



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: March 10, 2010 REPORT NO: 10-013

ATTENTION: Budget and Finance Committee
Agenda of March 17, 2010

SUBJECT: Annual Living Wage Ordinance Report for Fiscal Year 2009

REFERENCE: Living Wage Ordinance: San Diego Municipal Code Chapter 2, Article 2, Division 42; and
Report No. 09-007, Annual Living Wage Ordinance Report for Fiscal Year 2008; and
Report No. 09-052, Additional Data requested by Committee for Annual Living Wage Ordinance Report for Fiscal Year 2008

REQUESTED ACTION: Accept report.

STAFF RECOMMENDATION: Accept report.

BACKGROUND:

This annual report describes administration of the Living Wage Ordinance [LWO] during Fiscal Year 2009 (July 1, 2008 – June 30, 2009). The LWO, adopted in June 2005 and effective beginning July 1, 2006, requires employers to compensate employees who perform work on applicable service contracts under a predetermined wage structure. This is the third annual report of LWO activity.

For reference, text of the Living Wage Ordinance is included as Attachment A, *San Diego Municipal Code [SDMC] Chapter 2, Article 2, Division 42*. A convenient, one-page summary of the applicability, exemptions, and requirements of the LWO is provided as Attachment B, *Living Wage Ordinance Synopsis*. All material correlates to the ordinance in effect during Fiscal Year 2009; (subsequent revisions have occurred).

EXECUTIVE SUMMARY:

To consolidate the City's compliance functions, the Living Wage Program was moved from Purchasing & Contracting Department into the Administration Department during Fiscal Year 2009, and an existing half-time position converted to full-time. A second staff position was filled at the start of the year. This increase in oversight is reflected in several accomplishments:

- Though the incidence of LWO Employee Complaints doubled (to 14), time to resolve these

complaints decreased by nearly half (to 72.7 days average).

- Back payments to employees resulting from LWO Employee Complaints quadrupled (to \$211,888).
- For the first time, Contract Compliance Reviews (11) were conducted, and discrepancies were found in 36% resulting in a recovery of \$27,698.
- For the first time, covered employers were requested to submit annual reports (and 100% completed and returned reports) in accordance with SDMC §22.4225(d).
- Based on follow-up to an LWO Employee Complaint investigation, an overcharge (\$7,951) was repaid to the City.

During Fiscal Year 2009, the number of contracts (104) and covered employers (43) remained fairly consistent with previous years, as did the total Purchasing Agreement amount (\$31,329,064).

However, these numbers are expected to increase. On October 20, 2008, the LWO was modified by a unanimous vote of the City Council. More stringent enforcement (SDMC §22.4230) became effective December 24, 2008; additional modifications took effect on January 1, 2010. Those modifications broaden the inclusivity of the LWO.

Contract compliance reviews uncover discrepancies and assist contractors in understanding and meeting their LWO obligations. After three years, the service contracting community has become familiar with the Living Wage Ordinance, but distinct issues still arise. Although notified directly by the Living Wage Program, some covered employers have not increased wages on July 1 as required and many have not established procedures to track accrual of compensated leave time (10 days per year).

Some effects of the ordinance were shown in the first annual reports submitted by covered employers:

- 974 workers were covered by the LWO in Fiscal Year 2009;
- 25% of covered employees receive health care; 51% of employers offer this option;
- 47% of covered employers self-report the LWO improved their firm's quality of service;
- 46% of covered employers self-report the LWO reduced absenteeism or turnover.

Information summarized above is expanded upon in the body of this report.

LWO PROGRAM ADMINISTRATION DURING FY 2009

LWO Administration

In accordance with SDMC §22.4235(a), *Rules Implementing the Living Wage Ordinance* are posted on the City's website with sections on applicability, exemptions, employer requirements, recordkeeping and reports, monitoring and investigation, enforcement, and an employee

complaint process. Appendices include: Current Living Wage Rates; LWO Notice to Employees (English, Spanish); LWO Certification of Compliance form; LWO Application for Exemption form; and LWO Employee Complaint Form (English, Spanish).

These *Rules* with notices and forms are provided with this report as Attachment C and posted at http://www.sandiego.gov/purchasing/pdf/lwo_rules.pdf.

LWO Annual Wage Adjustment

SDMC §22.4220(b) stipulates an upward adjustment of hourly wage and health benefits rates to take effect each year on July 1. New rates are calculated based on the regional 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 new rates are posted on the City's website with updated forms. Chart 1 shows LWO wage and health benefit rates since inception of the ordinance:

Chart 1: CITY OF SAN DIEGO LIVING WAGE RATES				
	<u>Effective Dates</u>	<u>Increase</u>	<u>Wage + Health Benefits</u>	<u>Full Cash Wage</u>
FY 2010	July 1, 2009 – June 30, 2010	3.9%	\$11.00 + \$2.20 /hr	\$13.20 /hr
FY 2009*	July 1, 2008 – June 30, 2009	2.3%	\$10.58 + \$2.12 /hr	\$12.70 /hr
FY 2008	July 1, 2007 – June 30, 2008	3.4%	\$10.34 + \$2.07 /hr	\$12.41 /hr
FY 2007	July 1, 2006 – June 30, 2007	N/A	\$10.00 + \$2.00 /hr	\$12.00 /hr
* Fiscal Year 2009 is the subject of this report				

In accordance with the Ordinance, a fiscal year rate adjustment is based on the prior calendar year's Consumer Price Index. For this reason, although the cost-of-living is currently trending down, Fiscal Year 2010 rate adjustments were based on data from January through December of 2008. Recently published data from the U.S. Department of Labor, Bureau of Labor Statistics show a net 0.0% change to the cost-of-living from January through December of 2009; therefore, Living Wage rates will remain static for Fiscal Year 2011.

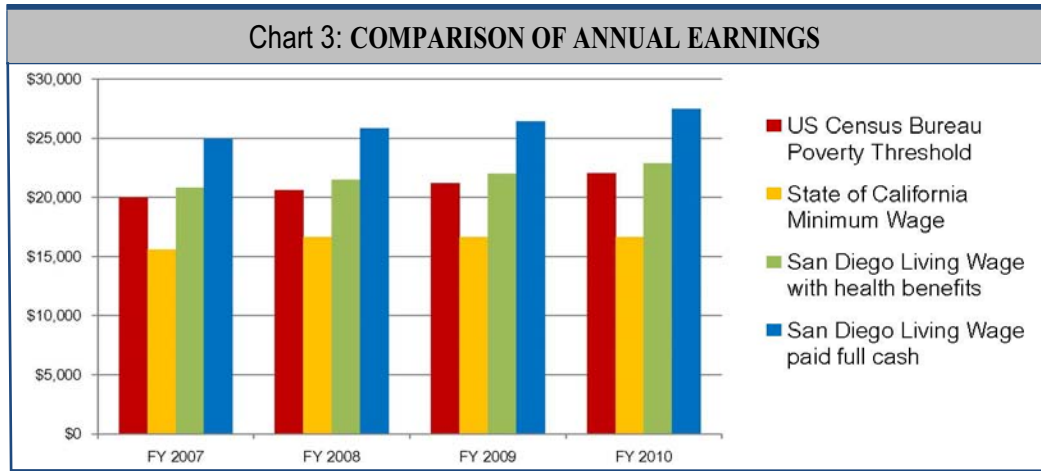
Annual earnings for various wage rates are listed in Chart 2:

Chart 2: ANNUAL EARNINGS FOR VARIOUS WAGE RATES				
	<u>CA Minimum Wage</u>		<u>San Diego Living Wage</u>	
	<u>Hourly</u>	<u>Annual*</u>	<u>Hourly</u>	<u>Annual*</u>
FY 2010	\$8.00	\$16,640	\$13.20	\$27,456
FY 2009	\$8.00	\$16,640	\$12.70	\$26,416
FY 2008	\$8.00	\$16,640	\$12.41	\$25,813
FY 2007	\$7.50	\$15,600	\$12.00	\$24,960
* Assumes 40 hours of work for 52 weeks				

The Purpose and Intent (SDMC §22.4201) of the Living Wage Ordinance states, in part:

“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 ... are extended by the *City* to private *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.”

Chart 3 shows the U.S. Census Bureau Poverty Threshold amount compared to annual earnings for workers receiving the California Minimum wage and San Diego’s Living Wage rates (with health benefits and paid in full cash):



City Costs for Living Wage Ordinance

The LWO mandates a cost-of-living wage increase for covered employees [SDMC §22.4220(b)]. In past practice, the City often adjusted service contract agreements in accordance with the Consumer Price Index, but, with the LWO in place, the City now requires firms to share this increase with their workers by raising wages of covered employees to meet minimum amounts.

To determine the LWO’s financial impacts on the City, invoice payments were totaled for contracts covered by the LWO; (a contract may span more than one fiscal year). Information was extracted by mining data across several different applications. Chart 4 calculates annual amounts paid for service contracts with mandated increases as a portion of the City’s overall budget:

Chart 4: LWO CONTRACT COST INCREASE SINCE IMPLEMENTATION				
	<u>Service Contract Payments</u>	<u>Cost of Living Increase</u>	<u>Cost of Living Amount</u>	<u>City Budget Increase</u>
FY 2009	\$19,231,403	2.3%	\$442,322	0.00014%
FY 2008	\$16,088,885	3.4%	\$547,023	0.00019%
FY 2007	N/A	N/A	N/A	N/A

The Living Wage Program moved to the Administration Department in April as part of a business restructure. At that time, the Supervising Management Analyst who previously addressed LWO issues on a half-time basis was assigned to full-time coverage. A Senior

Management Analyst joined the staff at the start of the year. Staff costs are shown in Chart 5:

Chart 5: CITY STAFF LWO COSTS IN FISCAL YEAR 2009				
<u>Classification</u>	<u>Full-Time Employee*</u>	<u>Salary*</u>	<u>Fringe*</u>	<u>Total</u>
Supervising Management Analyst	0.625 FTE	\$48,680	\$22,103	\$70,783
Senior Management Analyst	0.788 FTE	\$54,478	\$25,390	\$79,868
TOTAL	1.413 FTE			\$150,651
* Pro-rated to reflect actual amounts				

Tasks associated with LWO administration include: determination of applicability; record maintenance; complaint receipt, investigation, and resolution; performance of contract compliance reviews; provision of information in response to requests from contractors, workers, the public, and City staff; report preparation; and posting and distribution of informational materials including annual wage adjustment and Rules Implementing the LWO.

The City Attorney's Office expended staff time to support Living Wage enforcement during Fiscal Year 2009. The City Attorney's Office was involved in resolving an Employee Complaint at the administrative level without litigation.

Chart 6: CITY ATTORNEY'S OFFICE LWO COSTS IN FISCAL YEAR 2009				
<u>Classification</u>	<u>Hours</u>	<u>Salary</u>	<u>Fringe</u>	<u>Total</u>
Deputy City Attorney	Approx 20 hours	\$39.75 /hr	\$16.29 /hr	\$1,121

Attorney time and cost estimates do not include legal research and analysis, legislative drafting, and other legal services not directly related to enforcement.

Total LWO implementation costs for the City since inception are shown in Chart 7:

Chart 7: MAXIMUM TOTAL LWO IMPLEMENTATION COSTS SINCE INCEPTION			
<u>Description</u>	<u>FY 2007-2008</u>	<u>FY 2009</u>	<u>Total-to-Date</u>
LWO Program Staff	\$65,375	\$150,651	\$216,026
City Attorney's Office	\$11,295	\$1,121	\$12,416
LWO contract increase*	\$1,572,123	\$442,322	\$2,014,445
Offset amount	<u>\$10,000</u>	<u>\$23,359</u>	<u>\$33,359</u>
TOTAL	\$1,638,793	\$570,735	\$2,209,528
* Includes wages, material, and scope changes			

As noted, the calculated contract increase amount does not solely reflect a rise in LWO rates for covered employees. Because data was extracted from aggregate invoice payments, it necessarily includes any incurred expenses for material or scope changes. The Total-to-Date is further offset by a **\$10,000 fine recovered in 2008 by the City Attorney's Office** (in a Stipulated Judgment

pursuant to Code of Civil Procedure §664.6) and a **\$23,359 overcharge identified during a Living Wage Contract Compliance Review and subsequently recovered by the City** (listed in Chart 19 of this report).

LWO Contracts

During the subject period, the LWO applied to service contracts with an annual value over \$25,000 and a term of more than 90 days. Primarily, contracts were for landscaping, janitorial, security, and maintenance services. A full list of LWO contracts during Fiscal Year 2009, *LWO Contracts in Fiscal Year 2009 (July 1, 2008 – June 30, 2009)*, is included as Attachment D.

During this reporting period, five contractors requested and received an exemption from LWO requirements in accordance with SDMC §22.4215(b)(1) because their firms employed twelve or fewer employees:

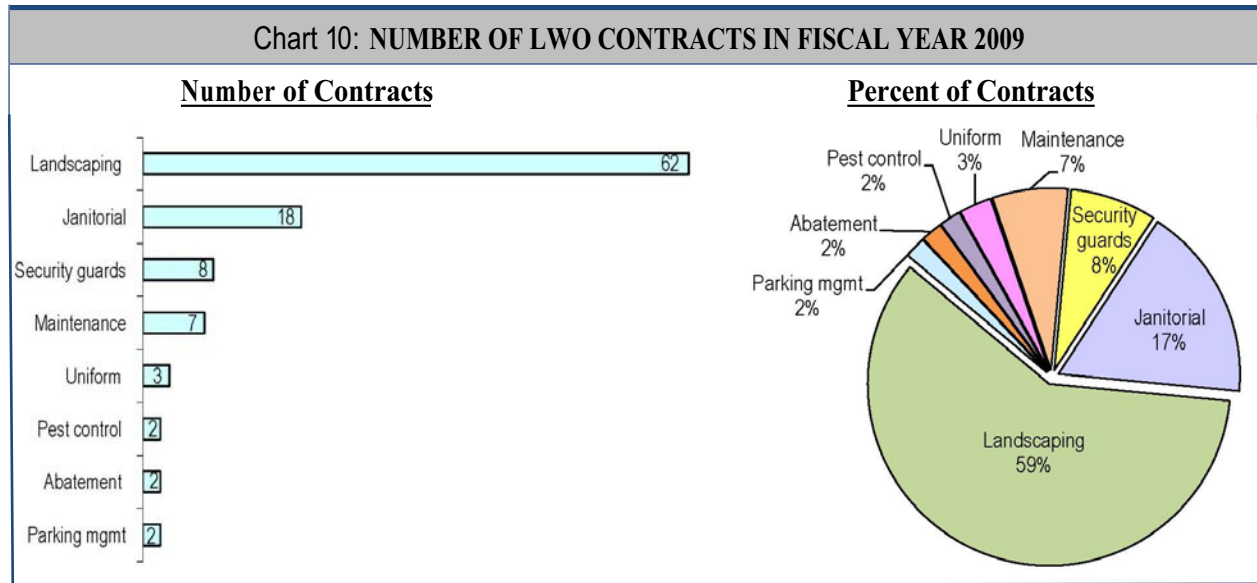
Chart 8: LWO EXEMPT EMPLOYERS IN FISCAL YEAR 2009		
Building Trust Services, Inc	Goldkamp Landscaping	VIP Holdings
Epic Pest Control	JL Krueger Landscape	

In Fiscal Year 2009, 43 contractors held 104 LWO contracts for a total value of \$31,329,064. (NOTE: Total contract value may span portions of several years.) Chart 9 lists LWO covered contractors:

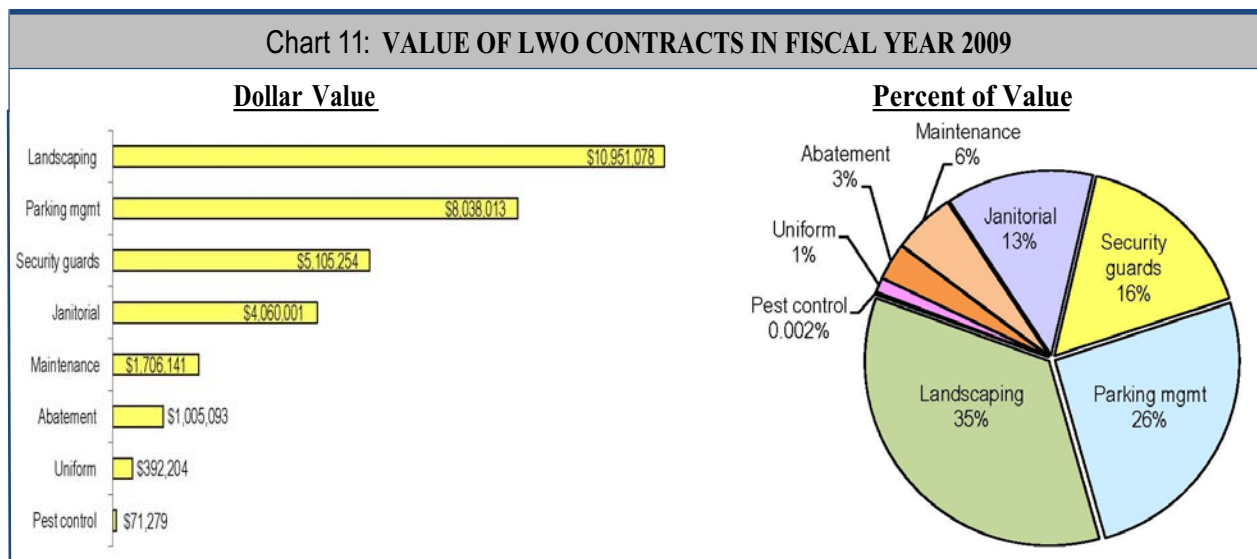
Chart 9: LWO COVERED EMPLOYERS IN FISCAL YEAR 2009		
AAA Pipeline, Inc	Downstream Services, Inc	Ron's Maintenance
Able Patrol and Guard	Empire Maintenance Company, Inc	San Diego Services
Acacia Landscape Company	Eric J Friend	Stafford Environmental Services Inc
Ace Parking Management, Inc	Fleet Transportation Services	T and T Janitorial
Agricultural Pest Control	Flores Sierra Contractors, Inc	TEG-LVI Environmental Services Inc
Ameripride Uniform Services	FRS Environmental Inc	The Wackenhut Corp
Atlas Environmental Services Inc	Jani-King of California, Inc	Tobi Jene Carter
Aztec Landscaping, Inc	JL Krueger Landscape	Treebeard Landscape, Inc
Bay City Equipment	Landscapes USA, Inc	Trugreen - Landcare Regional
Benchmark Landscape Services Inc	NMS Management, Inc	TTCC, Inc
Blue Skies Landscape Maintenance Inc	One Tripp Tree Service	Unifirst Corporation
Brewer Lawn Maintenance, Inc	ParkWest Landscape Maintenance	US Security Associates, Inc
Contemporary Design Landscape	Ponderosa Landscape, Inc	West Coast Arborists, Inc
DMS Services	Powerland Equipment, Inc	Westturf Landscape Maintenance
	Qualityway Building Maintenance	

Of the 104 active LWO contracts during this period, 59% were for landscaping services; 17% for janitorial services; 8% for security guard services; and 7% for maintenance. The remaining

contracts were for uniform services, pest control, lead and asbestos abatement, and parking management services. Chart 10 provides an overview of the number of LWO contracts:



Purchasing Agreements for these contracts totaled \$31,329,063. When calculated by dollar value: 35% of the combined contract value was for landscaping; parking management was 26%; security guards were 16%; janitorial was 13%; maintenance was 6%; and all others make up the remaining 4%. Each commodity type's costs and percentage of the total are shown in Chart 11:



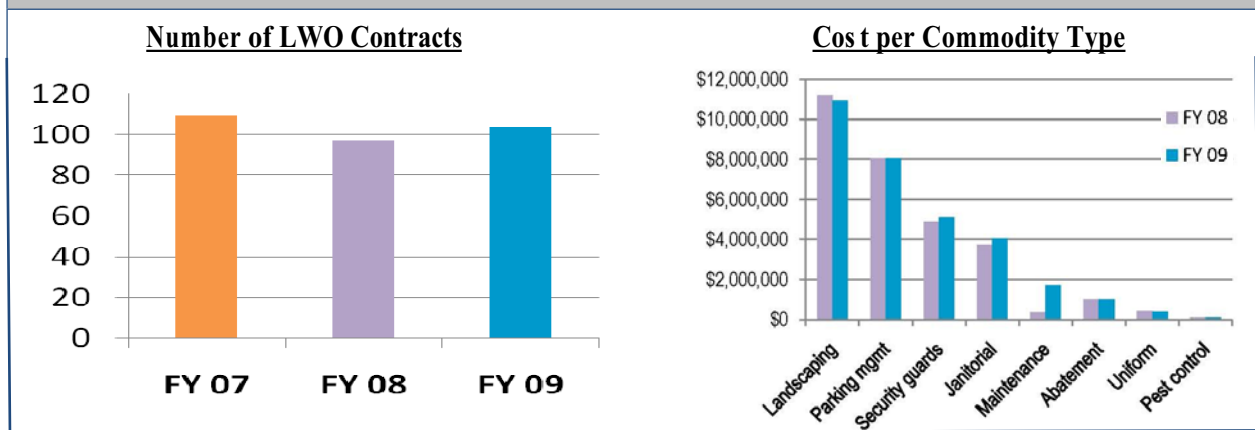
Landscaping service – with the most contracts (62) and highest total value (\$10,951,078) – is the largest commodity. Within this category, Maintenance Assessment Districts constitute 57% of the total landscaping contract dollars; Parks were 14%; tree care was 11%; facilities were 9%; and other landscaping services were 8%. Landscaping data is shown in Chart 12:

Chart 12: LANDSCAPING CONTRACTS IN FISCAL YEAR 2009



For comparison, a review of available data for the first three years of LWO implementation is provided in Chart 13. (The first annual report of LWO administration for Fiscal Year 2007 did not include cost data.)

Chart 13: COMPARISON OF ANNUAL LWO CONTRACTS



City Facility Agreements

LWO requirements are applicable to contracts and subcontracts at City facilities, in accordance with SDMC §22.4210(a)(4). These City facilities are defined in the ordinance as Petco Park, Qualcomm Stadium, San Diego Sports Arena, San Diego Convention Center and San Diego City Concourse. (NOTE: On January 1, 2010, the San Diego Civic Theatre was added.)

At the start of the fiscal year, the Living Wage Program sent an annual notification to each City facility to inform them of the adjusted wage, re-state their obligations regarding LWO requirements, request a signed *LWO Certification of Compliance*, and offer assistance. Throughout the year, contacts are maintained to support City facilities in understanding and attaining LWO compliance.

SDMC §22.4240 allows for supersession of LWO provisions when specifically agreed to in writing by parties to a collective bargaining agreement. The Living Wage Program approved several requests for exemption at City facilities during Fiscal Year 2009 as shown in Chart 14:

Chart 14: COLLECTIVE BARGAINING AGREEMENT LWO EXEMPTIONS AT CITY FACILITIES	
<u>Bargaining Unit</u>	<u>City Facility</u>
Service Employees International Union, Local 1877	San Diego Convention Center
Service Employees International Union, Local 2028	Petco Park
Teamsters, Chauffeurs, Warehousemen and Helpers, Local 542	San Diego Convention Center

During this period, the Living Wage Program received and investigated one LWO Employee Complaint regarding a City facility. No violation was found.

LWO Employee Complaints

During Fiscal Year 2009, the LWO Program received and investigated fourteen LWO Employee Complaints. Chart 15 lists information regarding these complaints while retaining confidentiality of the claimants:

Chart 15: LWO EMPLOYEE COMPLAINTS IN FISCAL YEAR 2009			
<u>Complaint</u>	<u>Allegation</u>	<u>Result</u>	<u>Back Pay</u>
#C09-001	Nonpayment of LWO rates	Violation	\$46
#C09-002	Nonpayment of LWO health benefits	Violation	\$29,147
#C09-003	Retaliation for inquiry about LWO	No jurisdiction	--
#C09-004	Retaliation for inquiry about LWO	No violation	--
#C09-005	Nonpayment of LWO rates	Violation	\$143,809
#C09-006	Nonpayment of LWO back pay	Violation	\$9,693
#C09-007	Nonpayment of LWO rates, health benefits, and leave time	Violation	\$28,464
#C09-008	Nonpayment of LWO back pay and leave time	No violation	--
#C09-009	Retaliation for inquiry about nonsufficient funds payroll check	No violation	--
#C09-010	Retaliation for inquiry about LWO	No violation	--
#C09-011	Nonpayment of LWO rates and leave time for all hours	Violation	\$627
#C09-012	Nonpayment of LWO rates and leave time	Violation	\$102
#C09-013	Nonpayment of LWO rates	No violation	--
#C09-014	Nonpayment of LWO rates	No violation	--
TOTAL	14 COMPLAINTS	7 VIOLATIONS	\$211,888

Chart 16 shows a record of LWO Employee Complaints since inception of the ordinance:

Chart 16: ANNUAL RECORD OF LWO EMPLOYEE COMPLAINTS				
	<u>Complaints</u>	<u>Violations</u>	<u>Non-Violations</u>	<u>Back Pay</u>
FY 2009	14	7	7	\$211,888
FY 2008	7	4	3	\$52,841
FY 2007	<u>0</u>	<u>0</u>	<u>0</u>	<u>\$0</u>
TOTAL	21	11	10	\$264,729

Chart 17 exhibits the trend for LWO Employee Complaints and recovery of back payment:



In Fiscal Year 2009 the stated performance measure for the LWO Program was resolution of LWO Employee Complaints within a target of 90 days. Total duration time includes:

- Complaint receipt and issuance of correspondence to claimant and subject of the complaint acknowledging receipt;
- Investigation, including contract file review and interviews with claimant, subject of complaint, responsible department contract administrator, Procurement Specialist, and any other persons with knowledge;
- Determination of Violation or Non-Violation and issuance of correspondence to claimant and subject of complaint stating determination;
- When required, calculation of back pay and verification of payment.

Whenever a complaint is not resolved within 60 days, the claimant and the subject of the complaint are notified of the status of the investigation, in accordance with the *Rules Implementing the LWO*. Additional status updates are provided every 30 days until completion.

In Fiscal Year 2009, complaints were investigated and resolved within an average timeframe of

72.7 days. (NOTE: Three prior year complaints were completed during the early months of this fiscal year, but their data was included in full in the Fiscal Year 2008 Annual LWO Report.)

Chart 18: LWO EMPLOYEE COMPLAINT RESOLUTION TIME IN FISCAL YEAR 2009				
<u>Complaint</u>	<u>Filed</u>	<u>Concluded</u>	<u>Duration</u>	<u>Comments</u>
#C09-001	07/30/2008	08/15/2008	15 days	
#C09-002	09/10/2008	02/24/2009	167 days	Includes time to verifyback payment
#C09-003	09/26/2008	11/05/2008	25 days	
#C09-004	09/26/2008	11/17/2008	37 days	
#C09-005	10/20/2008	04/29/2009	191 days	Includes time to verifyback payment
#C09-006	11/07/2008	03/26/2009	139 days	Includes time to verifyback payment
#C09-007	11/07/2008	03/09/2009	122 days	Includes time to verifyback payment
#C09-008	12/10/2008	01/26/2009	47 days	
#C09-009	02/09/2009	04/01/2009	54 days	
#C09-010	02/09/2009	04/01/2009	54 days	
#C09-011	03/09/2009	05/22/2009	74 days	Includes time to verifyback payment
#C09-012	04/23/2009	06/18/2009	56 days	Includes time to verifyback payment
#C09-013	05/11/2009	05/19/2009	8 days	
#C09-014	05/18/2009	06/16/2009	29 days	
Average time to conclude Complaint:			1,018 days	÷ 14 Complaints = 72.7 days average

No protests were received for determinations issued during Fiscal Year 2009.

LWO Compliance Reviews

Proactive LWO Contract Compliance reviews are conducted as part of an integrative approach to detect violations and exercise control through diligent oversight. In a difficult economy, complainants are less likely to step forward; (no LWO Employee Complaints were filed in the first half of Fiscal Year 2010). Compliance Reviews give assurance of a level playing field for all participants in the City's service contract bid process. The City benefits from strengthened working relationships with covered employers while identifying and resolving errors before they become longstanding.

SDMC §22.4235(a) allows for periodic reviews to be conducted to verify compliance with LWO requirements; the City's right to examine records and access the work site for interviews is affirmed in the *Rules*, Section F, Monitoring and Investigation.

Contracts for compliance review are selected randomly or based on concerns of possible non-compliance; selection of a firm for review does not imply wrong-doing. The LWO Program initiates contact with the covered employer to determine a mutually-agreeable time and location, and then sends a letter stating the intent to conduct a review with confirmation of the pre-determined meeting time. During the review, documents such as payroll records, employee

manuals, and project files are examined by LWO Program staff. At the job site, staff conducts interviews with covered employees in English or Spanish. The subject firm receives a report of compliance review findings which may include recommendations for improvement or direction to resolve discrepancies, if identified. A response is required within 30 days to affirm the findings.

Discrepancies uncovered during LWO Compliance Reviews included underpayment to covered employees in accordance with SDMC §22.4220(a-b); failure to allocate 10 paid vacation days per year in accordance with SDMC §22.4220(c); and failure to notify covered employees in accordance with SDMC §22.4225(b). Discrepancies are resolved before a Compliance Review is closed out.

Results of LWO Compliance Reviews during Fiscal Year 2009 are shown in Chart 19:

Chart 19: LWO CONTRACT COMPLIANCE REVIEWS IN FISCAL YEAR 2009			
<u>Review</u>	<u>Firm</u>	<u>Result</u>	<u>Comments</u>
#R09-001	Able Patrol & Guard	No discrepancies found	
#R09-002	Blue Skies Landscape	No discrepancies found	
#R09-003	T & T Janitorial	No discrepancies found	
#R09-004	Powerland Equipment	No discrepancies found	
#R09-005	Benchmark Landscaping	No discrepancies found	
#R09-006	West Coast Arborists	Minor discrepancies found	Back pay of \$231.26
#R09-007	Brewer Lawn Maintenance	No discrepancies found	
#R09-008	Acacia Landscape	No discrepancies found	
#R09-009	Landscapes USA	Minor discrepancies found	Back pay of \$542.40
#R09-010	J L Krueger	Discrepancies found	Back pay of \$3,564.96
#R09-011	Aztec Landscaping	Discrepancies found	Refund to City of \$23,359.00
TOTAL	11 REVIEWS	4 FIRMS WITH DISCREPANCIES	TOTAL \$27,697.62

Contractor Compliance Reports

Covered employers are required to complete an annual Contractor Compliance Report in accordance with SDMC §22.4225(d). The Living Wage Program provided a single-page form to survey firms with active LWO contracts in May 2009. Some results are shown in Chart 20:

Chart 20: FISCAL YEAR 2009 CONTRACTOR COMPLIANCE REPORT RESPONSES	
LWO covered employers submitting Contractor Compliance Report	100%
Number of LWO covered employees	974
Number of LWO covered employees receiving health benefits	244
Percent of LWO covered employees receiving health benefits	25%
Percent of LWO covered employers offering health benefit option	51%
Covered employers self-reporting LWO improved firm's quality of service	47%
Covered employers self-reporting LWO reduced absenteeism or turnover	46%

The Contractor Compliance Report was distributed to covered employers with a notice of the annual wage adjustment and a request for submittal of a newly-signed *LWO Certification of Compliance*. This packet included an updated *LWO Notice to Employees* and a handout explaining the Earned Income Tax Credit, in both English and Spanish. In accordance with SDMC §22.4225(b), a covered employer must notify covered employees of the LWO and the Earned Income Tax Credit.

LWO Modifications

The LWO was modified by a unanimous vote of the City Council on October 20, 2008, and several changes intended to enhance enforcement went into effect on December 24, 2008. Those changes are shown in Chart 21:

Chart 21: LWO ENFORCEMENT MODIFICATIONS EFFECTIVE DECEMBER 24, 2008	
<u>Code</u>	<u>Modification</u>
22.4230(a)(4,5)	Directs courts to award penalties and attorney fees.
22.4230(b)	Clarifies prohibition of retaliation.
22.4230(c)	Requires City to investigate all complaints “within 60 days, with reasonable 30-day extensions.”
22.4230(d)	Requires firm to correct violation within 30 days or City may: <ul style="list-style-type: none"> ▪ declare a material breach with contractual remedies; ▪ debar covered employer for 3 years or until penalties/restitution paid; ▪ determine firm is non-responsible; ▪ initiate civil action for payment to employee and/or fine up to \$100/day.

On January 1, 2010, additional modifications to the LWO will take effect. For convenience, these modifications are summarized in Chart 22:

Chart 22: LWO MODIFICATIONS EFFECTIVE JANUARY 1, 2010	
<u>Code</u>	<u>Modification</u>
22.4205 <i>City facility</i>	Definitions Adds “Civic Theatre, including the portion of the Civic Center Plaza directly adjacent to the Civic Theatre when theatre-related activities are held there” and excludes other structures located in plaza.
<i>Service contract</i>	Deletes requirement for “term of more than 90 days” and clarifies inclusion of “all contracts for services provided through the managed competition program under Charter Section 117(c).”
<i>Services</i>	Adds: <ul style="list-style-type: none"> ▪ Street cleaning; ▪ Waste collection and waste disposal, including recycling; ▪ Right of way maintenance; and ▪ Water and wastewater maintenance.
[continued]	

Chart 22: LWO MODIFICATIONS EFFECTIVE JANUARY 1, 2010

[continued from previous page]

<u>Code</u>	<u>Modification</u>
22.4215(a)(4) Exemptions	Removes exemption for “recycling or solid waste management franchises.”
22.4215(a)(7)	Defines “professional services” as in CA Labor Code Section 515(a): employee customarily and regularly exercises discretion and independent judgment in performing duties and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.
22.4215(c)	Says definitions “shall be liberally interpreted so as to further the policy objectives of this division” and directs City Manager to establish implementation procedures.
22.4225(d) Reporting and Notification Requirements	Requires covered employer to document compliance, maintain records for 3-7 years, and make records available to City upon request. Records must include “all wage records, proof of payment for health benefits, employee name, address, date of hire, job classification, rate of pay, cost and amount paid for health benefits, hours worked in each pay period, and paid and unpaid time off (accrued and used).”
22.4225(e)	Requires businesses to prominently post notice to employees at worksite (or site frequented by workers) about LWO rights or firm’s exempt status.
22.4235 Administration	Requires annual LWO report to Council.

In preparation, the Living Wage Program worked with City departments, City Facilities, and covered employers to ensure dissemination of information, identification of newly-covered contracts, and inclusion of appropriate contract language.

FISCAL CONSIDERATIONS: The Living Wage Ordinance generally requires an annual increase for labor costs in City service contracts, however, in the past, cost-of-living adjustments were frequently applied even without direction from the ordinance. Due to the state of the economy, there will be no upward adjustment for Fiscal Year 2011; (U.S. Department of Labor, Bureau of Labor Statistics published a *12-Month Percent Change* of 0.0% for this region). With no cost-of-living increase during calendar year 2009, the Living Wage rate will not be adjusted and service contract costs will not be increased to comply with the ordinance.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None regarding this report.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The City’s LWO information is easy to locate and understand – two measurements used by national advocacy groups to determine whether an agency is doing well in its LWO implementation. The Living Wage Program maintains accurate, up-to-date information on the City’s website. Current posted information includes the Municipal Code text, *Rules Implementing the LWO*, and all forms and

notices (some in Spanish). A planned enhancement of the webpage is scheduled for mid-2010 and will include annual reports on LWO administration since inception.

A brochure summarizing aspects of the LWO is available. Several times a year, Purchasing & Contracting Department sponsors a workshop for potential bidders entitled, “How to Do Business with the City” which includes a section about LWO requirements.

Various organizations continue to be actively interested in LWO administration including the Center on Policy Initiatives and the Maintenance Cooperation Trust Fund. These groups and others regularly contact Living Wage Program staff with inquiries about specific ongoing contracts and upcoming bid opportunities.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Key stakeholders for the LWO remain the City of San Diego citizens, covered employees, and covered employers. The City’s Living Wage Program employs efficient methods to provide information about the Living Wage Ordinance, monitor compliance with ordinance requirements, and assist covered employers in meeting their obligations.

Official version signed by

Debra Fischle-Faulk, Director
Administration Department

Official version signed by

Wally Hill
Assistant Chief Operating Officer

Attachment A: San Diego Municipal Code Chapter 2, Article 2, Division 42

Attachment B: Living Wage Ordinance Synopsis

Attachment C: Rules Implementing the Living Wage Ordinance

Attachment D: LWO Contracts in Fiscal Year 2009 (July 1, 2008 – June 30, 2009)

Article 2: Administrative Code

Division 42: City of San Diego Living Wage Ordinance

(Added 6/6/2005 by O-19386 N.S.)

§ 22.4201 Purpose and Intent

The *City* awards many taxpayer-funded agreements to private *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 private *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 service 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. Private businesses that do not fall into any of the above described categories are not required to comply with this division.

(Added 6-6-2005 by O-19386 N.S.)

§22.4202 Citation

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

(Added 6-6-2005 by O-19386 N.S.)

§22.4205 Definitions

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

Business means any corporation, partnership, limited liability corporation, joint venture, sole proprietorship, association, or trust, other than a public entity.

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 means any of the following facilities that are owned, operated, managed, or leased by the *City*:

- (a) Petco Park;
- (b) Qualcomm Stadium;
- (c) San Diego Sports Arena;
- (d) San Diego Convention Center; or
- (e) San Diego City Concourse.

City facility agreement means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility* that generates \$350,000 or more in annual gross receipts to the *business*. *City facility agreement* includes (a) subleases or other agreements for use of the *City facility* for 30 days or more in any calendar year; and (b) subcontracts and concession agreements for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, and with a term of more than 90 days.

City facility employer 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 means the City Manager and his/her delegates and representatives.

Covered employee means any individual employed on a full-time, part-time, temporary, or seasonal basis by (a) a *service contractor* with regard to any hours worked in performance of a *service contract*; (b) a *financial assistance recipient* who works at least 20 hours a month at the site that is the subject of the *financial assistance agreement* or at least 20 hours a month on the program that is the subject of the *financial assistance agreement*;

or (c) a *City facility employer* with regard to any hours worked at a *City facility*. *Covered employee* does not include: (a) individuals who, in addition to wages, receive academic credit for their work from an accredited educational institution; and (b) individuals who participate in job training and education programs that have as their express purpose the provision of basic job skills or education.

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

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 shall apply 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 shall apply 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 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 rate means a minimum dollar amount per hour toward the cost of health and medical care insurance for employees and their dependents.

Service contract means a contract between the *City* and a *business* with a combined annual value of payments in excess of \$25,000 and with a term of more than 90 days, and any applicable subcontracts or franchises, to furnish *services*.

Service contractor means any *business* that has been awarded a *service contract* subject to this division. For the 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) Automotive repair and maintenance;
 - (b) Cashiers;
 - (c) Child care;
 - (d) Concessions/retail sales;
 - (e) Facility and building maintenance;
 - (f) On-site food service/preparation;
 - (g) Janitorial, custodial, and housekeeping;
 - (h) Landscaping;
 - (i) Laundry services;
 - (j) Office/clerical;
 - (k) Parking services;
 - (l) Pest control;
 - (m) Security services;
 - (n) Ushers and wheelchair attendants;
 - (o) Ticket takers; and
 - (p) Warehouse workers.
- (Added 6-6-2005 by O-19386 N.S.)*

§22.4210 Applicability of Living Wage Ordinance

- (a) This division shall apply to:
- (1) any *service contract*, including any applicable subcontract, entered into, awarded, amended, renewed, or extended on or after July 1, 2006. Compliance with this 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 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 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.

(Added 6-6-2005 by O-19386 N.S.)

§22.4215 Exemptions.

- (a) Except for *City facility agreements*, 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) contracts for *services* by any other governmental agency;
 - (4) contracts for public works construction, recycling, or solid waste management franchises;
 - (5) cooperative procurement contracts, including contracts that use a bidding process that substantially complies with *City* requirements;
 - (6) contracts for the purchase of goods, property, or the leasing of property;
 - (7) contracts for design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other professional services.
 - (8) contracts where compliance with this division is not in the best interests of the *City* as certified by the *City Manager* and approved by the *City Council*.
- (b) The following businesses, even if otherwise qualified as a *covered employer*, are exempt from the requirements of this division:
- (1) *Businesses*, including their parent and subsidiary entities, employing twelve or fewer employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, so long as the *City* determines that the *business*, including any of its subcontractors, will not need to retain more than twelve employees to perform work related to a *service contract*, *financial assistance agreement*, or *City facility agreement*.
 - (2) *Businesses* organized under Internal Revenue Service Code, section 501(c)(3) to provide community-based social services, other than child care services, and whose highest paid officer earns a salary that, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee.

(Added 6-6-2005 by O-19386 N.S.)

§22.4220 Payment of Living Wage and Provision of Benefits

- (a) *Covered employers* subject to this division shall 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 *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 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. Prior to April 1 of each year, the *City* shall 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 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. Such days off shall vest as accrued. Part-time employees shall accrue such days at a rate proportional to full-time employees. *Covered employees* shall 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 also permit *covered employees* to take an additional ten uncompensated days off 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. This section does not mandate the accrual from year to year of uncompensated days off.

(Added 6-6-2005 by O-19386 N.S.)

§22.4225 Reporting and Notification Requirements

- (a) Every *service contract*, *financial assistance agreement*, and *City facility agreement* shall 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* shall notify its *covered employees* of the requirements of this division and of the possible availability of the Earned Income Tax Credit.
- (c) Each *covered employer* shall 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 shall be completed on a form provided by the *City Manager*.
- (d) Each *covered employer* shall file with the *City Manager* an annual report regarding compliance with this division.

(Added 6-6-2005 by O-19386 N.S.)

§22.4230 Enforcement

- (a) A *covered employee* claiming a violation of this division shall have the right to file an action against an employer in the appropriate court within one year after discovery of the alleged violation. The court may award any employee who files suit pursuant to this subdivision, the following:
 - (1) For failure to pay the minimum wage required by this division, the difference between the minimum wage required herein and the amount actually paid to the employee, plus interest.
 - (2) For failure to pay the *health benefits rate*, the difference between the *health benefits rate* required by this division and the amount actually paid towards the *health benefits rate*, plus interest.
 - (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 court shall award as a penalty up to treble the amount of monies to be paid as damages.
 - (5) The court shall award reasonable attorney's fees and costs to an employee who prevails in any such private action and to an employer who so prevails if the employee's suit is found to be frivolous.

- (b) A *business* is prohibited from any retaliation against an employee who alleges non-compliance with this division or cooperates with an investigation regarding compliance with this division. A *business* shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining with regard to the *business's* practices with respect to this division, for opposing any practice proscribed by this division, for participating in proceedings related to this division, for seeking to enforce his or her rights under this division by any lawful means, or for otherwise asserting rights under this division. Any such employee may report any alleged retaliation to the *City Manager*.
- (c) A *covered employee* claiming a violation of the division may file a complaint with the *City*. The *City* shall investigate and address any alleged violation of this division's requirements, and shall convey the results of the investigation to the complainant within 60 days, with reasonable 30-day extensions. However, the *City's* failure to investigate an alleged violation or otherwise enforce any of the provisions of this division shall not create any right of action to recover damages from the *City* by any person, including but not limited to an aggrieved employee.
- (d) Whether based upon a complaint or otherwise, where the *City Manager* has determined that a *covered employer* has violated this article, the *City Manager* shall issue a written notice to the *covered employer* that the violation is to be corrected within thirty days. In the event that the *covered employer* has not demonstrated to the *City Manager* within such period that it has substantially cured any material violation, the *City Manager* shall then do one or more of the following:
 - (1) Declare a material breach of the *service contract*, *financial assistance agreement*, or *City facility agreement* and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the *service contract*, *financial assistance agreement*, or *City facility agreement* and the return of monies paid by the *City* for services not yet rendered.
 - (2) Institute proceedings under Article 2, Chapter 2, Division 8 to debar the *covered employer* from future *City* contracts for three years or until all penalties and/or restitution have been fully paid, whichever occurs last.
 - (3) Request a determination of non-responsibility under Article 2, Chapter 2, Division 32.

- (4) Request that the City Attorney bring a civil action against the *covered employer* seeking any legal remedies, including but not limited to:
 - (i) Where applicable, payment to the *covered employee* of all unpaid wages and/or health premiums prescribed by this division; and/or
 - (ii) A fine payable to the *City* in the amount of up to one hundred dollars (\$100) for each violation for each day the violation remains uncured.
- (e) A violation of this division shall not be prosecuted as a misdemeanor, notwithstanding any other provision of the San Diego Municipal Code.
- (f) This division shall not be construed to limit an employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this division be a prerequisite to the assertion of any other such right.

(Added 6-6-2005 by O-19386 N.S.)

(Amended 11-24-08 by O-19809 N.S; effective 12-24-2008.)

§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.
- (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) On July 1, 2007, or as soon thereafter as is practicable, the *City Manager* shall submit a report to the City Council generally describing the effects of the City of San Diego Living Wage Ordinance upon the *City*.

(Added 6-6-2005 by O-19386 N.S.)

§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.
(Added 6-6-2005 by O-19386 N.S.)

§22.4245 Severability

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.
(Added 6-6-2005 by O-19386 N.S.)

LIVING WAGE ORDINANCE SYNOPSIS

Fiscal Year 2009

APPLICABILITY

The Living Wage Ordinance applies in three types of contractual situations:

- **City service contracts** with a term of more than 90 days and an annual value over \$25,000.
- **Facility Agreements** defined in the ordinance as Petco Park, Qualcomm Stadium, San Diego Sports Arena, San Diego Convention Center, and San Diego City Concourse.
- **Financial Assistance Agreements** defined in the ordinance as direct financial assistance to encourage, facilitate, support or enable:
 - economic development, job creation, or job retention when the combined value over five years is \$500,000 or more; and
 - tourism, arts, and cultural programs with an annual value of \$750,000 or more.

EXEMPTIONS

Certain contracts are **categorically exempt** from the LWO:

- contracts subject to Federal or State law or regulations that preclude LWO applicability;
- cooperative procurement contracts, contracts for services by other governmental entities, or contracts where the City shares management authority with other jurisdictions;
- public works construction, recycling, or solid waste management franchise contracts;
- contracts for purchase of goods, property, or a lease of property with City as lessee unless included services are more than incidental;
- contracts for design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other professional services; and
- contracts where compliance with the LWO is not in the best interests of the City as certified by the Mayor and approved by the City Council.

When the LWO applies to a contract, a contractor or subcontractor may **apply for exemption** if:

- the business employs twelve or fewer employees, including parent and subsidiaries;
- the business is organized under IRS section 501(c)(3) and the highest officer's pay is less than eight times the lowest workers pay; or
- a collective bargaining agreement specifically supersedes the LWO.

REQUIREMENTS

A covered employer must meet the following LWO requirements:

- pay covered employees at the current Fiscal Year 2010 rate of \$11.00/hour plus \$2.20/hour toward health benefits for a total of \$13.20 (rate is adjusted annually on July 1);
- provide ten compensated and ten additional uncompensated days off per year;
- submit a *Certification of Compliance* for each applicable project and allow City access to LWO records for inspection;
- inform employees of their possible right to Federal Earned Income Tax Credit; and
- prohibit retaliation against an employee for allegation of LWO non-compliance.

City of San Diego

RULES IMPLEMENTING THE LIVING WAGE ORDINANCE

Effective date: July 1, 2006

Revision date: July 1, 2009

City of San Diego Living Wage Program

202 C Street, M.S. 9A

San Diego, CA 92101-4195

Phone: 619/236-6682

Fax: 619/533-3240

Table of Contents

A. Definitions	2
B. Applicability of LWO	6
C. Exemptions	8
D. Employer Requirements	11
E. Administrative Recordkeeping and Reports	16
F. Monitoring and Investigation	17
G. Enforcement	18
H. Employee Complaint Process	19

Appendix A: Current Living Wage Rates

Appendix B: Living Wage Ordinance Notice and Forms

Notice to Employees (English, Spanish)

Certification of Compliance

Application for Exemption

Employee Complaint Form (English, Spanish)

RULES IMPLEMENTING THE LIVING WAGE ORDINANCE

The purpose of these Rules Implementing the Living Wage Ordinance [Rules] is to provide guidance for contractors to comply fully with the requirements of the City of San Diego's Living Wage Ordinance, Chapter 2, Article 2, Division 42 of the San Diego Municipal Code (SDMC) [the Living Wage Ordinance or simply "LWO"]. These Rules are intended as an administrative aide to carry out the intent of the LWO and should not be construed to extend, modify, or otherwise alter the substantive provisions of the LWO.

A. DEFINITIONS

In addition to the definitions in SDMC §22.4205, the following definitions shall apply in these Rules:

Bidder includes an applicant for any agreement that is subject to the LWO, whether under a competitive bid, request-for-proposal (RFP), sole source, or other procurement process.

Business means any corporation, partnership, limited liability corporation, joint venture, sole proprietorship, association, or trust, other than a public entity.

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 means any of the following facilities that are owned, operated, managed, or leased by the *City*:

- (a) Petco Park;
- (b) Qualcomm Stadium;
- (c) San Diego Sports Arena;
- (d) San Diego Convention Center; or
- (e) San Diego City Concourse.

City facility agreement means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility* that generates \$350,000 or more in annual gross receipts to the *business*. *City facility agreement* includes:

- (a) subleases or other agreements for use of the *City facility* for 30 days or more in any calendar year; and
- (b) subcontracts and concession agreements for *services* at the *City facility* with a

combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, and with a term of more than 90 days

City facility employer 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 means the City Manager and his/her delegates and representatives. However, for the duration that the *City* operates under a “Strong Mayor” form of government pursuant to Article XV of the City Charter, *City Manager* means the Mayor and his/her delegates and representatives.

Community-based social services means any recipient of Community Development Block Grants (CDBG) social service contracts.

Complaint means a report of an alleged violation of the LWO.

Covered employee means:

(a) any individual employed on a full-time, part-time, temporary, or seasonal basis by:

- (1) a *service contractor* with regard to any hours worked in performance of a *service contract*;
- (2) a *financial assistance recipient* who works at least 20 hours a month at the site that is the subject of the *financial assistance agreement* or at least 20 hours a month on the program that is the subject of the *financial assistance agreement*; or
- (3) a *City facility employer* with regard to any hours worked at a *City facility*.

(b) But *covered employee* does not include:

- (1) individuals who, in addition to wages, receive academic credit for their work from an accredited educational institution;
- (2) individuals who participate in job training and education programs that have as their express purpose the provision of basic job skills or education; and
- (3) an owner of a *business*.

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

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. 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 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 rate means a minimum dollar amount per hour toward the cost of health and medical care insurance for *covered employees* and their dependents. Health benefits may include the following types of insurance: medical health coverage, dental, vision, mental health, and disability income. For purposes of the LWO, retirement benefits, accidental death and dismemberment insurance, life insurance, and other benefits that do not provide medical or health-related coverage will not be credited toward the cost of providing *covered employees* with health benefits.

Incidental services means services that are:

- (a) part of an agreement for which the primary purpose is to purchase or rent goods or equipment; and
- (b) performed on a non-recurring and irregular basis. Services are not incidental, even if the primary purpose of the agreement is to purchase goods or equipment, if the agreement provides that services are to be performed on a regular schedule.

Managerial employee and ***supervisory employee*** both mean a person compensated above the living wage rate and who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other subordinate employees, or the responsibility to direct them, adjust their grievances, or recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Service contract means a contract between the *City* and a *business* with a combined annual value of payments in excess of \$25,000 and with a term of more than 90 days. *Service contract* includes any applicable subcontracts or franchises to furnish *services*.

Service contractor means any *business* that has been awarded a *service contract* subject to this division. For the 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) Automotive repair and maintenance;
- (b) Cashiers;
- (c) Child care;
- (d) Concessions/retail sales;
- (e) Facility and building maintenance;
- (f) On-site food service/preparation;
- (g) Janitorial, custodial, and housekeeping;
- (h) Landscaping;
- (i) Laundry services;
- (j) Office/clerical;
- (k) Parking services;
- (l) Pest control;
- (m) Security services;
- (n) Ushers and wheelchair attendants;
- (o) Ticket takers; and
- (p) Warehouse workers.

Subcontractor includes sublessees and concessionaires.

Wages means the amount paid to a *covered employee* as compensation for labor performed. The term does not include any amount paid to a *covered employee* not directly related to the labor performed, such as for parking, uniforms, meals, and contributions to retirement plans. Aside from a *covered employee's* hourly wages, wages may only include commissions earned by a *covered employee* if the *covered employer* keeps accurate records verifying the amount paid to a *covered employee* for each pay period and follows the requirements set forth in these Rules.

B. APPLICABILITY OF LWO

1. Types of Covered Agreements. The majority of the LWO's provisions apply only to *businesses* that enter into the following types of agreements with the City: *service contracts*, *City facility agreements*, and *financial assistance agreements*.

a. Service Contracts.

- (1) In determining whether a contract for *services* is 90 days or longer in duration, the term shall be calculated using the starting date of the original contract and the ending date that appears in the most recent amendment, modification, renewal or extension. A contract that was previously exempt from the LWO because it did not meet the 90 days threshold may thereafter become subject to the LWO because an amendment, modification, renewal, or extension increases the duration of the contract.
- (2) In determining whether a contract for *services* exceeds \$25,000 annually, the total amount of the contract shall be calculated by adding together the amount provided for in the original contract and all amendments, modifications, renewals, or extensions. A contract that was previously exempt from the LWO because it did not meet the monetary threshold may thereafter become subject to the LWO because an amendment, modification, renewal, or extension increases the total amount of the contract.
- (3) Contracts for *services* with maximum amounts or that are to be performed on an as-needed basis:
 - (a) For contracts that specify a maximum amount to be expended, that amount shall be used to determine whether the contract exceeds the \$25,000 threshold.
 - (b) Contracts for *services* that are to be performed on an as-needed basis are presumed to be covered by the LWO. The employer will not be required to comply with the wage and benefit requirements of the LWO, however, until the *City* has used over \$25,000 in *services* from the employer or the invoices submitted by the employer exceed \$25,000. Once the \$25,000 threshold is passed, the employer must comply with all requirements of the LWO.

b. Agreements to Purchase or Rent Property, Goods or Equipment. Agreements to purchase or rent property, goods or equipment that have a component for the provision of *services* are subject to the LWO if the agreement is over \$25,000 annually, at least 90 days in duration, and the *services* to be provided are not *incidental*.

c. City Facility Agreements. *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 from operations at a *City*

facility. City facility agreements apply to Petco Park; Qualcomm Stadium; San Diego Sports Arena; San Diego Convention Center; and San Diego City Concourse.

(1) A *City facility agreement* also includes:

(a) Subleases or other agreements for use of the *City facility* for 30 days or more in any calendar year.

(b) Subcontracts and concession agreements for *services* at the *City facility* with a combined annual value of payments in excess of \$25,000 for any single subcontractor or concessionaire, and with a term of more than 90 days.

(2) A *City facility agreement*, including any applicable sublease, subcontract, or concession agreement, is subject to the LWO if it was in effect on July 1, 2007, or is entered into after this date. Compliance with this division is required during the term of the *City facility agreement*.

d. **Financial Assistance Agreements.** *Financial assistance agreements* are subject to the LWO under either of the following conditions:

(1) The *financial assistance agreement* is for economic development, job creation, or job retention and has a combined value over a period of five years of \$500,000 or more.

(a) A *financial assistance agreement* meeting this definition is subject to the LWO if it is entered into, awarded, amended, renewed, or extended on or after July 1, 2006.

(b) Compliance with this division must continue for a period of 5 years after the threshold amount has been received by the *business*.

(2) The *financial assistance agreement* is for tourism, arts, and cultural programs and has a combined annual value of \$750,000 or more.

(a) A *financial assistance agreement* meeting this definition is subject to the LWO if it is entered into, awarded, amended, renewed, or extended on or after July 1, 2007.

(b) Compliance with this division must continue for one year after the threshold amount has been received by the *business*.

2. Anti-Retaliation Provision. The LWO's prohibition against retaliation (SDMC §22.4230(b)) is not limited to *covered employers*. The anti-retaliation provision is separate from the LWO's wage and benefits provisions and applies to all *businesses*, even if those *businesses* are exempt from the LWO's wage and benefits provisions.

3. Presumption of Coverage. An agreement, request for proposal, request for bid, or

request for quote for any of the agreements in the foregoing paragraph (Rule B.2) is presumed to be covered by the LWO unless specifically exempted by the LWO or these Rules.

4. 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 LWO requirements.
5. Leases and licenses that involve *services* to be performed on *City facility* property are presumed subject to the LWO.
6. The Director of Administration has the final authority in determining whether an agreement is subject to the LWO.

C. EXEMPTIONS

1. **Categorical Exemptions.** Except for *City facility agreements*, the following categories of agreements shall be exempt from the LWO:
 - a. Contracts subject to federal or state law or regulations that preclude applicability of the LWO.
 - b. Contracts where the *City* shares management authority with other jurisdictions unless all those jurisdictions agree to the applicability of the LWO.
 - c. Contracts for *services* by other governmental entities.
 - d. Public works construction, recycling, or solid waste management franchise contracts.
 - e. Cooperative procurement contracts.
 - f. Contracts for purchase of goods, property, or a lease of property with *City* as lessee, unless the contracts include a component for services that are more than *incidental services*.
 - g. Contracts for design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other professional services.
 - h. Contracts where compliance with the LWO is not in the best interests of the *City* as certified by the *City Manager* and approved by the *City Council*.
2. **Exemptions Requiring City's Approval.** In order to qualify for the following exemptions, contractors must submit an Application for Exemption on the form included in Appendix B. The exemption is not valid until the Living Wage Manager approves the contractor's application, via a Certificate of Exemption.
 - a. *Businesses* employing 12 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, if the *City* determines

the *business*, including its *subcontractors*, will not need to retain more than 12 employees to perform work related to the subject agreement.

(1) The number of employees includes:

- (a) The contractor's employees as of the date the contract is signed;
- (b) The employees the contractor reasonably believes it will hire during the course of the contract, whether those employees will work on the *City* contract or not;
- (c) The employees of the contractor's parent and subsidiary entities; and
- (d) The employees of any *subcontractors* the contractor proposes to use to perform all or a portion of the service covered by the contract.

(2) Along with the Application for Exemption, the contractor must provide written documentation of the number of employees. Acceptable documentation shall include a letter on the contractor's letterhead and signed by an officer who is authorized to legally bind the entity and a copy of the firm's State of California Employment Development Department Quarterly Wage and Withholding Report.

(3) A previously exempt contract may later become subject to the LWO if the number of employees exceeds 12 as calculated according to these Rules.

b. *Businesses* organized under section 501(c)(3) of the United States Internal Revenue Code, 26 U.S.C. § 501(c)(3) to provide community-based social services, other than child care services. Such *businesses* must provide the following additional documents in support of an Application for Exemption:

- (1) A copy of the most recent IRS letter indicating that the *business* has been recognized as a non-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.
- (2) A statement showing that the *business's* highest paid officer's salary, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee.
 - (a) The "lowest paid full-time employee" refers to the lowest paid full-time employee of the *business*, regardless of whether that employee works on the *City* agreement.
 - (b) In calculating the salary of the highest paid officer and the wage rate of the lowest paid full-time employee, items such as cash allowances for car expenses, meals, parking, or the value of pension plan contributions shall not be included.

c. **Collective Bargaining Agreement:** A collective bargaining agreement may exempt a

contract from the LWO provided such waiver or exemption is explicitly stated in the collective bargaining agreement.

- (1) If the collective bargaining agreement does not specifically indicate that it is exempt from, or waives, the provisions of the LWO, the employer shall submit written confirmation from the union representing the employees that the union and the employer have agreed that the collective bargaining agreement supersedes the LWO.
 - (2) The provisions of the LWO shall not be interpreted to require an employer to reduce the wages and benefits required by a collective bargaining agreement.
- d. **Negotiation of Collective Bargaining Agreement:** An employer subject to the LWO may apply for provisional exemption from the LWO if the employer and the union are engaged in negotiations and the issue of supersession of the LWO has been proposed. If provisional exemption status is granted, it is valid until the end of the negotiation process.
- (1) The employer must provide sufficient documentation with the application and shall provide status reports upon request from the *City*.
 - (2) At the end of the negotiation process, the employer shall provide the Living Wage Manager with a copy of the final collective bargaining agreement to verify whether it supersedes the LWO and the effective dates.
 - (a) If the final collective bargaining agreement supersedes the LWO, the employer shall be exempt for the time period covered by the effective dates. However, the employer remains subject to all applicable provisions of the LWO for the time period not covered by that collective bargaining agreement and if the employer has not complied with the LWO during the time period not covered by that collective bargaining agreement, the employer shall make retroactive corrections.
 - (b) If the final collective bargaining agreement does not supersede the LWO, the employer shall be required to comply with all applicable LWO requirements, including the wage and benefits provisions. Compliance shall also be required retroactively to the date the employer first became subject to the LWO. If necessary, the employer shall provide retroactive payments to *covered employees*.
- 3. Determination of Exemption.** The Living Wage Manager shall review Applications for Exemption and, upon approval from the Director of Administration, provide a final determination within 10 working days after receipt of all forms, documentation, and, if necessary, legal opinions.
- a. A determination by the Living Wage Manager that a bidder or employer is exempt from the LWO exempts the bidder or employer only for the agreement for which the application was submitted. Approval does not exempt the bidder or employer for any

other bid or agreement.

- b. An exemption approval does not extend to any *subcontractor* unless the *subcontractor* separately applies for and is granted an exemption from the LWO or unless the Living Wage Manager has categorically exempted the agreement.
- c. If the Living Wage Manager categorically exempts an agreement from the LWO, then neither the prime contractor nor any *subcontractor* working on the agreement will be subject to the LWO.
- d. An exemption from the LWO approved by the Living Wage Manager does not extend to the anti-retaliation provision of the LWO. Notwithstanding the Living Wage Manager's determination that an agreement is exempt, the employer and *subcontractors* are required to comply with the prohibition against retaliation.

D. EMPLOYER REQUIREMENTS

All employers, including *subcontractors*, who perform work or provide *services* pursuant to an agreement that is subject to the LWO must comply with all requirements of the LWO and these Rules.

1. LWO Requirement of Minimum Compensation.

- a. *Covered employers* must pay *covered employees* a "living wage" which shall be no less than the minimum initial compensation as defined in the LWO and included in Attachment A. If the employer offers no health benefits, the *covered employer* shall pay the *covered employee* at least the full cash living wage rate. If the *covered employer* offers health benefits, the terms must be in accordance with the LWO and these Rules.
- b. The Living Wage Manager shall upwardly adjust wage rates each fiscal year, effective July 1, to reflect the change in the regional Consumer Price Index for All Urban Consumers. The Living Wage Manager shall provide notice of the new wage rate by publishing an announcement of such wage adjustments on the *City's* website.
- c. *Covered employers* are required to pay the living wage rate and benefits to *covered employees* working on the *City* agreement for each hour the employee works on the subject agreement. Benefits include health care or cash equivalent, compensated days off, and uncompensated days off.
- d. A *covered employer* shall not use tips or gratuities earned by a *covered employee* to offset the amount required by the LWO.

- 2. **LWO Health Benefits.** *Covered employers* may pay *covered employees* the living wage either fully in cash or largely in cash and partly by a health benefits payment of a minimum dollar amount per hour toward the cost of health and medical care insurance as defined in the LWO and these Rules.

- a. If the *covered employer* elects not to provide health and medical care insurance, the full cash living wage rate must be paid to a *covered employee*.
 - b. If the *covered employer* elects to provide a *covered employee* with health and medical care insurance, proof of the provision of health benefits must be submitted to the Living Wage Manager not later than 10 calendar days after a request for such documentation.
 - (1) If the submitted documentation does not demonstrate that health benefits are provided in accordance with the LWO and these Rules, the *covered employer* will be considered to be out of compliance with the LWO until sufficient documentation is received.
 - (2) In addition to remedies provided for by the LWO, failure to provide the requested information may result in payment being withheld until documents are submitted.
 - c. If the *covered employer* elects to provide health and medical care insurance through a plan costing less than the minimum dollar amount per hour as specified in the LWO, the difference shall be added to the *covered employee's* hourly wage rate as cash payment.
 - d. A co-premium may be required of a *covered employee* only if the cost of health and medical care insurance is greater than the minimum dollar amount per hour as specified in the LWO.
- 3. Compensated and Uncompensated Time Off.** A *covered employer* must provide a *covered employee* working on the *City* agreement at least 10 compensated days off per year for sick leave, vacation, or personal necessity at the *covered employee's* request, and 10 additional uncompensated days off per year for sick leave for illness of the *covered employee* or an immediate family member, when the *covered employee* has exhausted all accrued compensated days off.
- a. A *covered employee* shall accrue a minimum of 10 compensated days off per year of full-time employment based on the *covered employee's* regularly scheduled work hours. A part-time *covered employee* shall accrue compensated days off in increments proportional to that accrued by a full-time *covered employee*.
 - (1) A *covered employer* may not unreasonably deny a *covered employee's* request to use an accrued compensated day off.
 - (2) A *covered employee's* request for time off is presumed to be a request for paid time off unless the *covered employee* has specifically asked that unpaid time off is used.
 - (3) A *covered employee* shall be eligible to use accrued paid days off after the first 6 months of employment or consistent with company policy, whichever is sooner.
 - (4) A *covered employee* shall accrue time off unless the *covered employee* has been

on a leave of absence without pay for over 30 calendar days.

- (5) Upon return to work following an unpaid leave of absence of more than 30 calendar days, a *covered employee* shall begin to accrue compensated days off at the appropriate applicable full-time or part-time rate.
- b. Paid holidays that are provided under established employer policy shall not be counted toward the provision of the 10 compensated days off.
 - (1) Payment of premium pay for work performed on a holiday does not constitute a compensated day off for purposes of the LWO.
 - (2) For a holiday to qualify as one of the minimum 10 paid days off required under the LWO, a *covered employee* who works on a holiday must be allowed to take another paid day off in lieu, even if the *covered employee* is provided with premium pay for the hours worked on the holiday.
 - c. Unused compensated days off accrued by a *covered employee* working on a subject agreement shall be carried over for at least one year, with the carryover date based on the date of accrual.
 - d. The LWO does not require the *covered employer* to cash out compensated days off upon a *covered employee's* termination unless otherwise required by law.
 - e. A *covered employer* may choose to provide *covered employees* with more compensated days off than is required under the LWO and these Rules.
 - f. The Living Wage Manager, upon approval from the Director of Administration, may allow a *covered employer's* established compensated time off policy to remain in place, even though it does not meet the accrual rate and eligibility deadlines required in these Rules, if the Living Wage Manager determines all of the following conditions are met:
 - (1) The *covered employer's* established policy provides *covered employees* with more than 10 paid days off per year;
 - (2) At least a portion of the paid days off are available for use by *covered employees* within the first year of employment; and
 - (3) The Living Wage Manager determines requiring the covered employer to change its policy to comply with these Rules will result in *covered employees* receiving fewer benefits.
 - g. At least 10 uncompensated days off shall be made available, as needed, for personal or immediate family illness after a *covered employee* has exhausted his or her compensated days off. Whether a *covered employee* may take uncompensated time off before exhausting accrued compensated time off shall be determined by the *covered employer*. Accrual from year to year of uncompensated days off is not

mandated by the LWO.

- h. A *covered employer* working on or under the authority of a subject agreement who fails to provide *covered employees* with time off in accordance with the requirements of the LWO and these Rules shall provide the affected *covered employees* with the time off retroactive to the effective date of the agreement or amendment. A *covered employer* required to provide *covered employees* with time off retroactively shall:
 - (1) Calculate the amount of compensated time off the *covered employee* should have accrued under the LWO and pay the *covered employee* the cash value at the wage rate the *covered employee* was earning when the compensated time-off should have accrued.
 - (2) Calculate the amount of uncompensated time off that the *covered employee* should have accrued under the LWO and add the additional amount of uncompensated time-off the *covered employees* should have earned to the uncompensated time-off already accrued by the *covered employee*.

4. LWO Notice to Employees.

- a. A *covered employer* shall post a copy of the LWO Notice to Employees included in Appendix B in a prominent place in an area frequented by employees. If no such central area is frequented on a regular basis by employees, the *covered employer* shall annually distribute a copy of the LWO Notice to Employees with employee paychecks immediately after July 1 of each year to ensure employees are advised of the adjusted wage and health benefits rates.
- b. A *covered employer* shall notify each current employee, and each new employee at time of hire, of his or her rights under provisions of the LWO by providing employees with a copy of the LWO Notice to Employees in Appendix B.

5. Federal Earned Income Tax Credit (EITC). Within 30 days of commencement of work on a *City* agreement or subcontract subject to the LWO, the *covered employer* shall inform all *covered employees* of their possible right to EITC. The *covered employer* shall annually distribute information regarding EITC with employee paychecks.

6. Reporting Requirements.

- a. Each *covered employer* shall file an LWO Certification of Compliance with the Living Wage Manager within 30 days of becoming a *covered employer*.
 - (1) *Covered employers* are required to ensure that all applicable *subcontractors* file an LWO Certification of Compliance within 30 days of becoming covered by the LWO.
 - (2) The LWO Certification of Compliance shall be completed on the form included in Appendix B.

- (3) Failure to file an LWO Certification of Compliance may result in payment being withheld until the document is submitted.
- b. Contractors shall maintain, and shall require *subcontractors* covered by the LWO to maintain, payroll records on *covered employees* containing the following information:
 - (1) Name.
 - (2) Address.
 - (3) Date of hire.
 - (4) Job classification.
 - (5) Rate of pay.
 - (6) Paid and unpaid time off (accrued and used).
 - (7) Hours worked in each pay period with time on LWO-covered contracts clearly indicated.
- c. Contractors and *subcontractors* shall retain records sufficient to document that employers have provided LWO benefits to *covered employees*. *Covered employers* shall make these records available for inspection to the *City* upon request. *Covered employers* shall make a *covered employee's* individual records available for inspection to the *covered employee* upon such a request.
- d. Contractors and *subcontractors* must maintain the records referred to in these Rules for 3 years after the *City's* final payment on the contract.
- 7. **Contractor Annual Reports.** Each *covered employer* shall file an annual report with the Living Wage Manager regarding compliance with the LWO. The Living Wage Manager shall prescribe the contents and due date of the report. The *City* may require a contractor to submit additional reports.
- 8. **City Access to Employer Records to Monitor Compliance with the LWO.** A *covered employer*, subject to the LWO, shall allow authorized *City* representatives access to work sites, upon request, to monitor compliance and investigate employee *complaints*. A *covered employer* shall submit, upon request, copies of payrolls, health benefit statements, and related documents to comply with the LWO. The *City* may require the *covered employer* to submit other documentation. Failure to submit documents or allow access to the work sites as requested may be deemed as non-compliance with the LWO. In addition to remedies provided for by the LWO, such non-compliance may result in a recommendation that the *covered employer's* subject agreement be terminated and/or payments to the *covered employer* be withheld until access is provided and documentation is submitted.

- 9. Disclosure of Documents and Information.** Documents and information obtained in the course of administration of the LWO become *City* records. Disclosure is subject to provisions and limitations of the California Public Records Act. Consistent with the Public Records Act, documents and information obtained during the course of an investigation or inquiry shall remain confidential while the investigation or inquiry is ongoing.
- 10. Subcontractors Subject to the LWO.** A *subcontractor* performing work or providing *services* on an agreement subject to the LWO shall also comply with the LWO unless the *subcontractor* qualifies for an exemption. A *subcontractor* may be subject to the LWO even if the prime contractor has been granted an exemption.
- a. A prime contractor is responsible for informing its *subcontractor* of the *subcontractor's* obligation to comply with the LWO. Language obligating the *subcontractor* to comply with the LWO shall be included in each subcontract between the prime contractor and the *subcontractor*.
 - b. If the *City* finds that a prime contractor intentionally entered into separate agreements to keep subcontracts below the 90-day or \$25,000 thresholds, the Living Wage Manager may determine that the separate subcontracts are subject to the LWO.
 - c. If the *City* finds that an employer classified a worker as an independent contractor in order to avoid complying with the LWO, the Living Wage Manager may require the employer to comply with the LWO and/or recommend terminating the employer's agreement. The Living Wage Manager may consider the following factors in determining whether a worker is a bona fide independent contractor:
 - (1) Whether the worker has the right to control or discretion to determine how to perform the work required under the *City* agreement.
 - (2) Whether similar workers in the industry or field are customarily engaged as independent contractors for the type of work.
 - (3) Whether the worker has any substantial investment other than personal services in the business.
 - (4) Whether the worker has control over the time and place of work.
 - (5) Whether the worker supplies his or her own tools or equipment, if they are normally used by persons engaged in such work.
 - (6) Whether the worker hires employees.

E. ADMINISTRATIVE RECORDKEEPING AND REPORTS

- 1. LWO Administrative Records and Reports.** The Director of Administration shall maintain a list of all subject and exempt agreements and a file of all *complaints*, findings, and results. The Director of Administration may provide special reports and

recommendations on significant issues of interest to the City Council.

2. **Report to Council.** The Director of Administration shall provide a report to the City Council generally describing the effects of the LWO upon the City.
3. **Annual LWO Wage Rate Adjustment.** Beginning July 1, 2007, the hourly wage rates and health benefits rate shall be upwardly adjusted each July 1 to reflect the change in the regional Consumer Price Index for All Urban Consumers for the twelve-month period preceding December 31 of the previous year. Prior to April 1 of each year, the Living Wage Manager shall calculate the new rates and provide notice by posting on the *City's* website the rates in effect for the next fiscal year.

F. MONITORING AND INVESTIGATION

These Rules will augment the *City's* normal and customary procedure for administering its contracts.

1. **LWO Contract Language.** The Living Wage Manager will assist departments to ensure standard LWO contract language is incorporated into all agreements subject to the LWO.
2. **Employer Monitoring.** The Living Wage Manager will monitor the operations of *covered employers* to ensure compliance by conducting site visits and payroll audits. The Living Wage Manager may review the provision of wages and benefits by a *covered employer* as part of site visits. A *covered employer* shall cooperate with the Living Wage Manager when a meeting, a site visit, or documentation is requested. Cooperation includes providing:
 - a. Full access to the work site for employer and employee interviews.
 - b. Copies of certified payrolls, timesheets, health and benefit statements, employee policy manuals, and any other document that would assist in determining if a *covered employer* is providing or has provided the wages and benefits required by the LWO.
3. **Investigation in Response to Specific Concerns or Complaints.** Whether based upon a complaint or otherwise, the *City* shall initiate an investigation when there is a specific concern or complaint about a *covered employer*. If a *covered employee* alleges noncompliance with the LWO or retaliation by the contractor as a result of an allegation, the *City* shall initiate an investigation pursuant to these Rules.
4. **Employer's Failure to Reasonably Cooperate.** If a *covered employer* fails to produce requested documentation, fails to allow access to the work site or the *covered employees* for employee interviews, or otherwise unreasonably fails to cooperate, the Living Wage Manager may consider the *covered employer* to be out of compliance with the LWO. In addition to remedies provided in the LWO, the Living Wage Manager may request payments to the *covered employer* be withheld until the *covered employer* cooperates.

G. ENFORCEMENT

1. **Notice to Employer of LWO Violations.** Whether based upon a complaint or otherwise, if the Living Wage Manager determines that a *covered employer* is not in compliance with the LWO, the Living Wage Manager will issue a written notice to the employer that the violation is to be corrected within 30 days.
2. **Remedies.** If a *covered employer* has not demonstrated within 30 days that it has substantially cured any material violation of the LWO and no resolution is imminent, the Living Wage Manager upon approval from the Director of Administration shall initiate one or more of the following:
 - a. Request the Purchasing Agent to declare a material breach of the *service contract*, *financial assistance agreement*, or *City facility agreement* and exercise its contractual remedies including but are not limited to termination of the *service contract*, *financial assistance agreement*, or *City facility agreement* and the return of monies paid by the *City* for services not rendered.
 - b. Recommend debarment under Article 2, Chapter 2, Division 8 of the San Diego Municipal Code to debar the *covered employer* from future *City* contracts for a period of three years or until all penalties and/or restitution have been fully paid, whichever occurs last.
 - c. Request a determination of non-responsibility under Article 2, Chapter 2, Division 32 of the San Diego Municipal Code.
 - d. Request that the City Attorney bring a civil action against the employer seeking any legal remedies, including but not limited to:
 - (1) Where applicable, payment to the *covered employee* of all unpaid wages and/or health premiums prescribed by the LWO; and/or
 - (2) A fine payable to the City in the amount of up to one hundred dollars (\$100) for each violation for each day the violation remains uncured.
3. **Prime Contractor Responsible for Subcontractor.** A *covered employer* who is a prime contractor is responsible to:
 - a. Inform covered *subcontractors* of their obligation to comply with the LWO;
 - b. Include language requiring the *subcontractor* to comply with the LWO in each subcontract between the prime contractor and a covered *subcontractor*;
 - c. Require covered *subcontractors* to file a Certificate of Compliance within 30 days of becoming a *covered employer*; and
 - d. Cooperate with the *City's* investigation of covered *subcontractors*.

- 4. Employee's Right to File Action.** An employee claiming a violation of the LWO shall have the right to file an action against his or her employer in the appropriate court within one year after discovery of the alleged violation. The court shall award the following:
- a. For failure to pay the required living wage: the difference between the required living wage rate and the amount actually paid to the employee, plus interest.
 - b. For failure to pay the health benefits rate: the difference between the required health benefits rate and the amount actually paid towards the health benefits rate, plus interest.
 - c. For retaliation for exercise of any rights provided for under the LWO: reinstatement, back pay, and/or any other relief that a court may deem appropriate.
 - d. For a willful violation of this division, a court shall award as a penalty up to treble the amount of monies to be paid as damages.
 - e. The court shall award reasonable attorney's fees and costs to an employee who prevails in any such private action and to an employer who prevails if the employee's suit is found to be frivolous.
- 5. Prohibition against Retaliation.** Neither an employer nor an employer's representative shall take any action against an employee in retaliation for alleging non-compliance with the LWO or for providing information towards or cooperating in an investigation regarding compliance with the LWO. If an employee is terminated, demoted, suffers reduced compensation, is discriminated against, or otherwise penalized by an employer or employer's representative within 60 days of alleging non-compliance, providing information towards or cooperating in an investigation regarding compliance with the Living Wage Ordinance, for opposing any practice proscribed by this division, for participating in proceedings related to this division, or for asserting or seeking to enforce his or her rights under the LWO by any lawful means, a rebuttable presumption shall arise that the action was taken in retaliation for the employee's participation and shall be considered a violation of these Rules.

H. EMPLOYEE COMPLAINT PROCESS

- 1. Employee Complaints.** An employee who alleges violation of any provision of the LWO by an employer may report such acts to the Living Wage Manager and, at the employee's discretion, exhaust available employer internal remedies. An employee making a complaint regarding an employer's compliance with the LWO may submit the complaint in writing to the Living Wage Manager, on the LWO Employee Complaint Form, which is included in Appendix B.
- 2. Complaints Alleging Retaliation.** An employee claiming retaliation (such as termination, reduction in wages or benefits, or adverse changes in working conditions) under terms of the LWO may report the alleged retaliation to the Living Wage Manager in writing, on the LWO Employee Complaint Form, which is included in Appendix B.

3. **Confidentiality of Information during Investigation.** Consistent with the California Public Records Act, information and records obtained by the *City* in the course of its complaint investigations, including identity of the complainants and witnesses, shall be considered confidential and exempt from public disclosure during the course of the investigation.
4. **Investigation of Employee Complaints.** Upon receipt of an employee's written *complaint*, the *City* shall investigate and address any alleged violation of LWO requirements. Upon conclusion of the investigation, the Living Wage Manager shall notify the employee of the results.
5. **Resolution of Investigation into Employee Complaints.** The *City* will attempt to complete an investigation into an employee's *complaint* within 30 to 60 days. If the investigation is not complete within 60 days, the Living Wage Manager shall notify the employee of the status of the investigation and provide regular status reports to the employee every 30 days until the investigation is completed.
6. **Submission of Additional Information after Completion of Investigation.** Upon completion of an investigation, the Living Wage Manager upon approval from the Director of Administration will notify the *covered employee*, and the *covered employer* if appropriate, of the investigation results.
 - a. Either the employee or the employer may request reconsideration of the Living Wage Manager's investigation findings. Such request for reconsideration shall be based solely on discovery of new information, which, along with the written reconsideration request, shall be submitted to the Living Wage Manager, within 30 days of receiving notice of the findings.
 - b. If the request for reconsideration and new information is received before the 30 day deadline, the Living Wage Manager upon approval from the Director of Administration will re-evaluate the original *complaint* and notify the employee and the employer the result of the reconsideration.
 - c. If the request for reconsideration and the new information is submitted after the 30 day deadline, the discretion of whether to reopen the investigation shall lie solely with the Director of Administration.
7. **Payment of Amounts Due to Employees.** If corrective payments are required to be paid to employees in order to comply with the LWO, the employer shall pay the entire amount due to each employee in one payment within the time period required by the *City* in its notice to the employer.

APPENDIX A

City of San Diego
CURRENT LIVING WAGE RATES

EFFECTIVE DATES	CASH WAGE + HEALTH BENEFITS	FULL CASH WAGE
July 1, 2009 – June 30, 2010	\$11.00 + \$2.20 per hour in Health Benefits	\$13.20 per hour
July 1, 2008 – June 30, 2009	\$10.58 + \$2.12 per hour in Health Benefits	\$12.70 per hour
July 1, 2007 – June 30, 2008	\$10.34 + \$2.07 per hour in Health Benefits	\$12.41 per hour
July 1, 2006 – June 30, 2007	\$10.00 + \$2.00 per hour in Health Benefits	\$12.00 per hour

For additional information, please contact:

City of San Diego Living Wage Program
202 C Street, MS 9A
San Diego, CA 92101-4195
Phone: 619/236-6682
Fax: 619/533-3240

City of San Diego

**LIVING WAGE ORDINANCE
NOTICE AND FORMS**

The notice and forms listed below are approved by the City for use in conjunction with these Rules. When these Rules refer to the use of a notice or form, only the current version included in this Appendix B may be used.

NOTICE:

Living Wage Ordinance Notice to Employees (English, Spanish)

FORMS:

Living Wage Ordinance Certification of Compliance

Living Wage Ordinance Application for Exemption

Living Wage Ordinance Employee Complaint Form (English, Spanish)

LIVING WAGE ORDINANCE**ORDENANZA DEL SUELDO DIGNO****NOTICE TO EMPLOYEES**

This employer is a contractor with the City of San Diego. This contract is subject to the Living Wage Ordinance. You must be paid "a living wage" for any hours you work on this contract.

THESE ARE YOUR RIGHTS...**MINIMUM HOURLY PAY:**

- \$11.00/hour plus at least \$2.20/hour in health benefits
OR
- \$13.20/hour without health benefits.
 - If health benefits cost less than \$2.20/hour, the difference is added to the hourly wage.
 - Rates are adjusted annually; current rates are effective until June 30, 2010.

MINIMUM DAYS OFF PER YEAR:

- 10 paid days for vacation, sick leave, or other personal need
AND
- 10 unpaid days for personal or family illness.
 - Days off are in addition to paid holidays.
 - Days off are pro-rated based on hours worked at the living wage rate.

RETALIATION IS PROHIBITED:

- Employers may not fire, reduce pay or discriminate against a worker for filing a complaint.

FOR MORE INFORMATION

For more information or to obtain a complaint form if you believe your rights are being violated, please contact:

CITY OF SAN DIEGO
Living Wage Program
202 C Street, MS 9A
San Diego, CA 92101
619/236-6682

AVISO PARA EMPLEADOS

Este empleador es contratista de la Ciudad de San Diego. Este contrato está sujeto a la Ordenanza del Sueldo Digno. Usted debe ser pagado "un sueldo digno" por cada hora trabajada bajo este contrato.

ESTOS SON SUS DERECHOS...**COMPENSACIÓN MÍNIMA POR HORA:**

- \$11.00/hora más un mínimo de \$2.20/hora de prestaciones médicas O
- \$13.20/hora sin prestaciones médicas.
 - Si las prestaciones médicas cuestan menos de \$2.20/hora, la diferencia es añadida al salario.
 - El sueldo se ajusta anualmente; el sueldo actual tiene vigencia hasta Junio 30, 2010.

DÍAS LIBRES MÍNIMO CADA AÑO:

- 10 días pagados para vacaciones, enfermedad, o razones personales Y
- 10 días sin pagar por enfermedad personal o familiar.
 - Días libres son adicionales a los días festivos.
 - Días libres son ajustados por horas trabajadas al sueldo digno.

SE PROHIBE CUALQUIER TIPO DE REPRESALIA:

- Los empleadores no pueden despedir, reducir la paga, ni discriminar contra un trabajador por presentar una queja.

PARA MAYOR INFORMACION

Para más información o para obtener un formulario de quejas si usted considera que sus derechos han sido violados, por favor llame:

2009.07.01

**LIVING WAGE ORDINANCE
CERTIFICATION OF COMPLIANCE**



Send form to:

ATTACHMENT C
CITY OF SAN DIEGO
Living Wage Program
202 C Street, MS 9A
San Diego, CA 92101
FAX 619/533-3240

COMPANY INFORMATION

Company Name:

Company Address:

Company Contact Name:

Contact Phone:

CONTRACT INFORMATION

Contract Number (if no number, state location):

Start Date:

Contract Amount:

End Date:

Purpose/Service Provided:

TERMS OF COMPLIANCE

A contractor or subcontractor working on or under the authority of an agreement subject to the Living Wage Ordinance (LWO) must comply with all applicable provisions of the LWO unless specifically approved for an exemption. The basic requirements of the LWO obligate contractors and subcontractors to:

- (a) Pay covered employees a wage no less than the minimum initial compensation of \$11.00 per hour (adjusted annually on July 1).
- (b) Provide covered employees a health benefit of \$2.20 per hour (adjusted annually on July 1) or, if any lesser amount is applied toward a health plan, to add this difference to the hourly wage rate as cash payment.
- (c) Provide a minimum of 10 compensated days off per year for vacation, sick leave, or other personal need at the employee's request and to provide 10 additional uncompensated days off for personal or family illness when accrued compensated days off have been used.
- (d) Inform all covered employees of their possible right to Federal Earned Income Tax Credit within 30 days of contract start.
- (e) Permit access for authorized City representatives to work sites and relevant records to review compliance with the LWO.
- (f) Prohibit retaliation against any employee who alleges non-compliance with the requirements of the LWO.

If a subcontractor fails to submit this completed form, the prime contractor may be found in violation of the LWO for failure to ensure its subcontractor's compliance. This may result in a withhold of payments or termination of the agreement.

CONTRACTOR CERTIFICATION

By signing, the contractor certifies under penalty of perjury under laws of the State of California to comply with the requirements of the Living Wage Ordinance.

Name of Signatory

Title of Signatory

Signature

Date

FOR OFFICIAL CITY USE ONLY

Date of Receipt:

LWO Analyst:

Contract Number:

**LIVING WAGE ORDINANCE
APPLICATION FOR EXEMPTION**



Send form to:

ATTACHMENT C

CITY OF SAN DIEGO
Living Wage Program
202 C Street, MS 9A
San Diego, CA 92101
FAX 619/533-3240

COMPANY INFORMATION

Company Name:

Company Address:

Company Contact Name:

Contact Phone:

CONTRACT INFORMATION

Contract Number (if no number, state location):

Start Date:

Contract Amount:

End Date:

Purpose/Service Provided:

EXEMPTION BASIS

Check one option and submit required supporting documentation.

- ☐ **Business employs 12 or fewer employees**, including parent and subsidiary entities, for each working day in each of 20 or more calendar weeks in current or preceding calendar year. §SDMC 22.4215 (b)(1).

Required documentation: Correspondence on company letterhead and signed by a legally authorized officer documenting number of employees and copy of firm's State of California Employment Development Department Quarterly Wage and Withholding Report.

- ☐ **Business organized under IRS section 501(c)(3)** and highest officer's salary, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee. §SDMC 22.4215 (b)(2).

Required documentation: Copy of IRS letter recognizing status as non-profit organized under section 501(c)(3) AND statement of salary listing corporation's highest paid officer and lowest paid worker, both computed on an hourly basis.

- ☐ **Collective Bargaining Agreement** is in place which specifically supersedes the Living Wage Ordinance. §SDMC 22.4240.

Required documentation: Copy of collective bargaining agreement OR written confirmation from union representing employees working on the contract.

- ☐ **Other – Cite LWO Municipal Code section:** _____

Required documentation: Correspondence explaining basis of request for exemption.

CONTRACTOR CERTIFICATION

By signing, the contractor certifies under penalty of perjury under laws of the State of California that information submitted in support of this application is true and correct to the best of the contractor's knowledge.

Name of Signatory

Title of Signatory

Signature

Date

Approval of this application exempts only the listed contractor from the LWO during performance of this contract. A subcontractor performing work on this contract is not exempt unless separate exemption has been applied for and approved.

FOR OFFICIAL CITY USE ONLY

- ☐ Not Approved – Reason: _____

- ☐ Approved

LWO Analyst: _____

Date: _____

EMPLOYEE COMPLAINT FORM

FORMULARIO DE QUEJAS



Send form to: **CITY OF SAN DIEGO**
 Living Wage Program
 202 C Street, MS 9A
 San Diego, CA 92101
 FAX 619/533-3240

COMPANY INFORMATION

INFORMACIÓN SOBRE LA COMPAÑÍA

Company Name: <i>Nombre de la Compañía:</i>
Company Address: <i>Dirección de la Compañía:</i>
Company Phone: <i>Teléfono de la Compañía:</i>
Work Site Address: <i>Sitio de Trabajo:</i>
Supervisor Name: <i>Superintendente/Gerente:</i>

EMPLOYEE INFORMATION

INFORMACIÓN SOBRE EL EMPLEADO

Your Name: <i>Su Nombre:</i>	Social Security Number: <i>Número de Seguridad Social:</i>
Address: <i>Dirección:</i>	
Telephone number <i>Número de teléfono</i>	Home: <i>Residencia:</i>
Work: <i>Trabajo:</i>	
Hourly Rate Paid: <i>Sueldo por hora:</i>	Overtime Rate Paid: <i>Sueldo por horas extras:</i>
Current job title: <i>Puesto:</i>	How long have you worked for this company? <i>¿Cuánto tiempo ha trabajado para esta compañía?</i>
Do you receive health benefits? <i>¿Recibe usted prestaciones médicas?</i>	If Yes, how much do you pay for your benefits? <i>¿Si Sí, cuánto le hacen pagar por sus prestaciones médicas?</i>

EMPLOYEE COMPLAINT

QUEJA DE EMPLEADO

Use reverse side if needed
 Use el reverso si requiere de mas espacio

Signature · *Firma del Empleado*

Date · *Fecha*

FOR OFFICIAL CITY USE ONLY

PARA LA OFICINA DE LA CIUDAD SOLAMENTE

Date of Receipt:	LWO Analyst:	Contract Number:
------------------	--------------	------------------

Living Wage Ordinance Contracts in Fiscal Year 2009
(July 1, 2008 - June 30, 2009)

ATTACHMENT D

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start</u>	<u>Contract Amount</u>
3640-01-P	Parking Management Services at Evan Jones Parkade	Ace Parking Management, Inc	08/02/2005	\$357,000
3786-01-T	Janitorial Maintenance Service at Police Headquarters	Qualityway Building Maintenance, Inc	09/01/2005	\$322,134
4744-02-T	Fire Communications and Repair Facility Janitorial Maintenance Service	Aztec Landscaping, Inc	02/11/2006	\$36,770
4906-02-G	Janitorial Maintenance at San Diego World Trade Center and Crabtree Building	San Diego Services	07/31/2006	\$118,583
4920-02-G	Janitorial Maintenance Service at Various Comfort Stations & Park Restroom Facilities	Aztec Landscaping, Inc	06/15/2006	\$57,873
5335-04-H	Landscape Maintenance with Northwest Otay MAD	Acacia Landscape Company	12/08/2007	\$318,278
5749-03-A	Janitorial Maintenance Service at South Bay Waste Water Treatment Plant	Aztec Landscaping, Inc	12/14/2006	\$74,802
5833-03-A	Janitorial Maintenance Service for Miramar Landfill	Jani-King of California, Inc	06/02/2007	\$46,818
6126-03-A	Janitorial Maintenance Service at Mission Trails Visitor Ctr, Kumeyaay, & Cowles Mtn Comfort Station	Empire Maintenance Company	06/02/2007	\$58,640
6415-04-A	Janitorial Maintenance Service for Metropolitan Biosolids Center	T and T Janitorial	01/05/2008	\$44,022
6427-04-A	Janitorial Maintenance Service for Point Loma Wastewater Treatment Plant	NMS Management, Inc	01/12/2008	\$59,051
6472-04-H	Landscape Maintenance of Carmel Del Mar Neighborhood Park & Comfort Station	Aztec Landscaping, Inc	01/05/2007	\$39,614
6487-04-H	Landscape and Comfort Station Maintenance of Scripps Ranch Community Park & Joint Use Turf	Acacia Landscape Company	02/01/2008	\$109,952
6491-04-H	Landscape Maintenance of Rights-of-Way & Slopes w/in Campus Pt MAD & La Jolla Village Dr MAD	Blue Skies Landscape Maintenance, Inc	02/09/2008	\$44,232
6508-04-H	Landscape Maintenance of Various Police Department Facilities	Contemporary Design Landscape	02/09/2008	\$242,791
6596-04-H	Landscape Maintenance of Designated Areas within Miramar Ranch North MAD	Blue Skies Landscape Maintenance, Inc	07/01/2008	\$837,778
6609-04-Y	Uniform Service for Park & Recreation Dept	Ameripride Uniform Services	06/01/2010	\$42,156
6613-04-H	Landscape Maintenance of Designated Areas Within Coral Gate MAD	Acacia Landscape Company	06/01/2009	\$63,039
6631-04-H	Landscape Maintenance of Ashley Falls Neighborhood Park & Comfort Station	Acacia Landscape Company	06/28/2008	\$85,749
6639-04-H	Landscape Maintenance within the Park Village MAD	J L Krueger Landscape Services	09/01/2007	\$134,814
6710-05-Y	Landscape Maintenance of Areas within East Village Redev & Ballpark	Aztec Landscaping, Inc	09/01/2008	\$98,893

Living Wage Ordinance Contracts in Fiscal Year 2009
(July 1, 2008 - June 30, 2009)

ATTACHMENT D

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start</u>	<u>Contract Amount</u>
6766-04-T	Janitorial Maintenance Service for City of San Diego Branch Libraries	Jani-King of California, Inc	01/31/2007	\$600,643
6793-05-A	Janitorial Maintenance at Various Police Facilities	Qualityway Building Maintenance, Inc	12/03/2008	\$547,928
6805-04-A	Janitorial Maintenance Service North City Water Reclamation Plant & Various Pump Stations	NMS Management, Inc	07/01/2008	\$95,771
6994-05-Y	Landscape Maintenance of Views West Neighborhood Park & Comfort Station	Aztec Landscaping, Inc	12/01/2007	\$86,047
7008-05-A	Janitorial Maintenance Service at Various Police Storefronts	TobiJene Carter	10/24/2009	\$65,896
7009-05-Y	Landscape Maintenance within Eastgate Technology MAD	Trugreen - Landcare Regional	01/01/2009	\$104,213
7017-05-Y	Landscape Maintenance of Areas within Imperial Marketplace adjacent to South Las Chollas Creek	Acacia Landscape Company	12/01/2007	\$49,460
7396-05-Y	Landscape Maintenance Rancho Bernardo Community Park	Aztec Landscaping, Inc	07/01/2008	\$127,808
7403-05-Y	Landscape Maintenance Spring Canyon Park & Dingeman School Field and Janitorial Maintenance	Acacia Landscape Company	07/01/2009	\$81,223
7404-05-Y	Landscape Maintenance Designated Areas within Torrey Hills MAD	Park West Landscape Maintenance	10/01/2008	\$732,260
7407-05-Y	Complete Landscape Maintenance of Dusty Rhodes Neighborhood Park	Aztec Landscaping, Inc	07/01/2009	\$47,818
7417-05-Y	Landscape Maintenance Carmel Valley	Acacia Landscape Company	08/01/2009	\$110,825
7657-06-Y	Landscape Maintenance Carmel Creek Neighborhood Park & Janitorial Maintenance	Acacia Landscape Company	10/15/2008	\$75,725
7661-06-Y	Tree Maintenance Service in the Scripps-Miramar Open Space District	One Tripp Tree Service	01/01/2008	\$411,747
7691-06-Y	Landscape Maintenance South Creek Neighborhood Park & Janitorial Maintenance 1 Comfort Sta	Aztec Landscaping, Inc	12/01/2008	\$40,001
7728-06-Y	Landscape Maintenance South Village Neighborhood Park & Janitorial Maintenance 1 Comfort Station	Aztec Landscaping, Inc	01/01/2009	\$30,601
7730-06-Y	Tree Maintenance Service Within the Stonecrest Village MAD	Atlas Environmental Services, Inc	12/01/2008	\$50,718
7737-06-Y	Landscape Maintenance of Various Metropolitan Wastewater(MWWD) Facilities	Landscapes USA, Inc	03/01/2009	\$112,699
7763-06-A	Janitorial Maintenance Service at Civic Center & Gaslamp Square Park Comfort Stations	TobiJene Carter	12/04/2008	\$346,604
7889-06-Y	Landscape Maintenance of Designated Areas within Gateway Ctr East MAD	Aztec Landscaping, Inc	02/01/2008	\$95,412
7899-06-Z	Parking Management Services for Qualcomm Stadium	Ace Parking Management, Inc	08/12/2006	\$7,681,013

Living Wage Ordinance Contracts in Fiscal Year 2009
(July 1, 2008 - June 30, 2009)

ATTACHMENT D

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start</u>	<u>Contract Amount</u>
7960-06-Y	Landscape Maintenance of Sabre Springs Neighborhood Park & Janitorial Maintenance	Aztec Landscaping, Inc	04/01/2009	\$43,164
7992-06-Y	Landscape Maintenance of Designated Areas within First San Diego River Improvement Project	Blue Skies Landscape Maintenance, Inc	03/01/2010	\$112,606
8117-06-Y	Landscape Maintenance of Designated Areas within Mid-City MAD	Aztec Landscaping, Inc	06/12/2007	\$88,515
8121-06-Y	Landscape Maintenance Four Neighborhood Parks	Aztec Landscaping, Inc	06/28/2008	\$50,946
8125-06-Y	Landscape Maintenance of Solana Highlands Neighborhood Park	Westturf Landscape Maintenance	06/04/2009	\$41,234
8127-06-Y	Landscape Maintenance of Black Mountain Ranch Community Park	Acacia Landscape Company	06/01/2009	\$75,104
8259-06-Y	Landscape Maintenance of Designated Areas within Pacific Highlands Ranch MAD	Acacia Landscape Company	08/02/2008	\$53,576
8301-06-Y	Landscape Maintenance Sage Canyon and Torrey Hills Parks & Janitorial Maintenance	Acacia Landscape Company	09/01/2008	\$112,185
8328-07-A	Lead and Asbestos Abatement Services	Flores Sierra Contractors, Inc	12/14/2008	\$509,715
8328-07-A	Lead and Asbestos Abatement Services	TEG-LVI Environmental Services, Inc	12/14/2008	\$495,378
8336-07-E	Pest Control Services for Park & Rec Developed Regional Parks	Agricultural Pest Control	12/12/2008	\$39,430
8348-07-G	Janitorial Maintenance at Filtration/ Water Plants and Environ Monitoring & Tech Service Lab	T and T Janitorial	01/01/2009	\$199,264
8349-07-A	Janitorial Maintenance at Metro Operation Center (MOC)	Jani-King of California, Inc	02/06/2007	\$382,648
8351-06-Y	Complete Landscape Maintenance within Carmel Valley Neighborhood 10 MAD	Benchmark Landscape Services, Inc	12/01/2007	\$150,343
8398-07-Y	Landscape Maintenance of Designated Areas within Otay International Center MAD	Aztec Landscaping, Inc	12/01/2007	\$154,126
8421-07-Y	Landscape Maintenance Designated Areas within Carmel Valley MAD	Landscapes USA, Inc	01/02/2009	\$296,380
8432-07-G	Janitorial Services for Events and Post-Events at Qualcomm Stadium	Jani-King of California, Inc	02/12/2008	\$816,345
8433-07-G	Janitorial Maintenance Services for Central Library	TTCC, Inc	02/02/2009	\$186,208
8437-07-A	San Diego Concourse Event Staffing and Facility Maintenance Services	DMS Services, LLC	07/01/2007	\$213,979
8494-07-Y	Landscape Maintenance of Designated Areas within Scripps Miramar Ranch MAD	Landscapes USA, Inc	03/15/2008	\$387,144
8502-07-W	Security Guard Services at Various City Sites	The Wackenhut Corp	09/14/2008	\$3,354,643

Living Wage Ordinance Contracts in Fiscal Year 2009
(July 1, 2008 - June 30, 2009)

ATTACHMENT D

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start</u>	<u>Contract Amount</u>
8558-07-B	Security Guard Service at Metropolitan Operation Centers	Able Patrol and Guard	02/12/2009	\$154,176
8580-07-Y	Landscape Maintenance at Various Water Facility Sites	Aztec Landscaping, Inc	07/01/2008	\$26,469
8600-07-W	Uniform Services for Various City Sites	Ameripride Uniform Services	07/01/2007	\$238,573
8609-07-Y	Landscape Maintenance of Designated Areas within Stonecrest Village MAD	Contemporary Design Landscape	06/01/2008	\$233,779
8622-07-Y	Landscape Maintenance at Various Metropolitan Wastewater Operations Sites	Blue Skies Landscape Maintenance, Inc	06/01/2008	\$69,414
8646-08-Q	Landscape Maintenance of Camino Santa Fe MAD	Westturf Landscape Maintenance	08/01/2008	\$52,471
8648-07-Y	Tree Maintenance Services within City-Wide Open Space Areas & Tierrasanta MAD	Atlas Environmental Services, Inc	07/01/2008	\$422,162
8649-07-Y	Tree removal, Stump Grinding and Backfilling Services	West Coast Arborists, Inc	06/01/2008	\$77,717
8694-07-Y	Landscape Maintenance within Gas Tax Trans-Net Program	Aztec Landscaping, Inc	07/01/2008	\$514,404
8730-07-B	Security Gate Service at Black Mountain & San Pasqual Parks	Able Patrol and Guard	06/01/2008	\$29,890
8758-07-Q	Landscape Maintenance of Designated Areas Hillcrest, North Park, Mid City & Talmadge MAD	Aztec Landscaping, Inc	08/15/2007	\$237,089
8781-07-Y	Mowing and Grounds Maintenance at Montgomery and Brown Fields	Powerland Equipment, Inc	10/01/2007	\$109,487
8797-07-Q	Landscape Maintenance of Designated Areas within City Heights Urban Village	Acacia Landscape Company	07/01/2007	\$132,653
8837-07-Q	Maintenance of Designated Areas, Fire Station #24 within the Carmel Valley MAD	Aztec Landscaping, Inc	09/15/2007	\$538,370
8851-07-Q	Landscape Maintenance within Northwest Otay Zone 2 MAD	Westturf Landscape Maintenance	07/01/2008	\$45,847
8871-07-Q	Landscape Maintenance of Designated Areas within Genesee Ave/North Torrey Pines MAD	Benchmark Landscape Services, Inc	08/15/2007	\$68,247
8881-07-B	Security Guard Service at Central Operations Facilities	Able Patrol and Guard	10/01/2007	\$231,735
8893-07-B	Security Guard Services at Brown Field and Montgomery Airport	Able Patrol and Guard	09/07/2008	\$122,197
8901-07-Q	Landscape Maintenance of Designated Areas within Mira Mesa NE Sub-Area MAD	Brewer Lawn Maintenance, Inc	11/01/2007	\$347,541
9004-08-B	Security Guard Services Fire-Rescue Training Facility	Able Patrol and Guard	10/22/2007	\$109,770
9023-08-W	Uniform Services for Various City Sites	Unifirst Corporation	09/20/2007	\$111,475

Living Wage Ordinance Contracts in Fiscal Year 2009
(July 1, 2008 - June 30, 2009)

ATTACHMENT D

<u>Bid #</u>	<u>Contract Title</u>	<u>Vendor</u>	<u>Start</u>	<u>Contract Amount</u>
9056-08-Q	Tree Trimming/Root Pruning/Tree Planting/Root Barrier Installation	West Coast Arborists, Inc	12/15/2007	\$149,800
9057-08-Q	Landscape Maintenance of Designated Planted & Paved Center Islands in Sabre Springs MAD	Aztec Landscaping, Inc	01/01/2008	\$55,320
9093-08-Q	Landscape Maintenance of Designated Areas within Tierrasanta MAD	Treebeard Landscape, Inc	05/01/2008	\$475,403
9144-08-Q	Landscape Maintenance of Various Library Sites	Ponderosa Landscape, Inc	06/01/2008	\$326,450
9185-08-Q	Landscape Maintenance of Areas within Calle Cristobal MAD	Brewer Lawn Maintenance, Inc	07/01/2008	\$137,949
9186-08-Q	Landscape Maintenance of Medians, Bike & Equestrian Trails within Carmel Valley CVREP	Brewer Lawn Maintenance, Inc	06/01/2008	\$39,550
9216-08-Q	Tree Trimming/Tree Planting for Approximately 5,000 Trees	West Coast Arborists, Inc	04/15/2008	\$267,000
9260-08-B	Inspection & Cleaning of Catch Basin, Cleanout & Curb Inlet	Ron's Maintenance	05/01/2008	\$336,000
9289-08-B	Pest Control At City Buildings, Pigeon And Skunk Trapping At Qualcomm	Stafford Environmental Services, Inc	07/01/2008	\$31,849
9331-08-B	Security Guard Services at Various City Sites	Able Patrol and Guard	08/01/2008	\$952,843
9379-08-W	Aqueous Part Cleaner Maintenance Services for Customer Owned Equipment & Rentals	FRS Environmental Inc	10/15/2008	\$358,272
9398-09-L	Removal & Disposal of Estimated 475 Wet Tons of Sewage Scum	Fleet Transportation Services, LLC	12/01/2008	\$74,300
9474-09-B	Security Guard Service For Various Park & Rec Sites	US Security Associates, Inc	11/01/2008	\$150,000
9489-09-Q	Palm Tree Trimming for approx 30,000 Queen, Fan & Date Palms, incl Planting New Trees	West Coast Arborists, Inc	01/01/2009	\$701,600
9492-09-Q	Steam Cleaning Sidewalks within North Park MAD	Eric J Friend	02/15/2009	\$47,740
9502-09-Q	Landscape Maintenance Carmel Mountain Ranch & Sabre Springs	Aztec Landscaping, Inc	03/15/2009	\$46,377
9552-09-L	Monthly/Annual Inspection, PM & Repair on Generators for Various Facilities	Bay City Equipment	03/01/2009	\$39,675
9574-09-W	CCTV Inspection of Sewer Mains and Manholes	AAA Pipeline, Inc	03/01/2009	\$209,895
9616-09-Q	Landscape Maintenance of Various Police Department Facilities	Westturf Landscape Maintenance	06/01/2009	\$131,219
9700-09-W	EPM CCTV of Sewer Mains and Manholes FY2010	Downstream Services, Inc	05/21/2009	\$474,020

104 CONTRACTS

43 CONTRACTORS

\$31,329,064