

#56
10/01/2024

(O-2024-130)

ORDINANCE NUMBER O- 21876 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 07 2024

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 10, DIVISION 1, OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING ARTICLE 10 AND DIVISION 1; AMENDING AND RENUMBERING SECTION 310.0102 TO NEW SECTION 310.0101 AND SECTION 310.0101 TO NEW SECTION 310.0102; AMENDING SECTIONS 310.0103 AND 310.0104; RETITLING AND AMENDING SECTION 310.0105; ADDING NEW SECTION 310.0106; RETITLING AND AMENDING SECTION 310.0107; AMENDING AND RENUMBERING SECTION 310.0106 TO NEW SECTION 310.0108; ADDING NEW SECTION 310.0109; AND AMENDING AND RENUMBERING SECTION 310.0108 TO NEW SECTION 310.0110, RELATING TO THE CITY OF SAN DIEGO TRAFFIC CONTROL WORKER MINIMUM WAGE ORDINANCE.

RECITALS

The Council of the City of San Diego (Council) adopts this Ordinance based on the following:

- A. By San Diego Ordinance O-21723 (Sept. 18, 2023) (Ordinance), the San Diego City Council (Council) adopted a minimum wage for traffic control workers employed on certain construction projects under a City of San Diego (City)-issued permit.
- B. The minimum wage is consistent with the prevailing wage that traffic control workers would be paid if they were performing similar work on a City public works project.
- C. Paying the minimum wage rate under the Ordinance is required as a condition of a City-approved permit, which allows for use of City streets and rights-of-way under specified conditions.
- D. Payment of the required minimum wage rate for traffic control workers under the Ordinance is enforced by the City's Compliance Department, Office of Labor Standards and Enforcement (OLSE), working under the Mayor.

E. The Mayor, through the Compliance Department's OLSE, is recommending clarifying amendments to the Ordinance to assist with enforcement, and the Council wishes to adopt the proposed amendments.

F. The proposed amendments change the title of the Article and the Division where the Ordinance is codified.

G. The proposed amendments clarify that the prevailing wage rate is a minimum wage required to be paid to specified employees working under and as a condition of a City-issued Traffic Control Permit rather than a Public Right-of-Way Permit.

H. The proposed amendments also clarify the requirement of employers to provide notice of the prevailing wage rate to their employees, the rights of employees under the Ordinance, and the duties and authority of the City's Enforcement Office and Officer, as defined.

I. The Ordinance is adopted in accordance with the City's powers under the Constitution and laws of the State of California, including the police powers vested in the City by Article XI, section 7, of the California Constitution and California Labor Code section 1205.

J. This Ordinance is not intended to create any power, duty, or obligation in conflict with federal or state laws.

K. The Office of the City Attorney has drafted this Ordinance based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate.

ACTION ITEMS

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

Section 1. Chapter 3, Article 10, Division 1 of the San Diego Municipal Code is amended by retitling Article 10 and Division 1; amending and renumbering section 310.0102 to new section 310.0101 and section 310.0101 to new section 310.0102; amending sections 310.0103 and 310.0104; retitling and amending section 310.0105; adding a new section 310.0106; retitling and amending section 310.0107; amending and renumbering old section 310.0106 to new section 310.0108; adding a new section 310.0109; and amending and renumbering old section 310.0108 to new section 310.0110, to read as follows:

Article 10: City of San Diego Traffic Control Worker Minimum Wage

Division 1: City of San Diego Traffic Control Worker Minimum Wage Ordinance

§310.0101 Citation

This Division shall be cited as the City of San Diego Traffic Control Worker Minimum Wage Ordinance.

§310.0102 Purpose and Intent

- (a) The purpose and intent of this Division is to establish a *City*-required minimum wage, referred to as the *prevailing wage rate*, for specified *employees* engaged in traffic control work on *City* streets and public rights-of-way, including sidewalk areas. The *City* requires payment of the *prevailing wage rate* to traffic control workers as a condition of a *Traffic Control Permit* issued under San Diego Municipal Code section 129.0742, as may be amended.
- (b) The City Council makes the following findings in support of the City of San Diego Traffic Control Worker Minimum Wage Ordinance:

- (1) Traffic control work includes stopping, slowing, guiding, directing, controlling, and monitoring traffic on *City* streets and public rights-of-way. Traffic control workers are responsible for maintaining the safety of drivers and pedestrians on the *City*'s streets and in the public rights-of-way adjacent to or near construction areas.
- (2) Unexpected and difficult driving conditions in these construction areas can present a significant risk of harm to drivers, other users of the *City*'s public rights-of-way, and the traffic control workers themselves.
- (3) Low wages can lead to less qualified workers and more difficult working conditions, which can increase the risk of harm to workers and users of the *City*'s public rights-of-way.
- (4) Traffic control workers employed by contractors on the *City*'s public works projects, involving the construction, reconstruction, or repair of public buildings, streets, utilities, and other public works, are paid a minimum wage, in accordance with San Diego Municipal Code section 22.3019, as may be amended, related to compliance with State of California prevailing wage laws. The prevailing wage is an hourly rate paid on public works projects to specified workers engaged in a particular craft, classification, or type of work within the locality and in the nearest labor market area.

- (5) By adopting this Division, the City Council establishes a minimum wage standard to apply to all traffic control workers on *City* streets and public rights-of-way, with limited exceptions as set forth in this Division, as a means to ensure that traffic control work in the *City* is being done by the most qualified and consistently and sufficiently paid workers.

§310.0103 Authority

This Division is adopted in accordance with the powers vested in the *City* by the Constitution and laws of the State of California, including the police powers vested in the *City* by Article XI, section 7, of the California Constitution and California Labor Code section 1205. This Division is not intended to create any power, duty, or obligation in conflict with federal or state laws.

§310.0104 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply to the terms in this Division:

City means the City of San Diego.

Employee means any person engaged in traffic control work, including setting up traffic control, guiding and monitoring vehicles, and restoring the roadway, as described in the traffic control plan required by the *City* under a *City*-issued *Traffic Control Permit*, in accordance with San Diego Municipal Code section 129.0742, as may be amended.

Employer means any person or entity, including an association, organization, partnership, business trust, limited liability company, or corporation, who exercises control over the wages, hours, or working conditions of any *employee*

and is subject to a *City*-issued *Traffic Control Permit*, excluding any person or entity engaged in activities as described in San Diego Municipal Code section 82.27, and local, state, and federal public agencies, including the *City*.

Enforcement Office means the *City's* Compliance Department, Office of Labor Standards and Enforcement, or other *City* office or department under the authority of the City Manager to enforce this Division.

Enforcement Officer means any person authorized by the City Manager to enforce violations of this Division.

Prevailing wage rate means the prevailing rate of per diem wages, including any predetermined increases, as determined by the California Director of Industrial Relations in accordance with California Labor Code sections 1770 and 1773, and related laws, as may be amended, for the classification of "Laborer: Building Construction, Group 1" (or as this classification may be amended) working on a public works project in San Diego County and performing traffic control work by any method. The *prevailing wage rate*, including any predetermined increases, is determined as of the date the *City* issues the *Traffic Control Permit*, following *City* approval of the traffic control plan, and it remains in effect for the duration of the *Traffic Control Permit*. The *prevailing wage rate* includes (1) the prevailing basic straight-time hourly rate of pay, (2) the prevailing rate for holiday and overtime work, and (3) the prevailing rate of *employer* payments for all programs or benefits for *employees*, consistent with the requirements of California Code of Regulations, Title 8, sections 16000 through 16301, and related regulations, as may be amended. The *prevailing wage rate* does not include the requirement to

pay travel or subsistence payments. The *employer* may make training contribution payments directly to an *employee* or to an approved apprenticeship program, at the discretion of the *employer*.

Retaliation means any threat, discipline, discharge, demotion, suspension, reduction in *employee* hours, or any other adverse employment action against any *employee* for exercising or attempting to exercise any right under this Division.

Traffic Control Permit means a permit required and issued by the *City* under San Diego Municipal Code section 129.0742, as may be amended, or any related administrative regulation promulgated by the City Manager, for the temporary use of a *City* street, sidewalk, or parking lane when a permittee is working on a construction project, improvement project, or other work encroaching into the public right-of-way, including sidewalks, parking spaces, medians, alleys, and streets. *Traffic Control Permit* does not include a permit issued by the City Manager, Police Chief, or designees for the limited purpose of controlling traffic for a special event under San Diego Municipal Code section 82.27.

§310.0105 Minimum Wage Requirement Under City-Issued Traffic Control Permit

- (a) A *City*-issued *Traffic Control Permit* must include the requirement that all *employers* responsible for performing work under the *Traffic Control Permit* pay their *employees* no less than the *prevailing wage rate*, in effect at the time the *City* issues the *Traffic Control Permit*, unless one of the following exceptions applies:
- (1) the *employer* is responsible for traffic control work related to the construction, renovation, or repair of a single-family home or duplex;

- (2) the *employer* is responsible for traffic control work on a project costing \$1,000 or less, as specified in California Labor Code section 1771 or any subsequent cost threshold applicable to the payment of prevailing wages established by California law;
 - (3) the *employer* is a gas or electric utility company, and their *employee* is performing traffic control work for one hour or less per workday or one hour or less per shift;
 - (4) the *employer* is responsible for traffic control work related to a public works project for any public agency, including the *City*, and another, higher minimum wage rate applies to the work; or
 - (5) the *employer* is prohibited from paying the *prevailing wage rate* by law or by a state or federal funding source requirement applicable to the work authorized by the *Traffic Control Permit*.
- (b) *Employers* subject to this Division must pay their *employees* the *prevailing wage rate*, including any predetermined increases, as determined by the *City* at the time the *City* issues the *Traffic Control Permit*, for the duration of the work performed under the *Traffic Control Permit*.

§310.0106 Notice Requirements

Every *employer* must post a notice at the job site where any *employee* works or otherwise provide written notice to *employees* informing *employees* of their rights under this Division and the *prevailing wage rate* in effect under this Division, including the effective dates and any predetermined increases related to the *City's* issuance of an applicable *Traffic Control Permit*.

§310.0107 Violations

- (a) Any *employer* who violates any requirement of this Division, except the notice requirements set forth in San Diego Municipal Code section 310.0106, is subject to a civil penalty, assessed and payable to the *City*, of no less than \$500, but no more than \$1,000 per violation. Each day that an *employer* fails to pay an *employee* the *prevailing wage rate* constitutes a separate and distinct violation of this Division.
- (b) Any *employer* who fails to comply with the notice requirements set forth in San Diego Municipal Code section 310.0106 is subject to a civil penalty, assessed and payable to the *City*, of \$100 for each *employee* who was not given the required notice, up to a maximum of \$2,000 for each applicable *Traffic Control Permit*.
- (c) An *employer's* failure to pay their *employees* wages equivalent to the *prevailing wage rate* may be enforced through revocation of the applicable *Traffic Control Permit* by the City Manager or designee, in accordance with the San Diego Municipal Code.
- (d) To enforce this Division, any aggrieved *employee*, the *Enforcement Officer*, or both, may seek payment of wages unlawfully withheld by *employers*, penalties for violations as described in this Division, court costs, and attorneys' fees.
- (e) If an *employer* ceases their business operations, or sells, exchanges, transfers, or otherwise disposes of the *employer's* business, then any person or entity that becomes a successor to the business is liable for any

unpaid amounts owed under this Division if, at the time of the conveyance of the business, the successor has actual or constructive knowledge of the amounts owed as determined by the *City*.

- (f) This Division is not intended to limit any *employee*'s right to obtain relief to which the *employee* may be entitled under applicable laws. Exhaustion of remedies under this Division is not a prerequisite to the assertion of any right.

§310.0108 Duties and Authority of the Enforcement Office and Enforcement Officer

- (a) The *Enforcement Office* has full authority to implement and enforce this Division, consistent with the authority, powers, and procedures of the *Enforcement Office*, set forth in Chapter 1, Article 2, of the San Diego Municipal Code, as may be amended, and other applicable *City* ordinances and regulations. This authority includes the power to investigate any possible violations of this Division by an *employer*, to demand payroll and business records from all *employers* issued a *Traffic Control Permit*, to access an *employer*'s workplace during workplace hours to examine and audit records, and to conduct *employee* and other worker interviews at a workplace or job site.
- (b) Any person may file a written complaint with the *Enforcement Office* regarding a violation of this Division. The written complaint must describe the alleged violation, including a statement of relevant facts, dates, places, and persons or entities responsible for the alleged violation. Complaints alleging a violation of this Division must be filed with the *Enforcement Office* within two years of the occurrence of the alleged violation.

- (c) To encourage reporting and cooperation with investigations, the *Enforcement Office* must maintain the confidentiality of any person reporting alleged violations and persons assisting in any investigation, including the name, address, and other identifying information of the person, to the extent permitted by law.
- (d) The *Enforcement Office* must also protect proprietary business information, to the extent permitted by law.
- (e) The *Enforcement Office* may disclose information as necessary to enforce this Division, as required by law, or for other lawful purposes.
- (f) The *Enforcement Officer* may issue subpoenas in accordance with California law and the San Diego Municipal Code.
- (g) The *Enforcement Officer* may conduct an informal settlement conference with the *employer* to provide an opportunity for the *employer* to remedy any alleged violations without further administrative enforcement action. The *Enforcement Officer* has discretion to impose civil penalties in accordance with San Diego Municipal Code section 12.0805, as may be amended, as a condition of settlement of an alleged violation.
- (h) The City Manager or *Enforcement Officer* may promulgate policies, rules, and administrative regulations necessary to implement the purpose, intent, and provisions of this Division, including procedures for handling complaints by *employees*.
- (i) The *Enforcement Office* must provide a summary report of its activities each year to the City Council by October 1, detailing the enforcement of this Division.

- (j) The *Enforcement Office* may collaborate with, including entering into a contract or contracts with, workers' rights advocates and community-based organizations to assist in outreach efforts and other governmental agencies to assist in enforcement. Any contract under this subsection is subject to the *City's* procurement requirements as set forth in the San Diego Municipal Code.
- (k) 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 by any person, including an aggrieved *employee*, to recover damages or other remedies from the *City*.
- (l) Consistent with the provisions of this Division, the City Manager or *Enforcement Officer* may establish and enforce any additional administrative rules, regulations, and standards they determine to be necessary to carry out the purpose and intent of this Division.

§310.0109 Employee Rights

- (a) *Employers* are prohibited from engaging in *retaliation* against any *employee*.
- (b) The rights of *employees* protected by this Division include the right to request and receive payment of the *prevailing wage rate*; file a complaint for alleged violations of this Division with the *Enforcement Office*, another appropriate enforcement agency, or the court; bring legal action for any violation of law concerning wages, hours, or other standards or rights; communicate with any person about a violation or alleged violation of this Division; participate in any administrative or judicial process

regarding an alleged violation of this Division; and inform any person of their potential rights under this Division. The rights of this Division apply to any *employee* who reasonably, even if mistakenly, and in good faith reports a violation of this Division to their *employer* or a governmental agency responsible for enforcing any wage and hour laws applicable to the *employer*.

- (c) Exhaustion of remedies under this Division is not a prerequisite to the assertion of any right.
- (d) An *employer's* adverse action against an *employee* within 90 calendar days of the *employee's* exercise of any protected right under this Division creates a rebuttable presumption that the *employer* acted in *retaliation* against the *employee* for the *employee's* exercise of the protected right.

§310.0110 No Effect on Higher Wages

This Division establishes a local minimum wage standard. It is not intended to conflict with applicable federal or state laws or to discourage or prohibit *employers* from paying higher wages to their *employees*. Further, this Division must not be interpreted to modify any obligation of *employers* to comply with any contract, collective bargaining agreement, employment benefit plan, other agreement, or applicable federal or state laws, including requirements to pay higher wages and other benefits.

Section 2. The Council dispenses with a full reading of this Ordinance before its passage because a written copy of this Ordinance was made available to the Council and the public before the date of its passage.

Section 3. This Ordinance will take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By Joan F. Dawson
Joan F. Dawson
Senior Deputy City Attorney

JFD:cm
09/03/2024
Or.Dept: Council District 7/Compliance Department
Doc. No. 3686005_4

I certify that the Council of the City of San Diego adopted this Ordinance at a meeting held on OCT 10 2024.

DIANA J.S. FUENTES
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 10/7/24
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 10, DIVISION 1, OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING ARTICLE 10 AND DIVISION 1; AMENDING AND RENUMBERING SECTION 310.0102 TO NEW SECTION 310.0101 AND SECTION 310.0101 TO NEW SECTION 310.0102; AMENDING SECTIONS 310.0103 AND 310.0104; RETITLING AND AMENDING SECTION 310.0105; ADDING NEW SECTION 310.0106; RETITLING AND AMENDING SECTION 310.0107; AMENDING AND RENUMBERING SECTION 310.0106 TO NEW SECTION 310.0108; ADDING NEW SECTION 310.0109; AND AMENDING AND RENUMBERING SECTION 310.0108 TO NEW SECTION 310.0110, RELATING TO THE CITY OF SAN DIEGO TRAFFIC CONTROL WORKER MINIMUM WAGE ORDINANCE.

Article 10: City of San Diego Traffic Control Worker ~~Prevailing~~ Minimum Wage

Division 1: City of San Diego Traffic Control Worker ~~Prevailing~~ Minimum Wage Ordinance

§310.0102~~1~~ Citation

[Text moved from old section 310.0102.]

This Division shall be cited as the City of San Diego Traffic Control Worker ~~Prevailing~~ Minimum Wage Ordinance.

§310.0104~~2~~ Purpose and Intent

(a) The purpose and intent of this Division is to establish a City-required minimum wage, referred to as the prevailing wage rate, for specified employees engaged in traffic control work on City streets and public

rights-of-way, including sidewalk areas. The City requires payment of the prevailing wage rate to traffic control workers as a condition of a Traffic Control Permit issued under San Diego Municipal Code section 129.0742, as may be amended.

(b) The City Council makes the following findings in support of the City of San Diego Traffic Control Worker Minimum Wage Ordinance:

(1) Traffic control workers are responsible for work includes stopping, slowing, and safely guiding, directing, or controlling, and monitoring traffic through construction and maintenance work in the on City streets and public rights-of-way. Traffic control workers are responsible for maintaining the safety of drivers and pedestrians on the City's streets and in the public rights-of-way adjacent to or near construction areas.

(2) Unexpected and difficult driving conditions in these construction areas can present a significant risk of harm to motorists drivers, other users of the City's public rights-of-way, and the traffic control workers themselves. Traffic control workers employed on public works projects are paid a prevailing wage while the same workers employed on private construction projects may be paid significantly less to perform the same work.

(3) Low wages; can lead to less qualified workers; and more difficult working conditions, which can present a significant increase the risk of harm to workers and users of the City's public rights-of-

~~way, that can be mitigated by ensuring the most qualified, sufficiently paid workers are employed to provide traffic control work in the public rights-of-way.~~

- (4) Traffic control workers employed by contractors on the City's public works projects, involving the construction, reconstruction, or repair of public buildings, streets, utilities, and other public works, are paid a minimum wage, in accordance with San Diego Municipal Code section 22.3019, as may be amended, related to compliance with State of California prevailing wage laws. The prevailing wage is an hourly rate paid on public works projects to specified workers engaged in a particular craft, classification, or type of work within the locality and in the nearest labor market area.
- (5) By adopting this Division, the City Council seeks to address the unique safety risks confronted by workers and users of City streets subject to traffic control by ensuring establishes a minimum wage standard to apply to all traffic control workers on City streets and public rights-of-way, with that, except in limited circumstances exceptions as set forth in this Division, all traffic control workers are paid a wage at least equivalent to the prevailing wage they would receive if working on a public works project as a means to ensure that traffic control work in the City is

being done by the most qualified and consistently and sufficiently paid workers.

§310.0102 Citation

[Text moved to new section 310.0101.]

§310.0103 Authority

This Division is adopted ~~pursuant to~~ in accordance with the powers vested in the *City* ~~under by~~ the Constitution and laws of the State of California, including the police powers vested in the *City* ~~pursuant to by~~ Article XI, section 7, of the California Constitution and California Labor Code section 1205(b). ~~Nothing in~~ †This Division shall be interpreted or applied is not intended to create any power, ~~or duty, or obligation~~ in conflict with federal or state laws.

§310.0104 Definitions

For purposes of this Division, defined terms appear in italics. The following ~~terms~~ definitions apply to the terms in this Division:

~~City has the same meaning as in San Diego Municipal Code section 39.0104~~
means the City of San Diego.

~~Employee has the same meaning as in San Diego Municipal Code~~
~~section 39.0104~~means any person engaged in traffic control work, including
setting up traffic control, guiding and monitoring vehicles, and restoring the
roadway, as described in the traffic control plan required by the City under a City-
issued Traffic Control Permit, in accordance with San Diego Municipal Code
section 129.0742, as may be amended.

Employer has the same meaning as means any person or entity, including an association, organization, partnership, business trust, limited liability company, or corporation, who exercises control over the wages, hours, or working conditions of any employee and is subject to a City-issued Traffic Control Permit, excluding any person or entity engaged in activities as described in San Diego Municipal Code section 39.010482.27, and local, state, and federal public agencies, including the City.

Enforcement Office has the same meaning as in San Diego Municipal Code section 39.0104 means the City's Compliance Department, Office of Labor Standards and Enforcement, or other City office or department under the authority of the City Manager to enforce this Division.

Enforcement Official has the same meaning as in San Diego Municipal Code section 39.0104 *Officer* means any person authorized by the City Manager to enforce violations of this Division.

Prevailing wage rate means the prevailing rate of per diem wages, including any predetermined increases, as determined by the California Director of Industrial Relations in accordance with California Labor Code sections 1770, and 1773, and 1773-1-related laws, as may be amended, for traffic control work by any method as a laborer within San Diego County on a public works project the classification of "Laborer: Building Construction, Group 1" (or as this classification may be amended) working on a public works project in San Diego County and performing traffic control work by any method. The prevailing wage rate, including any predetermined increases, is determined as of the date the City issues

the Traffic Control Permit, following City approval of the traffic control plan, and it remains in effect for the duration of the Traffic Control Permit. The prevailing wage rate includes (1) the prevailing basic straight-time hourly rate of pay, (2) the prevailing rate for holiday and overtime work, and (3) the prevailing rate of employer payments for all programs or benefits for employees, consistent with the requirements of California Code of Regulations, Title 8, sections 16000 through 16301, and related regulations, as may be amended. The prevailing wage rate does not include the requirement to pay travel or subsistence payments. The employer may make training contribution payments directly to an employee or to an approved apprenticeship program, at the discretion of the employer.

Public works project means the construction, reconstruction, or repair of public buildings, streets, utilities, and other public works, including design-build contracts, construction manager at risk contracts, and job orders.

Public Right-of-Way Permit means a permit issued by the City under Chapter 12, Article 9, Division 7, of this Code.

Retaliation means any threat, discipline, discharge, demotion, suspension, reduction in employee hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right under this Division.

Traffic Control Permit means a permit required and issued by the City under San Diego Municipal Code section 129.0742, as may be amended, or any related administrative regulation promulgated by the City Manager, for the temporary use of a City street, sidewalk, or parking lane when a permittee is working on a construction project, improvement project, or other work encroaching into the

public right-of-way, including sidewalks, parking spaces, medians, alleys, and streets. Traffic Control Permit does not include a permit issued by the City Manager, Police Chief, or designees for the limited purpose of controlling traffic for a special event under San Diego Municipal Code section 82.27.

§310.0105 Payment of Prevailing Wage Minimum Wage Requirement Under City-Issued Traffic Control Permit

(a) Employees whose duties include stopping, slowing, or otherwise guiding, directing, or controlling traffic as required by a Public Right-of-Way Permit shall be paid. A City-issued Traffic Control Permit must include the requirement that all employers responsible for performing work under the Traffic Control Permit pay their employees no less than the prevailing wage rate, except as follows in effect at the time the City issues the Traffic Control Permit, unless one of the following exceptions applies:

- (a)(1) the employer is responsible for traffic control work performed by an employee in support of related to the construction, renovation, or repair of a single-family home or duplex;
- (b)(2) the employer is responsible for traffic control work performed by an employee on any a project costing \$1,000 or less, as specified in California Labor Code section 1771 or any subsequent cost threshold applicable to the payment of prevailing wages prevailing wages established by California law;
- (c)(3) traffic control work performed by an employee of the employer is a gas or electric utility company on any project where the employee

~~performs and their *employee* is performing traffic control~~ work for one hour or less per workday or one hour or less per shift;

~~(d)(4) the *employer* is responsible for traffic control work performed by an *employee* of any related to a public works project for any public agency, or including the *City*, and another, higher minimum wage applies to the work; or~~

~~(e)(5) the *employer* is to the extent prohibited from paying the *prevailing wage rate* by law or by a state or federal funding source requirement applicable to the work authorized by the Traffic Control Permit.~~

(b) *Employers* subject to this Division must pay their *employees* the *prevailing wage rate*, including any predetermined increases, as determined by the *City* at the time the *City* issues the *Traffic Control Permit*, for the duration of the work performed under the *Traffic Control Permit*.

§310.0106 Notice Requirements

Every *employer* must post a notice at the job site where any *employee* works or otherwise provide written notice to *employees* informing *employees* of their rights under this Division and the *prevailing wage rate* in effect under this Division, including the effective dates and any predetermined increases related to the *City's* issuance of an applicable *Traffic Control Permit*.

§310.0107 Prevailing Wage Requirement in Public Right-of-Way Permits Violations

(a) Any *Public Right-of-Way Permit* that includes a traffic control plan shall include the requirement *employer* who violates any requirement of this

Division, except the notice requirements set forth in San Diego Municipal Code section 310.0106, is subject to a civil penalty, assessed and payable to the City, of no less than \$500, but no more than \$1,000 per violation. Each day that an employer fails to pay at least an employee the prevailing wage to traffic control workers, unless an exception in section 310.0105 applies rate constitutes a separate and distinct violation of this Division.

- (b) In addition to the enforcement of this Division under section 310.0106, a violation of the prevailing wage requirement of a Public Right of Way Permit is subject to enforcement under Chapter 12, Article 1, Division 3 of this Code. Any employer who fails to comply with the notice requirements set forth in San Diego Municipal Code section 310.0106 is subject to a civil penalty, assessed and payable to the City, of \$100 for each employee who was not given the required notice, up to a maximum of \$2,000 for each applicable Traffic Control Permit.
- (c) An employer's failure to pay its employees wages equivalent to the prevailing wage rate may be enforced through revocation of the applicable Traffic Control Permit by the City Manager, or designee, in accordance with the San Diego Municipal Code.
- (d) To enforce this Division, any aggrieved employee, the Enforcement Officer, or both, may seek payment of wages unlawfully withheld by employers, penalties for violations as described in this Division, court costs, and attorneys' fees.

- (e) If an *employer* ceases their business operations, or sells, exchanges, transfers, or otherwise disposes of the *employer's* business, then any person or entity that becomes a successor to the business is liable for any unpaid amounts owed under this Division if, at the time of the conveyance of the business, the successor has actual or constructive knowledge of the amounts owed as determined by the *City*.
- (f) This Division is not intended to limit any *employee's* right to obtain relief to which the *employee* may be entitled under applicable laws. Exhaustion of remedies under this Division is not a prerequisite to the assertion of any right.

§310.01068 Enforcement Duties and Authority of the Enforcement Office and Enforcement Officer

- (a) Any person may file a written complaint with the *Enforcement Office* regarding a violation of this Division. The written complaint must describe the alleged violation, including a statement of relevant facts, dates, places, and Persons or entities responsible for the alleged violation. The *Enforcement Office* has full authority to implement and enforce this Division, consistent with the authority, powers, and procedures of the *Enforcement Office*, set forth in Chapter 1, Article 2, of the San Diego Municipal Code, as may be amended, and other applicable *City* ordinances and regulations. This authority includes the power to investigate any possible violations of this Division by an *employer*, to demand payroll and business records from all *employers* issued a *Traffic Control Permit*, to

access an employer's workplace during workplace hours to examine and audit records, and to conduct employee and other worker interviews at a workplace or job site.

- (b) ~~The Enforcement Office has full authority to implement and enforce this Division, consistent with the authority, powers, and procedures of the Enforcement Office set forth in Chapter 1, Article 2, Division 1, and section 39.0113 of this Code. Any person may file a written complaint with the Enforcement Office regarding a violation of this Division. The written complaint must describe the alleged violation, including a statement of relevant facts, dates, places, and persons or entities responsible for the alleged violation. Complaints alleging a violation of this Division must be filed with the Enforcement Office within two years of the occurrence of the alleged violation.~~
- (c) ~~If an employer ceases its business operations, or sells, exchanges, transfers, or otherwise disposes of the employer's business, then any Person or entity that becomes a successor to the business shall be liable for any unpaid amounts owed under this Division if, at the time of the conveyance of the business, the successor has actual or constructive knowledge of the amounts owed as determined by the City. To encourage reporting and cooperation with investigations, the Enforcement Office must maintain the confidentiality of any person reporting alleged violations and persons assisting in any investigation, including the name,~~

address, and other identifying information of the person, to the extent permitted by law.

- (d) ~~This Division does not create any cause of action for damages against the City.~~ The Enforcement Office must also protect proprietary business information, to the extent permitted by law.
- (e) ~~The City Manager or Enforcement Official may promulgate policies, rules, and regulations reasonably necessary to implement the intent and provisions of this Division.~~ The Enforcement Office may disclose information as necessary to enforce this Division, as required by law, or for other lawful purposes.
- (f) ~~This Division is not to be construed to limit the rights of an employee to bring legal action for a violation of any law concerning wages, hours, or other standards or rights. Exhaustion of remedies under this Division is not a prerequisite to the assertion of any right.~~ The Enforcement Officer may issue subpoenas in accordance with California law and the San Diego Municipal Code.
- (g) The Enforcement Officer may conduct an informal settlement conference with the employer to provide an opportunity for the employer to remedy any alleged violations without further administrative enforcement action. The Enforcement Officer has discretion to impose civil penalties, in accordance with San Diego Municipal Code section 12.0805, as may be amended, as a condition of settlement of an alleged violation.

- (h) The City Manager or *Enforcement Officer* may promulgate policies, rules, and administrative regulations necessary to implement the purpose, intent, and provisions of this Division, including procedures for handling complaints by *employees*.
- (i) The *Enforcement Office* must provide a summary report of its activities each year to the City Council by October 1, detailing the enforcement of this Division.
- (j) The *Enforcement Office* may collaborate with, including entering into a contract or contracts with, workers' rights advocates and community-based organizations to assist in outreach efforts and other governmental agencies to assist in enforcement. Any contract under this subsection is subject to the *City's* procurement requirements as set forth in the San Diego Municipal Code.
- (k) 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 by any person, including an aggrieved *employee*, to recover damages or other remedies from the *City*.
- (l) Consistent with the provisions of this Division, the City Manager or *Enforcement Officer* may establish and enforce any additional administrative rules, regulations, and standards they determine to be necessary to carry out the purpose and intent of this Division.

§310.0109 **Employee Rights**

- (a) Employers are prohibited from engaging in retaliation against any employee.

- (b) The rights of employees protected by this Division include the right to request and receive payment of the prevailing wage rate; file a complaint for alleged violations of this Division with the Enforcement Office, another appropriate enforcement agency, or the court; bring legal action for any violation of law concerning wages, hours, or other standards or rights; communicate with any person about a violation or alleged violation of this Division; participate in any administrative or judicial process regarding an alleged violation of this Division; and inform any person of their potential rights under this Division. The rights of this Division apply to any employee who reasonably, even if mistakenly, and in good faith reports a violation of this Division to their employer or a governmental agency responsible for enforcing any wage and hour laws applicable to the employer.

- (c) Exhaustion of remedies under this Division is not a prerequisite to the assertion of any right.

- (d) An employer's adverse action against an employee within 90 calendar days of the employee's exercise of any protected right under this Division creates a rebuttable presumption that the employer acted in retaliation against the employee for the employee's exercise of the protected right.

§310.010810 No Effect on Higher Wages

This Division establishes a local minimum wage standard. ~~shall~~ It is not be construed intended to conflict with applicable federal or state laws or to discourage or prohibit an ~~employer~~ employers from ~~providing~~ paying higher wages to its their *employees*. Further, this Division must not be interpreted to modify any obligation of *employers* to comply with any contract, collective bargaining agreement, employment benefit plan, other agreement, or applicable federal or state laws, including requirements to pay higher wages and other benefits.

JFD:cm
09/03/2024
Or.Dept: Council District 7/Compliance Department
Doc. No. 3706755_3

Passed by the Council of The City of San Diego on OCT 10 2024, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Foster III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 07 2024.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Binda Krwin, 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

SEP 17 2024, and on OCT 07 2024.

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)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Binda Krwin, Deputy
For Connie Patterson

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21876</u>