



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: January 19, 2016 REPORT NO: 16-008

ATTENTION Honorable Council President and City Council

SUBJECT: Living Wage Ordinance Annual Report for Fiscal Year 2015 and Proposed Amendments

REFERENCE: Living Wage Ordinance: San Diego Municipal Code Chapter 2, Article 2, Division 42; Report No. 15-078, Living Wage Ordinance Annual Report for Fiscal Year 2015 and Proposed Amendments

REQUESTED ACTION: Accept Living Wage Ordinance Annual Report for Fiscal Year 2015 and consider proposed amendments to San Diego Municipal Code [SDMC] Chapter 2, Article 2, Division 42.

STAFF RECOMMENDATION: Accept Living Wage Ordinance Annual Report for Fiscal Year 2015 and consider proposed amendments to SDMC Chapter 2, Article 2, Division 42.

BACKGROUND: This annual report describes administration of the Living Wage Ordinance [LWO] during Fiscal Year 2015 (July 1, 2014 – June 30, 2015). It was originally presented to the Economic Development and Intergovernmental Relations Committee on October 22, 2015, as Report No. 15-078. Subsequent to Committee discussions, information regarding proposed modifications has been updated in this Report to Council.

Adopted in June 2005 and effective July 1, 2006, the LWO requires employers to compensate employees who perform work on applicable service contracts under a predetermined wage structure. For reference, full text of the Living Wage Ordinance, *San Diego Municipal Code Chapter 2, Article 2, Division 42*, (Attachment A) is included with this report. A one-page summary of LWO applicability, exemptions and requirements is also provided as *LWO Synopsis for Fiscal Year 2015* (Attachment B).

From time to time amendments to the Ordinance are necessary to clarify requirements; City Council members also request amendments to be put forth for consideration. This report includes proposed amendments to the Living Wage Ordinance.

EXECUTIVE SUMMARY: The Living Wage Program is located in the Purchasing & Contracting Department in the Internal Operations Branch of the City of San Diego. In Fiscal Year 2015, 1.00 additional position (a Senior Management Analyst) was added to support

amendments made during Fiscal Year 2014 to strengthen enforcement. LWO Program accomplishments during FY 2015 affirm the intended effect of this additional position.

During Fiscal Year 2015, the Living Wage hourly rate was \$11.80 plus \$2.37 in health benefits for a total of \$14.17. This reflected a 1.3% cost-of-living increase from the prior year. The LWO hourly rate for Fiscal Year 2016 is \$12.02 plus \$2.41 in health benefits for a total of \$14.43. During the ten years since passage of the Living Wage Ordinance, the hourly wage rate has increased \$2.43 (equal to the region's cost-of-living increase published by the Department of Labor, 18.65%). [See Chart 2.]

A total of 396 LWO contracts were active in FY 2015 with a combined value of \$52,206,865, as measured by the Purchasing Agreement amount; LWO contracts were held by 121 covered employers. The great increase in covered contracts was due, in part, to removal of the \$25,000 value threshold during Fiscal Year 2014 [See Charts 4–7.]

In Fiscal Year 2015, the LWO Program exceeded a milestone by achieving a total recovery of over a half-million dollars in back payment for covered employees since inception of the Ordinance. The comprehensive backpay amount of \$571,711 includes recovery of wages due to both LWO Complaints (\$385,853) and LWO Compliance Reviews (\$185,858). [See Chart 10.]

LWO Compliance Reviews have been conducted for 61 firms since inception of the Ordinance. Discrepancies were identified in 54.1% of all LWO Compliance Reviews. The reviews found 44.3% of examined firms underpaid covered employees and 34.4% did not provide required compensated leave time. [See Charts 11–15.]

Two LWO employee complaints were received during FY 2015, and neither was found to be a violation. In the history of the LWO, 59 LWO Complaints were investigated; 55.9% were found to have violations. [See Charts 16–19.]

An Annual Contractor Compliance Report is required by SDMC section 22.4225(d); 107 covered employers submitted a report (99.1%) In response to an inquiry, 49% stated they believed the LWO reduced their firm's absenteeism or turnover; 49% also confirmed the LWO improved their firm's quality of service. [See Chart 20.]

This report lists eleven amendments to the LWO for consideration by the Council. Most proposed modifications are intended to increase clarity; other amendments would extend LWO application to service workers in the medical field, including emergency medical technicians and paramedics. [See Chart 21.] Changes would be enforced only on future contracts, not current agreements.

The Living Wage Program continues to assist covered employers in meeting their obligations regarding the Living Wage Ordinance. The Program maintains thorough compliance information on Purchasing & Contracting Department's website. Annually, contractors are provided with direct correspondence outlining Ordinance requirements and giving notice of wage adjustments and any changes that may have occurred during the year. The LWO Program remains aggressive in investigations of allegations of noncompliance with the Ordinance. Additionally, the Program serves as a resource for all City departments with contracts for services.

LWO PROGRAM ADMINISTRATION DURING FISCAL YEAR 2015

LWO Administration

In accordance with SDMC § 22.4235(a), *Rules Implementing the Living Wage Ordinance* (provided for Fiscal Year 2015 with this report as Attachment C) are posted on the City’s website at sandiego.gov/purchasing/programs/livingwage. Sections in the Rules clarify components of the LWO:

- Applicability;
- Exemptions;
- Employer Requirements;
- Recordkeeping and Reports;
- Monitoring and Investigation;
- Enforcement; and
- Employee Complaint Process.

Appendices to the *Rules* include relevant notices and forms:

- Current Living Wage Rates;
- LWO Notice to Employees (English, Spanish);
- Affordable Care Act information sheet (English, Spanish);
- Earned Income Tax Credit information sheet (English, Spanish);
- LWO Certification of Compliance form;
- LWO Application for Exemption form; and
- LWO Employee Complaint Form (English, Spanish).

Additional information is maintained on the City’s website and updated as required.

The Living Wage Program consists of three staff positions, one Supervising Management Analyst and two Senior Management Analysts; these positions also administer the City’s Equal Benefits Program.

Actual program staffing costs are shown in Chart 1, *LWO Program Staff Costs in FY 2015*:

CHART 1: LWO PROGRAM STAFF COSTS IN FISCAL YEAR 2015						
<u>Classification</u>	<u>Employees</u>	<u>Salary</u>		<u>Fringe</u>		<u>Total</u>
Supervising Management Analyst *	1.00 FTE	\$80,891	+	\$27,158	=	\$108,049
Senior Management Analyst	1.00 FTE	\$69,248	+	\$56,038	=	\$125,286
Senior Management Analyst **	<u>1.00 FTE</u>	<u>\$64,333</u>	+	<u>\$50,564</u>	=	<u>\$115,897</u>
TOTAL	3.00 FTE	\$133,581	+	\$106,602	=	\$241,183

* Lower Fringe costs due to employee participation in Deferred Retirement Option Plan
 ** Lower Salary + Fringe reflect October start date

LWO Program functions include: determination of applicability; investigation and resolution of complaints; performance of contract compliance reviews; compilation of annual compliance report from covered employers; record maintenance; provision of information in response to requests from contractors, workers, City Facility operators, the public, and City staff; 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 2015 by providing counsel on issues upon request. Additionally, the City Attorney’s Office undertook enforcement action in accordance with SDMC § 22.4230(4)(A-C) against two contractors: Jani-King of California (settlement negotiated) and MEK Enterprises (ongoing). No litigation expenses were incurred during this fiscal year.

Annual LWO Wage Adjustment

SDMC § 22.4220(b) stipulates an upward adjustment of hourly wage and health benefit rates to take effect each year on July 1 and requires new rates to be posted on the City’s website prior to April 1. This adjustment is based on the prior calendar year’s Consumer Price Index for All Urban Consumers for the San Diego–Carlsbad–San Marcos Metropolitan Statistical Area as published (in February) by the U.S. Department of Labor, Bureau of Labor Statistics.

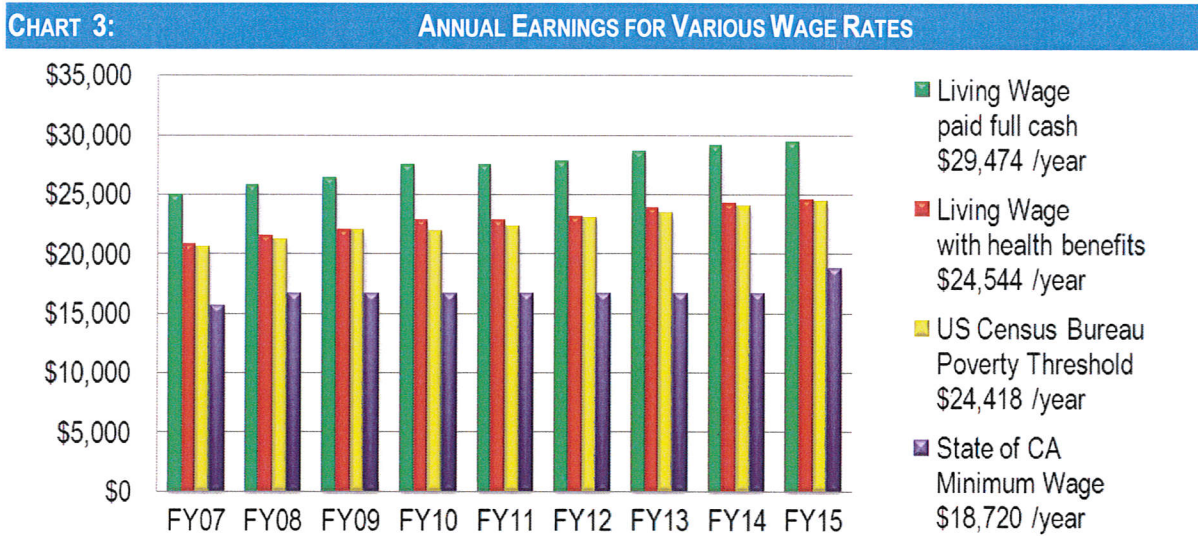
Chart 2, *City of San Diego Living Wage Rates*, lists a history of LWO wage and health benefit rates.

CHART 2: CITY OF SAN DIEGO LIVING WAGE RATES				
<u>Year</u>	<u>Effective Dates</u>	<u>Increase</u>	<u>Wage + Health Benefit</u>	<u>Full Cash Wage</u>
FY 2016	July 1, 2015 – June 30, 2016	1.85%	\$12.02 + \$2.41 /hr	\$14.43 /hr
FY 2015	July 1, 2014 – June 30, 2015	1.30%	\$11.80 + \$2.37 /hr	\$14.17 /hr
FY 2014	July 1, 2013 – June 30, 2014	1.60%	\$11.65 + \$2.34 /hr	\$13.99 /hr
FY 2013	July 1, 2012 – June 30, 2013	3.00%	\$11.47 + \$2.30 /hr	\$13.77 /hr
FY 2012	July 1, 2011 – June 30, 2012	1.30%	\$11.14 + \$2.23 /hr	\$13.37 /hr
FY 2011	July 1, 2010 – June 30, 2011	0.00%	\$11.00 + \$2.20 /hr	\$13.20 /hr
FY 2010	July 1, 2009 – June 30, 2010	3.90%	\$11.00 + \$2.20 /hr	\$13.20 /hr
FY 2009	July 1, 2008 – June 30, 2009	2.30%	\$10.58 + \$2.12 /hr	\$12.70 /hr
FY 2008	July 1, 2007 – June 30, 2008	3.40%	\$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

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.”

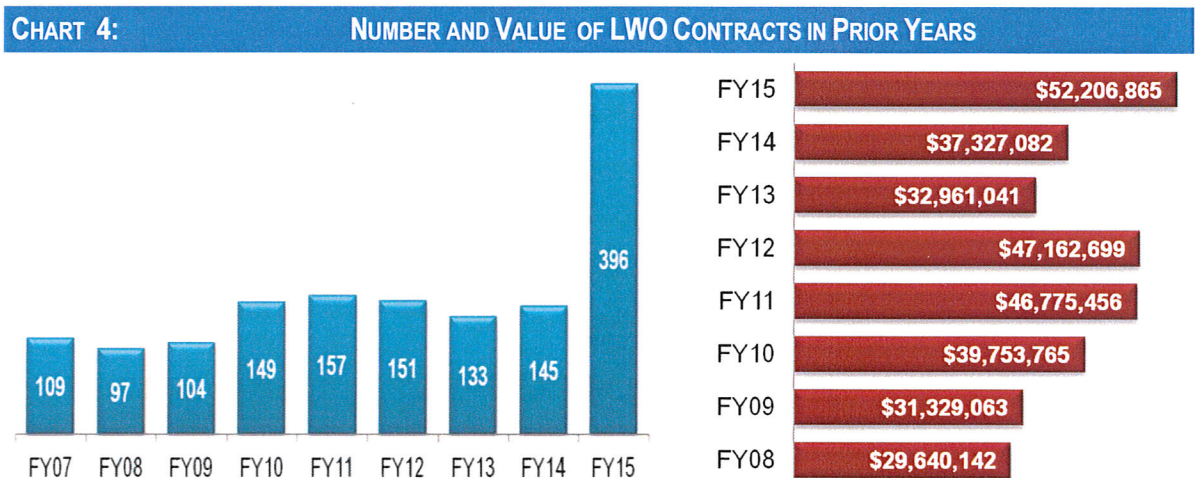
Chart 3, *Annual Earnings for Various Wage Rates*, compares annual incomes for Living Wage rates, California minimum wage rate and the U.S. Census Bureau’s poverty threshold.



LWO Contracts

During Fiscal Year 2015, there were a total of 396 active LWO contracts with a value of \$52,206,865, as measured by the Purchasing Agreement amount. The number and value of LWO-covered contracts increased substantially from prior years primarily because the LWO was modified to remove the \$25,000 threshold, effective March 28, 2014. Fiscal Year 2015 was the first full fiscal year to reflect application of the LWO to all City service contracts regardless of the value.

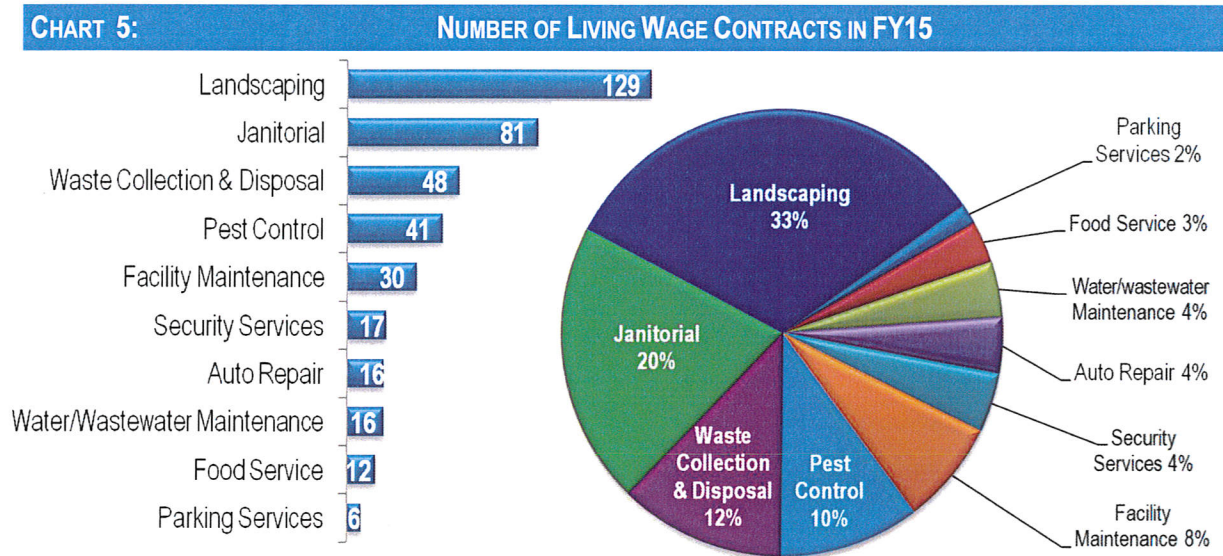
Chart 4, *Number and Value of LWO Contracts in Prior Years*, compares totals during current and previous fiscal years. Values are total costs for Purchasing Agreements at time of award.



Detailed spreadsheets are provided as attachments to this report in three views:

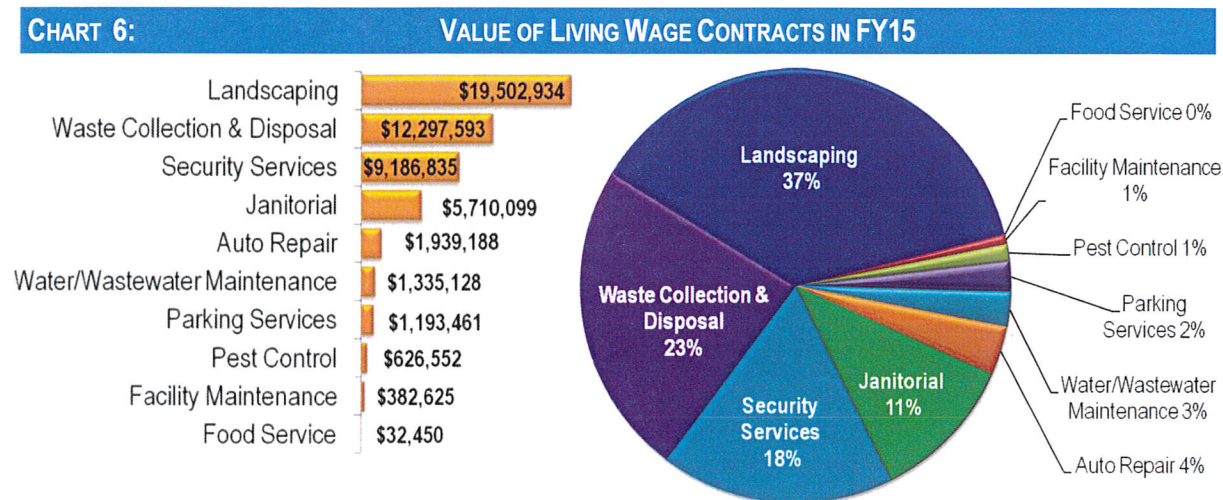
- LWO Contracts in Fiscal Year 2015, Sorted by Contract Number [Attachment D];
- LWO Contracts in Fiscal Year 2015, Sorted by Bid Number [Attachment E]; and
- LWO Contracts in Fiscal Year 2015, Sorted by Commodity Type [Attachment F].

Chart 5, *Number of Living Wage Contracts in FY15*, shows a comparison of contracts for various commodity types based on the number of contracts and the percentage of the total.



Landscaping contracts (129) comprised one-third of all LWO contracts. The second largest commodity by number of contracts was Janitorial (81); followed by Waste Collection and Disposal (48); Pest Control (41); Facility Maintenance (30); and Security Services (17).

Chart 6, *Value of Living Wage Contracts in FY15* is a graphic representation of the value of contracts for various commodity types. The value is the Purchasing Agreement amount for each contract for the fiscal year.



An analysis of contract costs shows that Landscaping (\$19,502,934) remained the greatest portion of LWO-covered contracts (37%). Waste Collection and Disposal was the second largest portion in value (\$12,297,593), followed by Security Services (\$9,186,835) and Janitorial (\$5,710,099).

LWO Covered Employers

During Fiscal Year 2015, 121 covered employers held LWO contracts. Detailed information is provided as attachments to this report in three views:

- *LWO Contracts in Fiscal Year 2015, Sorted by Contractors* [Attachment G];
- *LWO Contractors in Fiscal Year 2015, Sorted by Total Number of Contracts for Each Contractor* [Attachment H]; and
- *LWO Contractors in Fiscal Year 2015, Sorted by Total Value of Contracts for Each Contractor* [Attachment I].

All covered employers are listed in Chart 7, *LWO Covered Employers in Fiscal Year 2015*:

Chart 7: LWO COVERED EMPLOYERS IN FISCAL YEAR 2015		
A & A High Pressure Steam	Cortes Towing	Qualityway Building Service
AO Reed	Coverall Health Based Cleaning	Rancho Santa Fe Security
A to Z Enterprises	D2 Distributors	Recall Secure Destruction Services
Able Patrol and Guard	Dewey Pest Control	Recon Environmental, Inc
ABM Janitorial Services	Diamond Designs	Reliable Tire Company
ABM Parking Services	Diamond Environmental Services	Republic Services
Acacia Landscape Company	DMS Services	RMD Technologies
Ace Parking Management, Inc	Downstream Services	Rochester Midland Corporation
Ace Relocation Systems, Inc	Elite Show Services	San Diego Air Duct Cleaning
Advantage Towing	Epic Pest Control	San Diego Landfill Services
Aegis Pest Control	FRS Environmental Inc	San Diego Linens
Agricultural Pest Control	G4S Secure Solutions	San Diego Power Clean
Algae Eaters Pool Care, Inc	Gregory R Heer	SD Air Quality Inc
American Pest Control	Guardian Towing	Securitas Security Services USA
American Towing	Kelly and Associates	Sign Diego
Angelo's Towing & Recovery	Knotts Pest Control, Inc	So Cal Tree Care, Inc
Anytime Towing	Landcare Logic	Soil Safe of California, Inc
Aramark Sports & Entertainment Services	Landscapes USA, Inc	South Bay Fence, Inc
Asbury Environmental Services	Lloyd Pest Control, Inc	Southbay Heaven's Best
Atlas Environmental Services Inc	McKowski's Maintenance Systems	Southland Aquatic Management
Atlas Pumping Service	MEK Enterprises	Stafford Environmental Services
Aztec Landscaping, Inc	Merchants Building Maintenance	Stericycle, Inc
B & Z Builders, Inc	Nature's Image, Inc	Sun Diego Charter Company
Bekker's West Coast Catering	Miller Environmental, Inc	Super Cocina
Blue Skies Landscape Maintenance	Nissho of California, Inc	T&T Janitorial
Brewer Lawn Maintenance, Inc	NMS Management, Inc	Terminix Commercial
Burns and Sons Trucking, Inc	Ocean Blue Environmental Services	The Davey Tree Expert Co
BWM, Inc	Orkin Pest Control	TP Janitorial Services
C & D Towing Specialists	Panda Inn Restaurant	Treebeard Landscape, Inc
C & M Transfer	Patriot Environmental Services	United Pumping Service, Inc

CAM Services	Pestmaster Services	United Sites Services of CA Inc
Cannon Pacific	Ponderosa Landscape, Inc	Valley Crest Tree Company
Cartwright Termite & Pest Control	Powerland Equipment, Inc	VIP Janitorial Service
Centerplate	Precision Landscape Maintenance	Ware Disposal
Christian Brothers Cleaning	Premier Carpet Care	We Got Ya Pest Control
City Café	Prizm Janitorial Services Inc	West Coast Arborists, Inc
Clean Harbors Environmental	Pro Window Cleaning	West Coast Security & Investigations
Colt Services, Inc	Quality Coast, Inc	West Coast Turf
Contemporary Design Landscape	Quality Commercial Pest Control	Westgate Hotel Company
Contemporary Services Corp	Qualityway Building Service	Westturf Landscape Maintenance
Corporal Building Services		

Chart 8, *Contractors with Highest Number and Value of LWO Contracts in FY15*, shows the highest-earning contractors' totals for LWO-covered contracts by total contracts and dollar value.



San Diego Landfill Services held only one contract, but its total of \$8,200,000 was the highest (15.7% of the total LWO contract value). Aztec Landscaping, Inc., held 24 contracts (6% of all LWO contracts) for a total value of \$6,039,464 (11.6% of the total LWO contract value).

During Fiscal Year 2015, 91 contractors requested and received an exemption from LWO requirements. Contractors do not receive a universal exempt status, but are granted exemptions on a per contract basis; sufficient documentation must be provided before an exemption request is approved by the Living Wage Program. Chart 9, *Summary of LWO Contractor Exemptions Granted in Fiscal Year 2015*, shows exemptions for contractors on service contracts for the City and for designated City facilities:

CHART 9: SUMMARY OF LWO CONTRACTOR EXEMPTIONS GRANTED IN FISCAL YEAR 2015				
<u>Municipal Code</u>	<u>Exemption Type</u>	<u>City Contract</u>	<u>City Facility</u>	<u>Total</u>
§ 22.4215(c)(1)	12 or fewer employees	19	1	20
§ 22.4215(c)(2)	Non-profit	64	1	65
§ 22.4240	Collective Bargaining Agreement	0	4	4
	Other	<u>2</u>	<u>0</u>	<u>2</u>
	TOTALS	85	6	91

LWO Back Payment Recovered

During Fiscal Year 2015, the LWO Program exceeded a milestone by achieving a total recovery of over a half million dollars in back payment for covered employees since inception of the Ordinance. The comprehensive back payment amount of \$571,711 includes recovery of wages due to both LWO Complaints (\$385,853) and LWO Compliance Reviews (\$185,858). This information is shown in Chart 10, *Annual Amounts of LWO Back Payment Recovered*:

CHART 10: ANNUAL AMOUNTS OF LWO BACK PAYMENT RECOVERED			
	<u>Complaints</u>	<u>Compliance Reviews</u>	<u>Total Recovered</u>
FY 2015	\$0	\$146,647	\$146,647
FY 2014	\$102,535	\$2,286	104,821
FY 2013	\$0	\$0	\$0
FY 2012	\$6,696	\$0	\$6,696
FY 2011	\$11,669	\$0	\$11,669
FY 2010	\$224	\$8,906	\$9,130
FY 2009	\$211,888	\$28,019	\$239,907
FY 2008	\$52,841	\$0	\$52,841
FY 2007	<u>0</u>	<u>\$0</u>	<u>\$0</u>
TOTALS	\$385,853	\$185,858	\$571,711

LWO Compliance Reviews

SDMC §22.4235(a) requires periodic reviews of appropriate records to verify compliance with LWO requirements. Proactive LWO Compliance Reviews are conducted as part of an integrative approach to ensure compliance through diligent oversight. The City strengthens working relationships with covered employers while identifying and resolving errors before they become longstanding. Compliance Reviews help ensure a level playing field for all participants in the City's service contract bid process.

Contracts for review may be selected randomly or based on concerns of possible noncompliance; selection of a firm for review does not imply wrongdoing. During the review, payroll records, employee manuals, project files, and other documents, as needed, are examined by LWO Program staff. At the job site, staff conducts interviews with covered employees in English or

Spanish. Discrepancies, if identified, are resolved before a Compliance Review is closed out. At conclusion, the subject firm receives a report of Compliance Review findings. A response is required from the firm within 30 days to affirm the findings and its intent to follow recommendations, if any.

Chart 11 shows *LWO Contract Compliance Reviews in Fiscal Year 2015*:

CHART 11: LWO CONTRACT COMPLIANCE REVIEWS IN FISCAL YEAR 2015			
Review	Firm	Result	Backpay
#R15-01H	Cannon Pacific Services, Inc	Discrepancies found	\$115
#R15-02H	Allied Waste Services	Discrepancies found	\$4,158
#R15-03H	ABM Parking Services	Discrepancies found	\$13,082
#R15-04A	Acacia Landscape Company	No discrepancies found	—
#R15-05A	Road Works, Inc	No discrepancies found	—
#R15-06A	Ace Parking Management	Discrepancies found	\$72,138
#R15-07A	Securitas Security	Discrepancies found	\$21,972
#R15-08H	Ponderosa Landscape, Inc	Discrepancies found	—
#R15-09H	Algae Eaters Pool Care, Inc	No discrepancies found	—
#R15-10A	Contemporary Services Corp	Discrepancies found	\$33,943
#R15-11A	Diamond Environmental	Discrepancies found	\$733
#R15-12A	South Bay Fence	Discrepancies found	—
#R15-13H	Aramark Sports & Entertainment Services	Review incomplete	—
#R15-14A	Advantage Towing	Discrepancies found	\$9
#R15-15A	United Pumping Service, Inc	No discrepancies found	—
#R15-16A	Treebeard Landscape, Inc.	Discrepancies found	\$174
#R15-17A	MEK Enterprises	Discrepancies found	[Referred to City Attorney]
#R15-18H	D2 Distributors	No discrepancies found	—
#R15-19H	T and T Janitorial	No discrepancies found	—
#R15-20H	Brewer Lawn Maintenance, Inc.	No discrepancies found	—
#R15-21H	TP Janitorial Services	No discrepancies found	—
#R15-22A	Epic Pest Control & Landscape	No discrepancies found	—
#R15-23A	DMS Services	No discrepancies found	—
#R15-24A	San Diego Landfill Systems	Discrepancies found	—
#R15-25H	Angelo's Towing	No discrepancies found	—
#R15-26H	West Coast Turf	Discrepancies found	\$174
#R15-27H	Cartwright Termite and Pest Control	Discrepancies found	\$149
TOTAL	27 REVIEWS	16 FIRMS WITH DISCREPANCIES	\$146,647

Over the years, LWO Program staff have conducted a total of 62 Compliance Reviews as summarized in Chart 12, *Annual Record of LWO Compliance Reviews*:

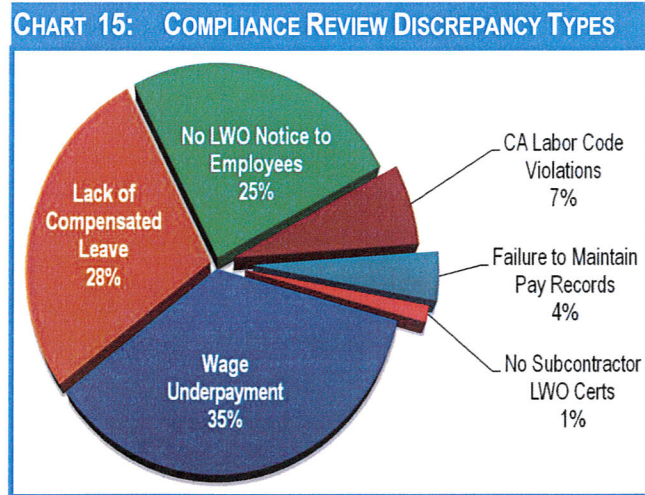
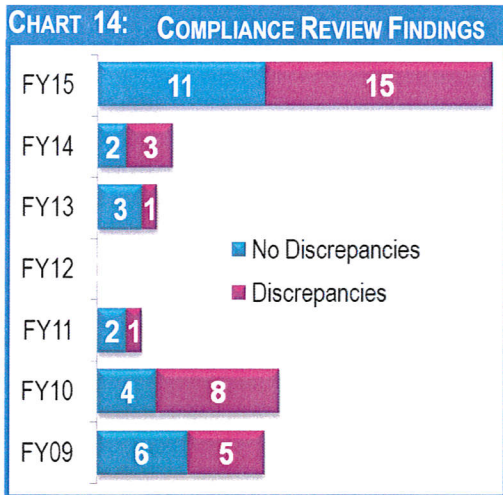
CHART 12: ANNUAL RECORD OF LWO COMPLIANCE REVIEWS					
	<u>Reviews</u>	<u>No Discrepancies</u>	<u>Discrepancies</u>	<u>Incomplete</u>	<u>Funds Recovered</u>
FY 2015	27	11	15	1	\$146,647
FY 2014	5	2	3	–	\$2,286
FY 2013	4	3	1	–	\$0
FY 2012	0	–	–	–	\$0
FY 2011	3	2	1	–	\$0
FY 2010	12	4	8	–	\$8,906
FY 2009	<u>11</u>	<u>6</u>	<u>5</u>	–	<u>\$28,019</u>
TOTAL	62	28	33	1	\$185,858

More than half (54.1%) of LWO Compliance Reviews found discrepancies. These include wage underpayment; failure to allocate 10 compensated leave days per year; lack of method to track accrual of leave time; and failure to notify covered employees of their LWO rights.

Chart 13, *Summary of LWO Compliance Review Violation Types*, lists the different LWO requirements found to be violated and shows number of times each violation was found to occur:

CHART 13: SUMMARY OF LWO COMPLIANCE REVIEW VIOLATION TYPES			
<u>Municipal Code</u>	<u>Requirement</u>	<u>Violations</u>	<u>% of Reviews</u>
§ 22.4220(a)	Pay covered employees specified wage and benefits	27	44.3%
§ 22.4220(c)	Provide minimum 10 compensated leave days per year	21	34.4%
§ 22.4225(b)	Notify covered employees of LWO requirements	19	31.2%
§ 22.4225(c)	File and ensure subcontractors file LWO Certification	1	1.6%
§ 22.4225(d)	Maintain wage and health benefits records	3	4.9%
Other	CA Labor Code	5	8.2%
	TOTAL FIRMS WITH DISCREPANCIES	33	54.1%
	TOTAL COMPLIANCE REVIEWS COMPLETED	61	

Graphical summaries of annual trends in are presented in Chart 14, *Compliance Review Findings*, and Chart 15, *Compliance Review Discrepancy Types*:



LWO Complaints

SDMC section 22.4230(e) requires the LWO Program to investigate and address an alleged LWO violation within 60 days, with reasonable 30-day extensions. Resolution of Employee Complaints includes: complaint receipt and written acknowledgement to claimant and firm; investigation, including review of records and interviews; issuance of determination of violation or non-violation; and, when required, calculation of back pay and verification of payment. If a complaint is not resolved within 60 days, the claimant and the subject receive status updates from the Living Wage Program every 30 days until completion.

Two LWO Employee Complaints were received during Fiscal Year 2015; both were found not to be violations, as shown in Chart 16, *LWO Complaints in Fiscal Year 2015*:

CHART 16: LWO COMPLAINTS IN FISCAL YEAR 2015

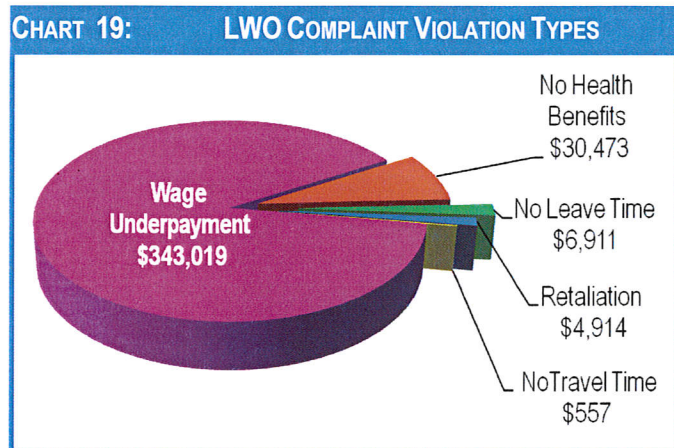
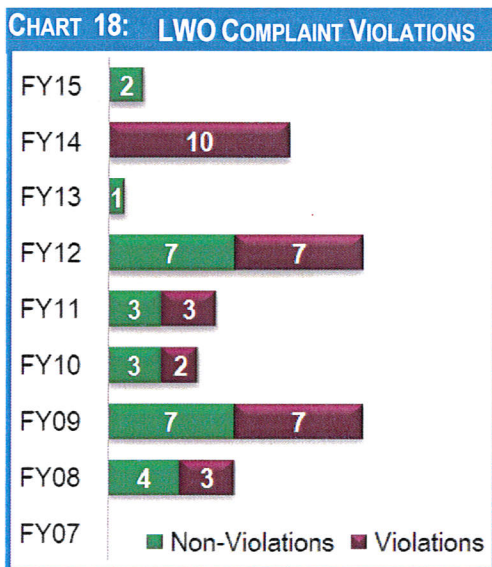
<u>Complaint</u>	<u>Allegation</u>	<u>Result</u>	<u>Back Pay</u>
#C15-001	Lack of notification to LWO covered employees	No violation	—
#C15-002	Nonpayment of LWO rates	No violation	—
TOTAL	2 COMPLAINTS	NO VIOLATIONS	\$0

During Fiscal Year 2015, at the request of Purchasing & Contracting Department and in response to two complaints (#C14-008 and #C14-010), the City Attorney’s Office undertook enforcement action against Jani-King of California for underpayment of janitors at Qualcomm Stadium. Subsequently, a settlement was negotiated and the firm provided back pay to covered employees.

Chart 17, *Annual Record of LWO Employee Complaints*, lists LWO Employee Complaints since inception of the Ordinance:

CHART 17: ANNUAL RECORD OF LWO EMPLOYEE COMPLAINTS				
	Complaints	Non-Violations	Violations	Back Pay
FY 2015	2	2	0	\$0
FY 2014	10	0	10	\$102,535
FY 2013	1	1	0	\$0
FY 2012	14	7	7	\$6,696
FY 2011	6	3	3	\$11,669
FY 2010	5	3	2	\$224
FY 2009	14	7	7	\$211,888
FY 2008	7	3	4	\$52,841
FY 2007	0	0	0	\$0
TOTAL	59	26	33	\$385,853

Chart 18, *LWO Complaint Violations*, and Chart 19, *LWO Complaint Violation Types*, exhibit trends for the number of complaints (59) during the history of the Ordinance.



Over half (55.9%) of all LWO Employee Complaints in the history of the Ordinance have been found to be violations. When measured by amount of back payment, the overwhelming majority of violations were for Wage Underpayment (88.9%). Nonpayment of Health Benefits (7.9%) comprised the next largest category. Lack of Compensated Leave Time (1.8%) and Retaliation (1.3%) followed. One small amount (0.1%) was recovered when an employer did not pay LWO rates for covered employees' time spent traveling to and from the jobsite.

Annual 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 distributed a single-page form to all covered employers with active LWO contracts in April 2015. This Contractor Compliance Report was included in a packet sent to each firm with:

- notice of the annual wage increase;
- request for a newly-signed *LWO Certification of Compliance* for active contracts ;
- updated *LWO Notice to Employees*;
- information sheet for the Earned Income Tax Credit, in English and Spanish; and
- information sheet for the Affordable Care Act, in English and Spanish.

Results are shown in Chart 20, *Annual Compliance Report Responses from Covered Employers*:

CHART 20: ANNUAL COMPLIANCE REPORT RESPONSES FROM COVERED EMPLOYERS		
	Number	Percent
LWO covered employers who submitted Contractor Compliance Report	107	99%
Number of LWO covered employees	3,896	23%
LWO covered employers using subcontractors	15	14%
LWO covered employers offering health benefit option	58	54%
LWO covered employees receiving health benefits	1,605	41%
Covered employers reporting LWO improved firm's quality of service	52	49%
Covered employers reporting LWO reduced absenteeism or turnover	52	49%

Responses reflect self-reporting by contractors.

City Facility Agreements

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

As soon as the wage adjustment amount becomes available, LWO Program staff sends correspondence to notify City facilities. Prior to the start of the fiscal year, the Living Wage Program sends a notice to each City facility to remind them of the adjusted wage rate, re-state their obligations regarding LWO requirements, request signed *LWO Certification of Compliance* forms for contractors and subcontractors, and offer assistance. Throughout the year, contact is maintained to support City facilities in understanding and attaining LWO compliance. The Living Wage Program receives and analyzes requests for LWO exemption from contractors performing work at City facilities; only the Living Wage Program can approve exemptions.

During Fiscal Year 2015, no LWO Complaints were alleged at City facilities. Over the years, there have been nine LWO Employee Complaints filed for City facilities; three were found to be violations.

Financial Assistance Agreements

LWO requirements are applicable to certain financial assistance agreements for (a) economic development, job creation, or job retention or (b) tourism, arts, and cultural programs, in accordance with SDMC § 22.4210(a)(2-3). To date, this section has been found to apply in two instances:

- San Diego Tourism Marketing District, during Fiscal Year 2014, requested and received exemption status with less than twelve employees; their subcontractors provided *LWO Certifications of Compliance* or requested exemption approval.
- Downtown San Diego Property and Business Improvement District’s new Operating Agreement, effective July 1, 2015, includes a clause affirming compliance with the City of San Diego Living Wage Ordinance.

PROPOSED LWO AMENDMENTS FOR CONSIDERATION

From time to time amendments to the Ordinance are necessary to clarify requirements; City Council members also request amendments to be put forth for consideration. Chart 21, *Proposed Living Wage Ordinance Modifications*, lists eleven changes to consider:

CHART 21: PROPOSED LIVING WAGE ORDINANCE MODIFICATIONS*		
<u>Municipal Code</u>	<u>Modification</u>	<u>Purpose</u>
1 § 22.4205	Modify “ <i>Compensated leave</i> ” definition from “paid sick leave, vacation leave, or personal leave” to “paid leave for illness, vacation or personal need.”	Increase clarity.
2 § 22.4205	Modify “ <i>Services</i> ” definition to add “Service workers in the medical field, including emergency medical technicians or paramedics.”	Broaden coverage.
3 § 22.4210(a)	Delete phrase “except for service contracts with a combined value of payments of \$25,000 or less that are” and delete date of “April 1, 2014.”	Increase clarity.
4 § 22.4210(b)	Delete “Service contracts, financial assistance agreements, and.”	Unnecessary; no value threshold applies.
5 § 22.4215(a)(7)	Add “The exemption for medical service contracts shall not extend to <i>service contracts</i> for emergency medical personnel, including emergency medical technicians and paramedics.”	Broaden coverage.
6 § 22.4215(b)	Delete phrase, “Notwithstanding section 22.4215(a)(1)-(8).”	Increase clarity.
7 § 22.4215(c)(2)	Change term “full-time employee” to “ <i>covered employee</i> .”	Be consistent.

8	§ 22.4220(c)	Change "ten days" to "eighty hours." Require "A <i>covered employee</i> , working under a <i>service contract</i> to provide <i>services</i> for the <i>City</i> of one day or less, must be paid additional wages in an amount equal to the proportional rate of <i>compensated leave</i> , in lieu of receipt of <i>compensated leave</i> ."	Ensure payment.
9	§ 22.4220(e)	Change "ten days" to "eighty hours." Change "sick leave" to "illness." Change "uncompensated days off" to "uncompensated leave."	Increase clarity.
10	§ 22.4220(d)	Add "The <i>City</i> will provide <i>covered employers</i> with credit toward the total amount of <i>compensated leave</i> required under this Division for the paid sick leave they must provide under the California Healthy Workplaces, Healthy Families Act of 2014."	Increase clarity.
11	§ 22.4225(b)	Include requirement for covered employer to "notify covered employees at the time of hire."	Increase clarity.

*Note: *Abbreviated descriptions of modifications are provided for convenience. For actual Municipal Code text, please refer to Ordinance language submitted by the City Attorney's Office. List does not include formatting changes that do not substantially modify text, such as re-numbering.*

If approved by the City Council, the listed proposals would increase clarity and consistency and would extend coverage to service contracts for emergency medical personnel, including emergency medical technicians and paramedics. Changes would be enforced only on future contracts, not current agreements.

FISCAL CONSIDERATIONS: There was a 1.85% upward adjustment of LWO wages for Fiscal Year 2015. During the ten years since passage of the Living Wage Ordinance, the hourly wage rate increased \$2.43 (18.65%, the region's cost-of-living increase as published by the Department of Labor). All bidders must pay the same wage rates, and a successful low bid is the result of increased efficiencies or a narrower profit margin rather than suppressed wages.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: On October 22, 2015, this item was heard before the Economic Development and Intergovernmental Relations Committee as Report No. 15-078. Councilmember Lightner moved to approve the item with direction to staff to work with the City Attorney's Office to ensure that Emergency Medical Technicians and Paramedics are covered by the Living Wage Ordinance. The motion was seconded by Councilmember Cole. Councilmembers Kersey and Cate voted nay, resulting in a 2-2 tie. As a result, the item moved forward to full Council with no recommendation. This Report to Council is updated to include proposed modifications discussed by the Committee for consideration by the Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The City continues to provide convenient access to LWO information for contractors and workers. The Living Wage Program maintains accurate, up-to-date information on the Purchasing & Contracting Department's website, including Municipal Code text, *Rules Implementing the LWO*, all forms

and notices (most with Spanish translations), and all past annual reports on LWO administration. Brochures summarizing LWO requirements are available. Living Wage Program staff present at citywide Purchasing & Contracting Department workshops entitled “How to Do Business with the City.”

Various community-based organizations maintain an active interest in the City’s LWO administration including the Center on Policy Initiatives, the Maintenance Cooperation Trust Fund, and the Interfaith Committee for Worker Justice. During Fiscal Year 2015, the Living Wage Program maintained working relationships with representatives from the Department of Industrial Relations, Division of Labor Standards Enforcement; County of San Diego District Attorney’s Office, Insurance Fraud Division; and San Francisco’s Office of Labor Standards Enforcement Manager.

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, assist covered employers in meeting their obligations, and conduct investigations in response to allegations of noncompliance.

Official version signed by

Official version signed by

Kristina Peralta, Interim Director
Purchasing & Contracting Department

Ronald H. Villa
Deputy Chief Operating Officer

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

Attachment B: LWO Synopsis for Fiscal Year 2015

Attachment C: Rules Implementing the Living Wage Ordinance (for Fiscal Year 2015)

Attachment D: LWO Contracts in Fiscal Year 2015, Sorted by Contract Number

Attachment E: LWO Contracts in Fiscal Year 2015, Sorted by Bid Number

Attachment F: LWO Contracts in Fiscal Year 2015, Sorted by Commodity Type

Attachment G: LWO Contracts in Fiscal Year 2015, Sorted by Contractors

Attachment H: LWO Contracts in Fiscal Year 2015, Sorted by Total Number of Contracts for Each Contractor

Attachment I: LWO Contracts in Fiscal Year 2015, Sorted by Total Value of Contracts for Each Contractor