhausted

all accrued *compensated leave*. This section does not mandate the accrual from year to year of uncompensated days off.

- (e) *Covered employers* must pay *covered employees* the state prevailing wage rate as specified in section 22.3019 if the prevailing wage rate is higher than the wage rate specified in this Division. For purposes of this section, “wage rate” means the sum of required hourly wages, *health benefits*, and *compensated leave*.

§22.4225 Reporting and Notification Requirements

- (a) Every *service contract*, *financial assistance agreement*, and *City facility agreement* must require that the party contracting with the *City* be subject to the terms of this Division and all regulations and rules promulgated under this Division and that all applicable subcontractors, sublessees, and concessionaires comply with the terms of this Division and all regulations and rules promulgated under this Division.
- (b) Each *covered employer* must annually distribute a notice with the first paycheck to occur after July 1 to its *covered employees* of the requirements of this Division, the possible availability of health insurance coverage under the *Affordable Care Act*, and the possible availability of the Earned Income Tax Credit.
- (c) Each *covered employer* must file a living wage certification with the *City Manager* within thirty days of becoming a *covered employer*. *Covered employers* must ensure that all applicable subcontractors, sublessees, and concessionaires file a living wage certification within thirty days of

becoming covered by the requirements of this Division. The living wage certification must be completed on a form provided by the *City Manager*.

- (d) Each *covered employer* must file with the *City Manager* an annual report documenting compliance with this Division. The *covered employer* must maintain records documenting compliance for at least three years, but is not required to maintain 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 must be made available to the *City* upon request. The records to be maintained must include all wage records, proof of payment for *health benefits, covered 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) Each *covered employer* must post a notice informing *covered employees* of their rights under this Division, and any applicable exemptions from the hourly wage rate requirements of this Division. The poster must be at the site of work, or a site frequently accessed by *covered employees*, in a prominent and accessible place where it can easily be seen by *covered employees*. Each *covered employer* must update this notice annually and within thirty days of receiving notice from the *City* of the amended hourly wage rates under this Division.

§22.4230 Enforcement and Remedies

- (a) A *covered employee* claiming a violation of this Division may file an action against a *covered employer* in a court of competent jurisdiction within three years after discovery of the alleged violation.
- (b) The court may award the following monetary damages to a *covered employee* who proves a violation of this Division:
 - (1) For failure to pay the required hourly wage on applicable *service contracts, financial assistance agreements, and City facilities agreements*, the difference between the hourly wage required by this Division and the amount actually paid to the *covered employee*, plus interest, and penalties for *willful violations*.
 - (2) For failure to pay the *health benefits rate* on applicable *service contracts, financial assistance agreements, and City facilities agreements*, the difference between the *health benefits rate* required by this Division and the amount actually paid towards the *health benefits rate* for the *covered employee*, plus interest, and penalties for *willful violations*.
 - (3) For retaliation for exercise of any rights provided for under this Division, reinstatement, back pay, or any other relief that a court may deem appropriate.
 - (4) For a *willful violation* of this Division, a penalty of up to three times the amount of damages awarded pursuant to section 22.4230(b)(1) and/or (b)(2).

- (5) Reasonable attorneys' fees and costs to a *covered employee* who prevails in any such private action.
- (c) The court may award reasonable attorneys' fees to a *covered employer* who prevails if the *covered employee's* suit is found to be frivolous.
- (d) A *covered employer* shall not:
- (1) Retaliate against a *covered employee* who alleges non-compliance with this Division or cooperates with an investigation regarding compliance with this Division. Retaliation includes but is not limited to *unfair immigration-related practices*, or any other discriminatory practice that violates federal or state law; or
 - (2) Discharge, reduce in compensation, or otherwise discriminate against any *covered employee* for complaining with regard to the *covered employer'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.
- (e) 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 sixty days, with reasonable thirty-day extensions. However, the *City's* failure to investigate an alleged violation or otherwise enforce any of the provisions

of this Division does not create any right of action to recover damages from the *City* by any person, including but not limited to an aggrieved *covered employee*.

- (f) Whether based upon a complaint or otherwise, where the *City Manager* has determined that a *covered employer* has violated this Division, the *City Manager* shall issue a written notice to the *covered employer* that the violation is to be corrected within thirty days. If the *covered employer* does not demonstrate to the *City Manager* within such period that it has substantially cured any material violation, the *City Manager* shall take one or more of the following enforcement actions:

- (1) Declare a material breach of the *service contract*, *financial assistance agreement*, or *City facility agreement* and exercise the *City's* contractual remedies, which are to include, but not be limited to, suspension or 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 Chapter 2, Article 2, Division 8 to debar the *covered employer* from future *City* contracts for three years or until all penalties or restitution have been fully paid, whichever occurs last.
- (3) Request a determination of non-responsibility under Chapter 2, Article 2, Division 30.
- (4) Request that the City Attorney bring a civil action against the

covered employer seeking any legal remedies, including but not limited to:

- (A) Where applicable, payment to the *covered employee* of all unpaid wages or *health benefits* prescribed by this Division, plus interest;
 - (B) A fine payable to the *City* in the amount of up to one hundred dollars (\$100) per *covered employee* for each violation for each day the violation remains uncured; and
 - (C) The *City's* administrative costs.
- (5) Refer violations of this Division to appropriate local, state, and/or federal agencies and authorities.
- (g) If a *covered employer* is determined by the *City Manager* to have violated this Division two or more times in a two-year period, the *City Manager* shall take enforcement action pursuant to section 22.4230(f), even if the *covered employer* has substantially cured any material violations.
 - (h) A violation of this Division is not subject to prosecution as a misdemeanor or infraction, notwithstanding any other provision of this Code.
 - (i) This Division is not to be construed to limit a *covered employee's* right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights, nor is exhaustion of remedies under this Division a prerequisite to the assertion of any other such right.

§22.4235 Administration

- (a) The *City Manager* shall develop and implement administrative policies, rules, and regulations to carry out the intent of this Division, including procedures for handling complaints by *covered employees*. The *City Manager* shall monitor compliance, including conducting periodic reviews of appropriate records maintained by *covered employers* to verify compliance and to investigate claimed violations. To secure compliance with this Division, the *City Manager* is authorized to take any appropriate enforcement action pursuant to Chapter 1, Article 2, Division 1 of this Code.
- (b) The *City Manager* is authorized to create a citizens advisory committee for the purpose of making recommendations regarding how the policies and purposes of this Division may be advanced.
- (c) [No change in text.]

§22.4240 Collective Bargaining Agreements

The provisions of this Division shall not be superseded by any collective bargaining agreement unless the supersession is specifically agreed to in writing by the parties to the collective bargaining agreement.

§22.4245 Severability

All provisions in this Division are intended to be consistent with all applicable federal and state laws. If any provision of this Division is declared legally invalid by a final judgment rendered in a court of competent jurisdiction, the provision declared invalid shall be deemed to be severable to the extent that the remaining

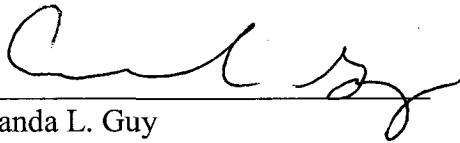
provisions of this Division can be enforced in a manner that substantially carries out the objectives of this Division.

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

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

APPROVED: JAN I. GOLDSMITH, City Attorney

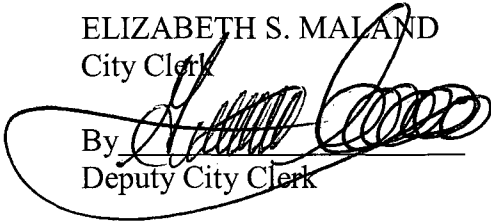
By


Amanda L. Guy
Deputy City Attorney

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I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of ~~FEB 10 2014~~.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved pursuant to Charter section 265(i):

(date)

TODD GLORIA, Council President

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 42 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 22.4201, 22.4202, 22.4205, 22.4210, 22.4215, 22.4220, 22.4225, 22.4230, 22.4235, 22.4240, AND 22.4245, ALL PERTAINING TO THE CITY OF SAN DIEGO LIVING WAGE ORDINANCE.

§ 22.4201 Purpose and Intent

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wage that will enable a full-time worker to meet basic needs and avoid economic hardship. Paying ~~service~~ services employees a living wage is intended to improve the quality of ~~services~~ services provided to the *City* and to the public by reducing high turnover, absenteeism, and instability in the workplace. This ~~d~~Division also promotes the *City's* policies and programs that seek to meet the employment and economic development needs of the *City* and its workforce. ~~Private~~ b*Businesses* that do not fall into any of the above described categories are not required to comply with this ~~d~~Division.

§22.4202 Citation

This ~~d~~Division shall be cited as the City of San Diego Living Wage Ordinance.

§22.4205 Definitions

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

Affordable Care Act means the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, and any subsequent federal legislation and applicable federal regulations.

Business [No change in text.]

City means the City of San Diego, its organizational subdivisions, agencies, offices, or boards, but does not include independent agencies, such as the Housing Authority, ~~Redevelopment Agency~~, and the Retirement Board, each of which is encouraged to adopt its own living wage policy.

City facility [No change in text.]

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~~ thirty 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~~ ninety days.

City facility employer means any *business* that has entered into a *City facility agreement*. For the purposes of this ~~d~~Division, *City facility employer* includes any sublessee, subcontractor, or concessionaire that retains employees to provide *services* at a *City facility*.

City Manager [No change in text.]

Compensated leave means any paid sick leave, vacation leave, or personal leave provided by a covered employer to a covered employee. Compensated leave does not include paid holidays that are provided by a covered employer under the covered employer's established policy.

Covered employee [No change in text.]

Covered employer means any *service contractor*, *financial assistance recipient*, ~~or~~ *City facility employer*, or any authorized agent thereof.

Financial assistance agreement means an agreement between the *City* and a *business* to provide direct financial assistance with the expressly articulated and identified purpose of encouraging, facilitating, supporting, or enabling: (a)

economic development, job creation, or job retention; or (b) tourism, arts, and cultural programs. As to economic development, job creation, or job retention, this ~~d~~Division ~~shall apply~~ applies to *financial assistance agreements* with a combined value over a period of five years of \$500,000 or more. As to tourism, arts, and cultural programs, this ~~d~~Division ~~shall apply~~ applies to *financial assistance agreements* with a combined annual value of \$750,000 or more. Direct financial assistance includes funds, below-market loans, rebates, deferred payments, forgivable loans, land write-downs, infrastructure or public improvements, or other action of economic value identified in the *financial assistance agreement*. Financial assistance does not include below-market leases to non-profit organizations or indirect financial assistance, such as that provided through broadly applicable tax reductions or services performed by *City* staff. *Financial assistance agreement* includes subcontracts to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

Financial assistance recipient means any *business* that has entered into a *financial assistance agreement*. For the purposes of this ~~d~~Division, *financial assistance recipient* includes all subcontractors retained by a *business* to perform *services* at the site that is the subject of the *financial assistance agreement*, or for the program that is the subject of the *financial assistance agreement*.

Health benefits means benefits related to medical, dental, vision, and other health services, and excludes benefits related to retirement, disability, accidental death and dismemberment insurance, and life insurance.

Health benefits rate means a minimum dollar amount per hour toward the cost of ~~health and medical care~~ health benefits insurance for ~~employees~~ covered employees and their dependents.

Prime service contractor means any business that enters into a contract for services directly with the City.

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~~ purposes of this ~~d~~Division, *service contract* includes all contracts for *services* provided through the managed competition program under Charter section 117(c).

Service contractor means any business that has been awarded a *service contract* subject to this ~~d~~Division. For ~~the~~ purposes of this ~~d~~Division, *service contractor* includes all subcontractors or franchisees retained by a business to perform any or all of the functions covered by a *service contract*.

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 ~~d~~Division and designated in a *City facility agreement*, *financial assistance agreement*, or *service contract*:

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

Unfair immigration-related practice has the same meaning as in California Labor Code section 1019(b)(1).

Willful violation means a covered employer's intentional failure or refusal to perform an act which is required under this Division. Such failure or refusal need

not be based on a deliberate malicious purpose or intent to defraud. A covered employer's failure or refusal to comply with this Division is prima facie evidence of a willful violation if the contract for services states that this Division applies.

§22.4210 Applicability of Living Wage Ordinance

(a) This ~~d~~Division shall apply to:

- (1) any *service contract*, including any applicable subcontract, except for service contracts with a combined value of payments of \$25,000 or less that are entered into, awarded, amended, renewed, or extended on or after July 1, 2006 before April 1, 2014.

Compliance with this ~~d~~Division is required during the term of the *service contract*. ~~Notwithstanding the foregoing, service contracts for child care services are exempt from the requirements of this division until July 1, 2008.~~

- (2) any *financial assistance agreement* subject to the \$500,000 threshold, including any applicable subcontract, ~~entered into, awarded, amended, renewed, or extended on or after July 1, 2006.~~

Compliance with this ~~d~~Division is required for a period of five years after the threshold amount has been received by the *business*.

- (3) any *financial assistance agreement* subject to the \$750,000 threshold, including any applicable subcontract ~~entered into, awarded, amended, renewed, or extended on or after July 1, 2007.~~

Compliance is required for one year after the threshold amount has been received by the *business*.

- (4) any *City facility agreement*, including any applicable sublease, subcontract, or concession agreement ~~in effect on July 1, 2007.~~

Compliance with this ~~d~~Division is required during the term of the *City facility agreement*.

- (b) *Service contracts, financial assistance agreements, and City facility agreements* shall not be subdivided into two or more contracts that logically should be made as a single transaction if the purpose of the subdividing is to avoid the requirements of this ~~d~~Division.

- (c) For any contract subject to this Division, the *prime service contractor* must use its own employees to perform at least fifty percent of the work described in the contract.

§22.4215 Exemptions.

- (a) ~~Except for *City facility agreements*,~~ The following contracts are exempt from the requirements of this ~~d~~Division:

(1) contracts subject to federal or state law or regulations that preclude the applicability of this ~~d~~Division's requirements;

(2) contracts that involve programs where the *City* shares management authority with other jurisdictions, unless all the signatory jurisdictions agree to the applicability of this ~~d~~Division's requirements to the contract;

(3) through (8) [No change in text.]

- (b) Notwithstanding section 22.4215(a)(1)-(8), *City facility agreements* are not exempt from the requirements of this Division.

~~(b)(c)~~ The following *businesses*, even if otherwise qualified as a *covered employer*, are exempt from the requirements of this ~~d~~Division:

(1) through (2) [No change in text.]

~~(e)(d)~~ 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 ~~d~~Division. ~~The City Manager shall establish procedures to implement this section.~~

§22.4220 Payment of Living Wage and Provision of Benefits

(a) *Covered employers* subject to this ~~d~~Division shall ~~shall~~ must pay *covered employees* a wage of ~~no less than \$10.00 per hour if the health benefits rate is paid, or no less than \$12.00 per hour if the health benefits rate is not paid~~ the hourly wage rate and health benefits rate posted on the City's web site for that fiscal year. ~~The health benefits rate is \$2.00 per hour. The rates are effective beginning July 1, 2006.~~

(b) ~~Beginning July 1, 2007,~~ ~~†~~The hourly wage rates and *health benefits rate* shall ~~shall~~ will be upwardly adjusted each July 1 to reflect the change in the Consumer Price Index for All Urban Consumers for the San Diego – Carlsbad – San Marcos Metropolitan Statistical Area for the twelve-month period preceding December 31. The health benefits rate will be consistent with the Affordable Care Act and any other applicable federal and state law provisions. Prior to April 1 of each year, the *City* shall ~~shall~~ will calculate the new rates and provide notice to all *covered employers* by posting on the *City's* web site the rates in effect for the next fiscal year.

- (c) *Covered employers shall must provide to each covered employee a minimum of ten ~~compensated~~ days off per year for sick leave, vacation, or personal necessity leave at the ~~covered employee's request~~ of compensated leave. Such days off Compensated leave shall vest as accrued, in accordance with applicable state law. Part-time employees shall must accrue such days compensated leave at a rate proportional to full-time employees. *Covered employees shall must be eligible to use accrued days off after the first six months of employment or consistent with employer policy, whichever is earlier.* ~~Paid holidays that are provided under established employer policy shall not be counted toward the provision of the ten compensated days off.~~*
- (d) *Covered employers shall must also permit covered employees to take an additional minimum of ten uncompensated additional days off uncompensated leave per year to be used for sick leave for the illness of the *covered employee* or a member of his or her immediate family, where the *covered employee* has exhausted all accrued ~~compensated days off~~ compensated leave. This section does not mandate the accrual from year to year of uncompensated days off.*
- (e) *Covered employers must pay covered employees the state prevailing wage rate as specified in section 22.3019 if the prevailing wage rate is higher than the wage rate specified in this Division. For purposes of this section, "wage rate" means the sum of required hourly wages, health benefits, and compensated leave.*

§22.4225 **Reporting and Notification Requirements**

- (a) Every *service contract, financial assistance agreement, and City facility agreement* ~~shall~~ must require that the party contracting with the *City* be subject to the terms of this ~~d~~Division and all regulations and rules promulgated under this ~~d~~Division and that all applicable subcontractors, sublessees, and concessionaires comply with the terms of this ~~d~~Division and all regulations and rules promulgated under this ~~d~~Division.
- (b) Each *covered employer* ~~shall~~ must ~~notify annually~~ distribute a notice with the first paycheck to occur after July 1 to its covered employees of the requirements of this ~~d~~Division, and of the possible availability of health insurance coverage under the Affordable Care Act, and the possible availability of the Earned Income Tax Credit.
- (c) Each *covered employer* ~~shall~~ must file a living wage certification with the *City Manager* within thirty days of becoming a *covered employer*. *Covered employers* must ensure that all applicable subcontractors, sublessees, and concessionaires file a living wage certification within thirty days of becoming covered by the requirements of this ~~d~~Division. The living wage certification ~~shall~~ must be completed on a form provided by the *City Manager*.
- (d) Each *covered employer* ~~shall~~ must file with the *City Manager* an annual report-documenting compliance with this ~~d~~Division. The *covered employer* ~~will~~ must maintain records documenting compliance for at least three years, but ~~will~~ is 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*; ~~s~~Such records shall must be made available to the *City* upon request. The records to be maintained shall must include all wage records, proof of payment for ~~health benefits~~ health benefits, ~~employee~~ covered employee name, address, date of hire, job classification, rate of pay, cost and amount paid for ~~health benefits~~ health benefits, hours worked in each pay period, and paid and unpaid time off (accrued and used).

- (e) ~~Businesses~~ Each covered employer shall must post a notice to ~~employees~~ informing ~~them~~ covered employees of their rights under this ~~d~~Division, and any applicable exemptions from the hourly wage rate requirements of this ~~d~~Division. The poster must be at the site of work, or a site frequently accessed by ~~workers~~ covered employees, in a prominent and accessible place where it can easily be seen by ~~workers~~ covered employees. Each covered employer must update this notice annually and within thirty days of receiving notice from the City of the amended hourly wage rates under this Division.

§22.4230 Enforcement and Remedies

- (a) A *covered employee* claiming a violation of this ~~d~~Division shall ~~have the right to~~ may file an action against an ~~employer~~ covered employer in the appropriate a court of competent jurisdiction within ~~one~~ three years after discovery of the alleged violation.

~~(a)(b)~~ The court may award the following monetary damages to any employee covered employee who files suit pursuant to proves a violation of this subdDivision, the following:

- (1) For failure to pay the minimum required hourly wage required by this division on applicable service contracts, financial assistance agreements, and City facilities agreements, the difference between the minimum hourly wage required herein by this Division and the amount actually paid to the ~~employee~~ covered employee, plus interest, and penalties for willful violations.
- (2) For failure to pay the health benefits rate on applicable service contracts, financial assistance agreements, and City facilities agreements, the difference between the health benefits rate required by this ~~d~~Division and the amount actually paid towards the health benefits rate for the covered employee, plus interest, and penalties for willful violations.
- (3) For retaliation for exercise of any rights provided for under this ~~d~~Division, reinstatement, back pay, or any other relief that a court may deem appropriate.
- (4) For a ~~willful violation~~ willful violation of this ~~d~~Division, a court shall award as a penalty of up to treble three times the amount of ~~monies to be paid as damages~~ awarded pursuant to section 22.4230(b)(1) and/or (b)(2).

- (5) ~~The court shall award r~~Reasonable attorney's' fees and costs to an employee covered 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) The court may award reasonable attorneys' fees to a covered employer who prevails if the covered employee's suit is found to be frivolous.
- (d) A covered employer shall not:
- (1) Retaliate against a covered employee who alleges non-compliance with this Division or cooperates with an investigation regarding compliance with this Division. Retaliation includes but is not limited to unfair immigration-related practices, or any other discriminatory practice that violates federal or state law; or
 - (2) Discharge, reduce in compensation, or otherwise discriminate

against any covered employee for complaining with regard to the covered employer'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.

~~(e)~~(e) A covered employee claiming a violation of the ~~d~~Division may file a complaint with the City. The City shall investigate and address any alleged violation of this ~~d~~Division's requirements, and will convey the results of the investigation to the complainant within ~~60~~ sixty days, with reasonable ~~30~~ thirty-day extensions. However, the City's failure to investigate an alleged violation or otherwise enforce any of the provisions of this ~~d~~Division ~~shall~~ does not create any right of action to recover damages from the City by any person, including but not limited to an aggrieved ~~employee~~ covered employee.

~~(d)~~(f) Whether based upon a complaint or otherwise, where the City Manager has determined that a covered employer has violated this ~~article~~ Division, 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~~ If the covered employer has ~~has~~ does not demonstrated to the City Manager within such period that it has substantially cured any material violation, the City Manager shall ~~then do~~ take one or more of the following enforcement actions:

- (1) Declare a material breach of the *service contract, financial assistance agreement, or City facility agreement* and exercise ~~it's~~ the City's contractual remedies ~~there under~~, which are to include, but not be limited to, suspension or 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, Article 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, Article 2, Division ~~320.~~
- (4) Request that the City Attorney bring a civil action against the *covered employer* seeking any legal remedies, including but not limited to:
 - (~~i~~)(A) Where applicable, payment to the *covered employee* of all unpaid wages ~~and/or health premiums~~ health benefits prescribed by this ~~d~~Division, plus interest; and/or
 - (~~ii~~)(B) A fine payable to the *City* in the amount of up to one hundred dollars (\$100) per covered employee for each violation for each day the violation remains uncured; and
 - (C) The City's administrative costs.

(5) Refer violations of this Division to appropriate local, state, and/or federal agencies and authorities.

(g) If a covered employer is determined by the City Manager to have violated this Division two or more times in a two-year period, the City Manager shall take enforcement action pursuant to section 22.4230(f), even if the covered employer has substantially cured any material violations.

~~(e)(h)~~ A violation of this ~~d~~Division shall ~~not be prosecuted as a misdemeanor~~ is not subject to prosecution as a misdemeanor or infraction, notwithstanding any other provision of the San Diego Municipal this Code.

~~(f)(i)~~ This ~~d~~Division shall is not to be construed to limit an employee's covered employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights, nor shall is exhaustion of remedies under this ~~d~~Division ~~be~~ a prerequisite to the assertion of any other such right.

§22.4235 Administration

(a) The *City Manager* shall develop and implement administrative policies, rules, and regulations to carry out the intent of this ~~d~~Division, including procedures for handling complaints by *covered employees*. The *City Manager* shall monitor compliance, including conducting periodic reviews of appropriate records maintained by *covered employers* to verify compliance and to investigate claimed violations. To secure compliance with this Division, the City Manager is authorized to take any appropriate enforcement action pursuant to Chapter 1, Article 2, Division 1 of this Code.

(b) The *City Manager* is authorized to create a citizens advisory committee for the purpose of making recommendations regarding how the policies and purposes of this dDivision may be advanced.

(c) [No change in text.]

§22.4240 Collective Bargaining Agreements

The provisions of this dDivision shall not be superseded by any collective bargaining agreement unless the supersession is specifically agreed to in writing by the parties to the collective bargaining agreement.

§22.4245 Severability

All provisions in this Division are intended to be consistent with all applicable federal and state laws. If any provision of this dDivision is declared legally invalid by a final judgment rendered in a court of competent jurisdiction, the provision declared invalid shall be deemed to be severable to the extent that the remaining provisions of this dDivision can be enforced in a manner that substantially carries out the objectives of this dDivision.

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Passed by the Council of The City of San Diego on FEB 10 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage FEB 26 2014

AUTHENTICATED BY: TODD GLORIA, COUNCIL PRESIDENT
as interim Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JAN 28 2014, and on FEB 26 2014

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 20352