

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: January 18, 2008

TO: Nora Nugent, Living Wage Administrator

FROM: City Attorney

SUBJECT: Living Wage Ordinance Applicability to the Civic Theatre

INTRODUCTION

Further to our discussion on January 11, 2008, this memorandum addresses whether the Civic Theatre constitutes a “City facility” under the Living Wage Ordinance [Ordinance], codified at San Diego Municipal Code [SDMC] sections 22.4201 *et seq.* We conclude that it does not for the reasons discussed below.

QUESTION PRESENTED

1. Is the Civic Theatre a “City facility” as defined by the City’s Living Wage Ordinance?

BRIEF ANSWER

1. No. The Civic Theatre is not one of the five enumerated “City facilities,” nor is it part of the “San Diego City Concourse” as that term is used in the Living Wage Ordinance.

DISCUSSION

The Ordinance applies to “City facilities agreements.” City facility agreements include certain agreements for use of space or services at five specifically identified “City facilities,”

which include: (a) Petco Park, (b) Qualcomm Stadium, (c) San Diego Sports Arena, (d) San Diego Convention Center, and (e) *San Diego City Concourse* (emphasis added). SDMC § 22.4205.

The San Diego City Concourse is an approximately 114,000 square foot facility that is used as a public event center and meeting hall; however, there has been some confusion as to what is meant by “San Diego City Concourse” in SDMC section 22.4205(e) – and specifically whether it includes the Civic Theatre -- due to the following:

- In common parlance, many San Diegans refer to the City’s Civic Center Plaza area and surrounding structures collectively as “the Concourse.”
- There is plaque on the City Administration Building, which sits next to the Civic Theatre and faces the Plaza, with the words “Charles C. Dail Concourse.”
- There is a sign near the Parkade exit that says, “Welcome to the San Diego City Concourse.”
- The box office for the Civic Theatre is located in the City Concourse building.

Notwithstanding the above, our review and analysis of the legislative history of the Living Wage Ordinance indicates that the City Council did not intend to include the Civic Theatre in the definition of “City facility.”

When introduced at the April 12, 2005 City Council meeting, the Ordinance included in its list of defined terms only four “City facilities”: Petco Park, Qualcomm Stadium, the San Diego Sports Arena, and the San Diego Convention Center. See City Manager’s Report 05-090 dated April 7, 2005, Attachment C (October 2004 version of the Ordinance).

At the April 12 meeting, the City Council heard presentations by both the City Attorney and the City Manager. The City Manager’s presentation included a fiscal impact analysis and a discussion of prior drafts of the Ordinance. In its presentation, the City Manager specifically addressed the fiscal impact of the proposed Ordinance if it should be applied to the “Concourse” as distinct from the “Civic Theatre.” See Supplementary Materials to O-19386, “City Manager’s Analysis of Proposed Responsible Wage and Benefits Ordinance, April 12, 2005,” pp. 23-24.¹

After the presentations, Councilmember Atkins made a motion to expand the definition of “City facility” to include the “City Concourse.” See City Council Meeting Minutes, April 12, 2005, Item 330, p. 11. Presumably, if the City Council intended to include the Civic Theatre as a City facility, it would have expressly done so at that time.

¹ In the City Manager’s Report that followed this meeting, the City Manager again listed the “Concourse” separately from the Civic Theatre in its fiscal impact analysis. City Manager’s Report 05-090 dated April 7, 2005, p. 26.

CONCLUSION

Because the Civic Theatre is not expressly listed as a City facility, nor included in the term “San Diego City Concourse,” the Civic Theatre does not constitute a City facility under the Living Wage Ordinance.

MICHAEL J. AGUIRRE, City Attorney

By _____
Sanna R. Singer, Deputy City Attorney

SRS