



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: January 8, 2014

REPORT NO: 14-006
CORRECTED

ATTENTION Committee on Economic Development and Intergovernmental Relations
Agenda of January 15, 2014

SUBJECT: Living Wage Ordinance Proposed Amendments

REFERENCE: Living Wage Ordinance: San Diego Municipal Code Chapter 2, Article 2,
Division 42

REQUESTED ACTION: Amend San Diego Municipal Code Chapter 2, Article 2, Division 42.

STAFF RECOMMENDATION: Amend San Diego Municipal Code Chapter 2, Article 2,
Division 42 as proposed.

BACKGROUND:

The Living Wage Ordinance [LWO], adopted in June 2005 and effective beginning July 1, 2006, requires employers to compensate employees who perform work on applicable City service contracts under a pre-determined wage structure. The Living Wage Ordinance has been in effect for eight and one-half years.

To date, 49 LWO Complaints have been investigated; 57% were found to be violations. Nearly half (48%) of LWO Compliance Reviews found discrepancies: wage underpayment, failure to allocate compensated leave, lack of a method to track accrual of leave time, and failure to notify covered employees of their LWO rights. Back pay in a total amount of \$317,979 has been recovered for employees. Clearly, some covered employers evade their LWO obligations.

In response to a presentation of the *Living Wage Ordinance Annual Report for Fiscal Year 2013*, on October 30, 2013, the Budget and Finance Committee directed staff to bring forward recommendations for updates to the Ordinance to improve clarification and enforcement.

Past LWO Amendments

Since inception, the LWO was revised only once, on October 20, 2008, with amendments effective on December 24, 2008, and January 1, 2010. Attachment A, *Living Wage Ordinance Revisions Adopted October 20, 2008*, provides a detailed list of the revisions. Amendments included:

- removal of condition for 90 day term for *service contract*;
- inclusion of “all contracts for *services* provided through the managed competition program under Charter Section 117(c)”;
- addition of street cleaning, water and wastewater maintenance, right-of-way maintenance and waste collection and waste disposal, including recycling, and removal of exemption for recycling or solid waste management franchises;
- addition of Civic Theatre as a *City facility*;
- requirements for *covered employers* to post notice of workers’ LWO rights and maintain specific records;
- inclusion of penalties for firms that do not correct violations within 30 days and clarification of prohibition of retaliation; and
- requirement for definitions to “be liberally interpreted so as to further the policy objectives of this division.”

PROPOSED ORDINANCE AMENDMENTS

The Living Wage Ordinance would benefit from amendments to clean up and clarify certain language. Additional revisions, if made, could strengthen enforcement of the LWO to better achieve its purpose. Attachment B, *Living Wage Ordinance Proposed Amendments*, includes San Diego Municipal Code text (with all proposed amendments highlighted) and a chart of amendments grouped by their intent to clean up and clarify or strengthen the Ordinance.

Proposed Amendments to Clean Up and Clarify the LWO

The following amendments are intended to clean up and clarify the text of the Living Wage Ordinance by removing unnecessary dates, adding descriptive phrases, and revising an incorrect reference:

§22.4205, Definitions

Health benefits rate – Add “Health benefits may include medical health coverage, dental, vision, mental health, and disability income. For purposes of this section, 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.”

§22.4210, Applicability of Living Wage Ordinance

(a)(1) Regarding *service contracts*, remove phrases “entered into, awarded, amended, renewed, or extended on or after July 1, 2006” and “Notwithstanding the foregoing,

service contracts for child care services are exempt from the requirements of this division until July 1, 2008.”

(a)(2) Regarding *financial assistance agreement* subject to the \$500,000 threshold, remove phrase “entered into, awarded, amended, renewed, or extended on or after July 1, 2006.”

(a)(3) Regarding *financial assistance agreement* subject to the \$750,000 threshold, remove phrase “entered into, awarded, amended, renewed, or extended on or after July 1, 2007.”

(a)(4) Regarding *City facility agreement*, remove phrase “in effect on July 1, 2007.”

§22.4215, Exemptions

(a) Move phrase, “Except for *City facility agreements*” from the beginning to the end of sentence and add, “to which these exemptions do not apply.”

§22.4220, Payment of Living Wage and Provision of Benefits

(e) Add new clause “When a *service contract* subject to this division also requires compliance with prevailing wage laws in accordance with section 22.3019(a-d), a *covered employer* shall pay wages, health benefits and compensated leave at the higher rate.”

§22.4225, Reporting and Notification Requirements

(b) Add word “annually” to requirement for *covered employers* to notify covered employees of requirements of Living Wage Ordinance and possible availability of the Earned Income Tax Credit.

(e) Add phrase “or annually distribute with the first paycheck after July 1” to requirement for businesses to post a notice to employees regarding requirement of Living Wage Ordinance.

§22.4230, Enforcement

(d)(3) Replace “Division 32” with “Division 30” as Municipal Code location of Contractor Standards Ordinance. [Changed to §22.3004 in April 2012.]

Proposed Amendments to Strengthen the LWO

Proposed amendments to strengthen the Living Wage Ordinance are intended to:

- remove annual value threshold to make all City *service contracts*, unless otherwise exempted, covered by LWO;
- extend time for report of complaint from one to three years after discovery;

- incorporate protections of California Labor Code section 1019 for persons exercising employment rights;
- assess violators liquidated damages and costs for City administration;
- allow City to initiate enforcement actions for repeated violations of the LWO;
- require covered employers to notify workers of the Patient Protection and Affordable Care Act;
- broaden the definition of *City facility agreement* through removal of threshold for gross receipts; and
- require a prime *service contractor* to self-perform at least half the work to prevent broker-type contracts and deem original contractor jointly responsible for violation committed by subcontractor.

The following are proposed amendments to strengthen the LWO:

§22.4205, Definitions

City facility agreement – Remove condition “that generates \$350,000 or more in annual gross receipts to the business.”

Service contract – Remove condition for contract to have “a combined annual value of payments in excess of \$25,000.”

Service contractor – Add requirement “For work performed under this division, a prime contractor must self-perform at least fifty percent of the work.”

§22.4225, Reporting and Notification Requirements

(b) Require covered employers to notify workers of the Patient Protection and Affordable Care Act.

§22.4230, Enforcement

(a) Extend right to file an LWO Complaint action from one to three years.

(a)(1-2, 6) Allow court to assess violators liquidated damages, and define liquidated damages as three times the difference between wages required and actual wages paid.

(b)(1-2) Broaden retaliation prohibition to include any person acting on behalf of employer; include protections of California Labor Code section 1019.

(d) Authorize City to initiate enforcement provisions “if a covered employer demonstrates repeated violations” of the Ordinance.

(d)(4)(i-ii) Add interest to payment of back wages and require violators to pay City administrative costs and liquidated damages.

(g) Deem contractor responsible for violations by subcontractors and subject to penalties.

§22.4235, Administration

(a) Give authority to City Manager to take appropriate enforcement action pursuant to section 22.4230(d) to secure compliance.

Purpose of Proposed Amendments to Strengthen the LWO

The purpose of these proposed amendments is to address issues identified during previous years of LWO administration and recommend improvements.

Covered employers are already required to give workers notice regarding LWO rights and possibility of Earned Income Tax Credit. LWO Program staff provides notices for employers to distribute and posts them on the City's website. It would not burden covered employers to include an additional notice about the *Patient Protection and Affordable Care Act*. Ensuring workers receive such information is in line with intentions of the LWO.

The \$25,000 annual threshold for service contract value is intended to protect lower-value contracts but there is no demonstrable need for this protection. Service workers on these contracts are unnecessarily subject to considerably lower pay. This arbitrary threshold causes confusion as to whether or not a contract is covered by the LWO; no administrative function is available to recognize if the threshold is exceeded during a year.

The City has experienced situations where a large firm with no (or few) service workers is awarded a contract and then acts as a "broker" by acquiring multiple subcontractors to perform the work. These broker-type firms easily – and unfairly – underbid competitors because they do not pay direct wages and do not provide compensated leave, but rather pay lump sums to subcontractors. City contract administrators privately express concerns regarding complications for performance and communication in these situations. A requirement that a prime service contractor must perform at least half the work will help prevent this method of skirting LWO obligations.

Enforcement of the LWO can be improved by including protections of California Labor Code section 1019, new legislation to safeguard workers from retaliation. The current Ordinance allows enforcement action only if a violation is not corrected in thirty days; new language would authorize the City to initiate enforcement proceedings for repeated violations and would specifically grant authority to the City Manager (Chief Operating Officer) "to take any appropriate enforcement action pursuant to section 22.4230(d) to secure compliance with this division." Proposed amendments increase the City's ability to assess fines, plus interest, and add authority to recover administrative costs.

Implementation and Enforcement

The LWO Program maintains *Rules Implementing the Living Wage Ordinance* and an internal *Administrative Procedures Manual*; each document will be revised where necessary to reflect changes to the Ordinance. Comprehensive LWO web pages on sandiego.gov provide links to Municipal Code text, all forms and notices, the *Rules*, and other relevant material; this information will also be updated. City staff, current contractors and prospective bidders will be informed of changes. Annually, the LWO Program sends correspondence to covered employers, and modifications will be clearly outlined at that time. Multiple departments and programs, including the LWO Program, participate in presentation of quarterly workshops, “How to Do Business with The City”; all relevant information will be updated.

Effective LWO enforcement hinges on three efforts: educational outreach (described above), Compliance Reviews, and Complaint investigations. Increased consequences – fines, interest, administrative cost recovery – for violations are anticipated to encourage compliance, but staff will continue to pursue discovery of violations through proactive reviews and investigations.

FISCAL CONSIDERATIONS: Since inception, the LWO Program has not been optimally staffed. The current LWO Program consists of one Supervising Management Analyst and one Senior Management Analyst. This staff also administers the Equal Benefits Ordinance (which applies to all City agreements) and the LWO’s companion ordinances: the Service Worker Retention Ordinance and the Contractor Standards Ordinance.

Efficient administration of the proposed amendments requires expanded monitoring to address additional contracts, thorough documentation to verify compliance, and increasingly complex investigations to justify possible assessments. Adequate staffing for the LWO Program should include the addition of a Program Manager and one more Senior Management Analyst for a full complement of four full-time employees. Increased cost, including fringe benefits, for the two added positions is estimated at \$230,000. Some cost recovery may be achieved through assessment and collection of fines for violations, however, such monies must be deposited in the General Fund and cannot provide direct support for LWO Program staffing. The additional positions will be requested as part of the Fiscal Year 2015 Proposed Budget.

In an initial discussion of LWO viability, City Manager Report No. 05-090, *City Manager’s Analysis of Proposed Responsible Wage and Benefits Ordinance* [renamed “Living Wage Ordinance”], dated April 7, 2005, stated, “...at least five positions would be required to adequately staff an LWO compliance program.” This assessment was based on a comparison with other California agencies.

The Office of the Independent Budget Analyst in Reports Number 07-99 and 08-110 (dated October 12, 2007, and October 18, 2008, respectively) expressed concerns about adequate staffing of the LWO Program to implement the LWO as intended.

Since the Living Wage Ordinance is already in effect and the proposed amendments do not significantly change applicability to City service contracts or City facility agreements, the fiscal impact to City departments will be minimal.

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

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Numerous speakers voiced support to strengthen the Living Wage Ordinance when the *LWO Annual Report for Fiscal Year 2013* was presented at the Budget and Finance Committee Meeting on October 30, 2013; their comments and suggestions were incorporated into proposed amendments in this report. Staff solicited specific input from various community-based organizations including the Center on Policy Initiatives, Maintenance Cooperation Trust Fund, Employee Rights Center, San Diego and Imperial Counties Labor Council, and the Interfaith Committee for Worker Justice. The Living Wage Program also engaged in discussions with various California agencies including the City of Los Angeles Living Wage Program and San Francisco's Office of Labor Standards Enforcement.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Key stakeholders for the proposed amendments to cleanup, clarify and strengthen the Living Wage Ordinance are covered employers, covered employees and City of San Diego citizens. The impact of the modifications will be a furtherance of the stated intent of the Ordinance that taxpayer-funded contracts "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."



Gakunga, Dennis
Purchasing & Contracting Department



Jeff Sturak
Deputy Chief Operating Officer, Internal Operations

Attachment A: Living Wage Ordinance Revisions Adopted on October 20, 2008
Attachment B: Living Wage Ordinance Proposed Amendments

Living Wage Ordinance Revisions Adopted October 20, 2008

<u>Municipal Code</u>	<u>Revision</u>
22.4205	Definitions
<i>City facility</i>	Added “Civic Theatre, including the portion of the Civic Center Plaza directly adjacent to the Civic Theatre when theatre-related activities are held there” and excluded other structures located in plaza.
<i>Service contract</i>	Deleted requirement for “term of more than 90 days” and clarified inclusion of “all contracts for services provided through the managed competition program under Charter Section 117(c).”
<i>Services</i>	Added: <ul style="list-style-type: none"> ▪ Street cleaning; ▪ Waste collection and waste disposal, including recycling; ▪ Right of way maintenance; and ▪ Water and wastewater maintenance.
22.4215(a)(4)	Exemptions Removed exemption for “recycling or solid waste management franchises.”
22.4215(a)(7)	Defined “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)	Added 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 Required 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)	Required businesses to prominently post notice to employees at worksite (or site frequented by workers) about LWO rights or firm’s exempt status.
22.4230(a)(4,5)	Enforcement Directed courts to award penalties and attorney fees.
22.4230(b)	Clarified prohibition of retaliation.
22.4230(c)	Required City to investigate all complaints “within 60 days, with reasonable 30-day extensions.
22.4230(d)	Required 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.
22.4235	Administration Required annual LWO report to Council.

Living Wage Ordinance Proposed Amendments

- Municipal Code Text
- Sorted by Intent to Clean Up and Clarify [C] or Strengthen [S] Ordinance

San Diego Municipal Code

Chapter 2: Government, Article 2: Administrative Code

Division 42: City of San Diego Living Wage Ordinance

§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.

§22.4202 Citation

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

§22.4205 Definitions

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

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*:

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- (a) Petco Park;
- (b) Qualcomm Stadium;
- (c) San Diego Sports Arena;
- (d) San Diego Convention Center;
- (e) San Diego City Concourse; or
- (f) Civic Theatre, including the portion of the Civic Center Plaza directly adjacent to the Civic Theatre when theatre-related activities are held there. This subsection is not intended to extend to the Living Wage Ordinance to other structures located in the Civic Center Plaza.

City facility agreement means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility* [S1] ~~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; or (b) individuals who participate in job training and education programs that have as their express purpose the provision of basic job skills or education.

Covered employer 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*.

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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. [C1] Health benefits may include medical health coverage, dental, vision, mental health, and disability income. For purposes of this section, 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.

Service contract means a contract between the *City* and a *business* [S2] with a combined annual value of payments in excess of \$25,000 and any applicable subcontracts or franchises, to furnish *services*. For the purpose of this division, *service contract* includes all contracts for *services* provided through the managed competition program under Charter section 117(c).

Service contractor 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*. [S3] For work performed under this division, a prime *service contractor* must self-perform at least fifty percent of the work.

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, street cleaning, 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;
- (p) Warehouse workers;

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- (q) Waste collection and waste disposal, including recycling;
- (r) Right-of-way maintenance; and
- (s) Water and wastewater maintenance.

§22.4210 Applicability of Living Wage Ordinance

(a) This division shall apply to:

- (1) any *service contract*, including any applicable subcontract [C2], ~~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*. [C3] ~~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 [C4], ~~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 [C5] ~~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 [C6] ~~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.

§22.4215 Exemptions.

- (a) [C7] ~~Except for City facility agreements,~~ The following contracts are exempt from the requirements of this division ~~except for City facility agreements to which these exemptions do not apply:~~
- (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;
 - (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 professional services, as described in California Labor Code Section 515(a), such as design, engineering, financial, technical, legal, banking, medical, management,

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operating, advertising, or other 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.
- (c) The definitions of *service contract*, *financial assistance agreement*, or *City facility agreement* shall be liberally interpreted so as to further the policy objectives of this division. The *City Manager* shall establish procedures to implement this section.

§22.4220 Payment of Living Wage and Provision of Benefits

- (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.
- (e) [C8] When a *service contract* subject to this division also requires compliance with prevailing wage laws in accordance with section 22.3019(a-d), a *covered employer* shall pay wages, health benefits and compensated leave at the higher rate.

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§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 [C9] annually notify its *covered employees* of the requirements of this division [S4], of the Patient Protection and Affordable Care Act requirement for health insurance coverage, 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 documenting compliance with this division. The *covered employer* will maintain records documenting compliance for at least three years, but will not be required to maintain such records for more than seven years, after the *City's* final payment on the *service contract, financial assistance agreement, or City facility agreement*; such records shall be made available to the *City* upon request. The records to be maintained shall include all wage records, proof of payment for health benefits, employee name, address, date of hire, job classification, rate of pay, cost and amount paid for health benefits, hours worked in each pay period, and paid and unpaid time off (accrued and used).
- (e) *Businesses* shall post [C10] and annually distribute with the first paycheck after July 1 a notice to employees informing them of their rights under this division, and any applicable exemptions from the wage rate requirements of this division. The poster must be at the site of work, or a site frequently accessed by workers, in a prominent and accessible place where it can easily be seen by workers.

§22.4230 Enforcement

- (a) A *covered employee* claiming a violation of this division shall have the right to file an action against an employer in the appropriate court within [S5], one three years 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 [S6] and liquidated damages.
 - (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 [S7] and liquidated damages.
 - (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.

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- (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.
- (6) [S8] The courts shall award liquidated damages to be paid by the employer to the employee in the amount of three times the difference between the wages required to be paid and the actual amount of wages paid.
- (b) A *business* [S9] or any person acting on behalf of the employer 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*.
- (1) [S10] No covered employer or any person acting on behalf of the covered employer shall engage in an unfair immigration-related practice against a worker in violation of California Labor Code section 1019.
- (2) Any such action shall constitute a breach of the contract and subject the contract to suspension or termination.
- (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, [S11] or if a covered employer demonstrates repeated violations, 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 [C11] 32 30.
- (4) Request that the *City Attorney* bring a civil action against the covered employer seeking any legal remedies, including but not limited to:

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- (i) Where applicable, payment to the *covered employee* of all unpaid wages and/or health premiums prescribed by this division, [S12] plus interest; 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 [S13], the *City's administrative costs, and liquidated damages in the amount of three times the difference between the wages required to be paid and the actual amount of wages paid.*
- (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.
- (g) [S14] If a subcontractor is found to be in violation of this division, both the original contractor and subcontractor shall be deemed in violation and subject to the penalties outlined in this section.

§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. [S15] The *City Manager* shall have authority to take any appropriate enforcement action pursuant to section 22.4230(d) to secure compliance with this division.
- (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 of each year, or as soon thereafter as is practicable, the *City Manager* shall submit an annual report to the City Council generally describing the effects of the City of San Diego Living Wage Ordinance upon the *City*.

§22.4240 Collective Bargaining Agreements

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

§22.4245 Severability

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.



LWO Proposed Amendments
Sorted by Intent to Clean Up and Clarify [C] or Strengthen [S] Ordinance

CLEAN UP & CLARIFY LWO

- [C1] §22.4205 *Health benefits rate* means a minimum dollar amount per hour toward the cost of health and medical care insurance for employees and their dependents. *Health benefits may include medical health coverage, dental, vision, mental health, and disability income. For purposes of this section, 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.*
- [C2] §22.4210 (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.~~
- [C3] §22.4210 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.~~
- [C4] §22.4210 (a) This division shall apply to:
 (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.~~
- [C5] §22.4210 (a) This division shall apply to:
 (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.~~
- [C6] §22.4210 (a) This division shall apply to:
 (4) any *City facility agreement*, including any applicable sublease, subcontract, or concession agreement ~~in effect on July 1, 2007.~~
- [C7] §22.4215 (a) ~~Except for City facility agreements,~~ The following contracts are exempt from the requirements of this division ~~except for City facility agreements to which these exemptions do not apply:~~
- [C8] §22.4220 (e) *When a service contract subject to this division also requires compliance with prevailing wage laws in accordance with section 22.3019(a-d), a covered employer shall pay wages, health benefits and compensated leave at the higher rate.*
- [C9] §22.4225 (b) Each *covered employer* shall **annually** notify its *covered employees* of the requirements of this division and of the possible availability of the Earned Income Tax Credit.
- [C10] §22.4225 (e) *Businesses* shall post **and annually distribute with the first paycheck after July 1** a notice to employees informing them of their rights under this division, and any applicable exemptions from the wage rate requirements of this division.
- [C11] §22.4230 (d)(3) Request a determination of non-responsibility under Article 2, Chapter 2, Division ~~32 30.~~

LWO Proposed Amendments
Sorted by Intent to Clean Up and Clarify [C] or Strengthen [S] Ordinance

STRENGTHEN LWO

- [S1] §22.4205 *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.~~
- [S2] §22.4205 *Service contract* means a contract between the *City* and a *business* ~~with a combined annual value of payments in excess of \$25,000~~ and any applicable subcontracts or franchises, to furnish *services*.
- [S3] §22.4205 *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*. ~~For work performed under this division, a prime service contractor must self-perform at least fifty percent of the work.~~
- [S4] §22.4225 (b) Each *covered employer* shall annually notify its *covered employees* of the requirements of this division ~~of the Patient Protection and Affordable Care Act requirement for health insurance coverage~~, and of the possible availability of the Earned Income Tax Credit.
- [S5] §22.4230 (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~~ **three** years after discovery of the alleged violation. The court may award any employee who files suit pursuant to this subdivision, the following:
- [S6] §22.4230 (a) (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 ~~and liquidated damages.~~
- [S7] §22.4230 (a) (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 ~~and liquidated damages.~~
- [S8] §22.4230 (a) (6) ~~The courts shall award liquidated damages to be paid by the employer to the employee in the amount of three times the difference between the wages required to be paid and the actual amount of wages paid.~~
- [S9] §22.4230 (b) A *business* ~~or any person acting on behalf of the employer~~ 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.
- [S10] §22.4230 (b) (1) ~~No covered employer or any person acting on behalf of the covered employer shall engage in an unfair immigration-related practice against a worker in violation of California Labor Code section 1019.~~
 (b) (2) ~~Any such action shall constitute a breach of the contract and subject the contract to suspension or termination.~~

LWO Proposed Amendments
Sorted by Intent to Clean Up and Clarify [C] or Strengthen [S] Ordinance

STRENGTHEN LWO (continued)

- [S11]** §22.4230 (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, **or if a covered employer demonstrates repeated violations,** the *City Manager* shall then do one or more of the following:
- [S12]** §22.4230 (d)(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, **plus interest;** and/or
- [S13]** §22.4230 (d)(4)(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, **the City's administrative costs, and liquidated damages in the amount of three times the difference between the wages required to be paid and the actual amount of wages paid.**
- [S14]** §22.4230 (g) **If a subcontractor is found to be in violation of this division, both the original contractor and subcontractor shall be deemed in violation and subject to the penalties outlined in this section.**
- [S15]** §22.4235 (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. **The City Manager shall have authority to take any appropriate enforcement action pursuant to section 22.4230(d) to secure compliance with this division.**