
[Proposed]
City of San Diego
Responsible Wage and Benefits Ordinance

Draft - Feb 29, 2004

ORDINANCE NUMBER 0-_____

ADOPTED ON _____

**AN ORDINANCE ADDING DIVISION 41 TO CHAPTER 2, ARTICLE 2 OF
THE SAN DIEGO MUNICIPAL CODE, AMENDING DIVISION 28 OF
CHAPTER 2, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE, AND
AMENDING DIVISION 32 OF CHAPTER 2, ARTICLE 2 OF THE
SAN DIEGO MUNICIPAL CODE**

WHEREAS, it is important to the health welfare of all citizens of the City of San Diego that working people receive wages and health benefits sufficient to lift families out of poverty and cover basic health care costs; and

WHEREAS, the City awards taxpayer-funded contracts to businesses to provide services to the public and to City government; and

WHEREAS, the City maintains an ownership interest in, and/or operates, large, publicly-funded facilities; and

WHEREAS, the City provides taxpayer-funded financial assistance to businesses that pledge to create jobs and expand economic opportunity in the City of San Diego; and

WHEREAS, many service employees in the City of San Diego and their families live at or below the poverty line; and

WHEREAS, the payment of inadequate compensation to service employees negatively affects the quality of services provided to the City and to the public, by fostering high turnover and instability in the workplace; and

WHEREAS, ensuring that businesses benefiting from City funds or using City facilities promote the creation of jobs that pay a living wage will increase the ability of San Diego residents to attain self-sufficiency, will decrease economic hardship in the City, and will reduce the need for the taxpayers to fund social services in order to provide supplemental support for the employees of these local businesses; and

WHEREAS, many businesses benefiting from City funds do not provide health insurance to their employees, adversely affecting employee performance

and absenteeism, and increasing the burden on the taxpayers of caring for the uninsured through local and state health programs; and

WHEREAS, a City policy to promote the creation of living wage jobs complements other City programs aimed at meeting the employment and economic development needs of the City of San Diego and its workforce; and

WHEREAS, it is the purpose of this policy to ensure that businesses benefiting from taxpayer funds or using City facilities provide their service employees a living wage and to provide health benefits to their employees, thus enhancing the health and welfare of workers of the City of San Diego and their families; and

WHEREAS, it is important to minimize disruption in services when City contracts change hands; and

WHEREAS, the City wishes to minimize the hardship imposed on employees of City contractors when City contracts change hands; and

WHEREAS, the City wishes to ensure that it contracts with businesses capable of performing contract requirements and with a record of compliance with applicable laws;

NOW, THEREFORE:

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

Section 1. That Chapter 2, Article 2 of the San Diego Municipal Code, is amended by adding Division 41, to read as follows:

§ 22.4101. Title and Purpose.

- (a) Title. This Division shall be known as the “City of San Diego Responsible Wage and Benefits Ordinance.”
- (b) Purpose. The purposes of this Division are (1) to ensure that when taxpayer-funded agreements, including Service Contracts, Financial Assistance, and use of City Facilities, are extended by the City of San Diego to private Businesses, that these 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 the City’s Service Contractors, Businesses benefiting from Financial

Assistance provided by the City, Businesses providing certain services at large City Facilities, and Subcontractors of such Businesses, to pay their employees a wage that will enable a full-time worker to support a family at a level that meets basic needs and avoids economic hardship.

§ 22.4102. Authority.

This Division is adopted pursuant to the powers vested in the City of San Diego under the laws and Constitution of the State of California and the City Charter, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution; California Labor Code, section 1205, subdivision (b); the City's spending power; the City's power to enter into contracts; and any other powers under law.

§ 22.4103. Definitions.

When used in this Division, or in any documents, hearings, proceedings, or decisions relating to this Division or its implementing regulations, the following terms shall have the following meanings. These definitions encompass both the singular and plural form of defined terms. These definitions shall apply only when the term appears in capitalized form; otherwise the term shall have its ordinary dictionary or legal meaning.

Appeals Officer shall mean an individual appointed by the City Manager to conduct hearings on appeals of decisions issued by a Hearing Officer.

Awarding Department means any City division, subdivision, agency, office, or department, that awards a Service Contract or Financial Assistance.

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

City means the City of San Diego or any of its organizational subdivisions, agencies, offices, or boards. City includes all City agencies, and any board, commission, committee, or task force of the City established by action of the City Council under authority of the City Charter, Municipal Code, or Council resolution, or State law, including the Housing Authority and Redevelopment Agency.

City Compliance Official or CCO means the person and/or agency that is designated by the City Council to be charged with monitoring and enforcement of this Division by Covered Employers and the City. The CCO shall be Equal Opportunity Contracting until the City Council through resolution elects to designate another department or agency as the CCO.

City Council means the City Council of the City of San Diego.

City Facility means any of the following facilities, in which the City has an ownership interest and/or which is a City Agency:

- Qualcomm Stadium;
- San Diego Sports Arena;
- San Diego Convention Center
- City Concourse

City Facility Agreement means any contract entered into by a City Facility Employer and the City under which work will be performed at a City Facility.

City Facility Employer means any Business that retains one or more Employees to perform any of the following services at a City Facility:

- custodial;
- security;
- concessions/retail sales;
- food service or preparation;
- parking services;
- office/clerical;
- landscaping;
- maintenance;
- ushers;
- ticket takers;
- housekeeping and;
- laundry.
- warehouse workers
- attendants
- cashiers

Covered Employee means any natural person fitting the definitions set forth in Section 22.4106.

Covered Employer means any Business fitting the definitions set forth in Section 22.4105.

CPI-U means the Consumer Price Index for All Urban Consumers for the San Diego–Carlsbad–San Marcos Metropolitan Statistical Area, or a comparable statistical area encompassing the City and later designated by the federal government for analysis of the Consumer Price Index for All Urban Consumers.

Employee means any person who performs work on a full-time, part-time, temporary, or seasonal basis, including employees, temporary workers, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.

Financial Assistance means funds or action of economic value, provided to a Business by or through the approval of the City, for the purpose of encouraging, facilitating, supporting, or enabling economic development or job creation or retention. Financial Assistance includes the City’s Special Promotion Programs for Economic Development and Arts, Culture and Community Festivals. Financial Assistance includes, but is not limited to, such direct support to a Business as environmental remediation, deferred payments, forgivable loans, below-market loans, land write-downs, infrastructure or public improvements or other action of economic value. Provision of Financial Assistance to a Business does not constitute provision of Financial Assistance to tenants of that Business. All Financial Assistance offered by the City will be set forth in a Financial Assistance Agreement. Financial Assistance does not include generalized financial assistance such as that provided through broadly applicable tax reductions or services performed by City staff to assist a Business.

Financial Assistance Agreement means a contract or agreement to provide or extend Financial Assistance, entered into by the City and any other entity. Financial Agreements shall set forth the value of the Financial Assistance to be provided; the purpose for which the Financial Assistance is provided, the term of the commitments to be fulfilled. All aspects of Financial Assistance Agreements are public records.

Financial Assistance Recipient means a Business that has entered into one or more Financial Assistance Agreements with the City, under which either of the following is true:

- (1) the combined annual value of the Financial Assistance to be provided is \$500,000 or more; or

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- (2) the City will transfer to the Financial Assistance Recipient title to real property in value of \$500,000 or more.

Financial Assistance Site means the property that is owned or operated by a Financial Assistance Recipient and that is an intended location of the economic development or job creation that was the purpose of provision of Financial Assistance by the City, as described in the relevant Financial Assistance Agreement.

Hearing Officer shall mean an individual appointed by the City Manager to conduct hearings under this Division.

Living Wage Rate means the wage identified in Section 22.4107.

Social Service Contractor shall mean any recipient of Community Development Block Grants (CDGB) Social Service contracts.

Service Contract means any contract or grant agreement between the City and a Business, under which the Business will furnish services to the City or for the City and/or any other entity. Such services include, but are not limited to, janitorial, security, landscaping, childcare, parking and other services vital to the functioning of the city. Contracts for the purchase or lease of goods, products, equipment, supplies or other property, and professional service and construction contracts are not Service Contracts. In addition to contracts fitting the above definition, the CCO may explicitly designate as a Service Contract:

- (1) any contract for which at least some of the services to be furnished will be performed by employees whose work site is on property owned by the City;
- (2) any contract for which the services to be furnished could be performed by City employees; or
- (3) any contract for which the City in letting the contract has determined that designation as a Service Contract would further the proprietary interests of the City.

Service Contractor means a Business that has entered into one or more Service Contracts, under which the combined annual value of payments is in excess of \$25,000. A Business shall not be considered a Service Contractor if all Service

Contracts it enters into in a given calendar year have a combined term of less than 30 days and involve combined payments of less than \$100,000.

Subcontract means:

- (1) a contract under which a Business will assist a Service Contractor, or another Subcontractor, in performance of a Service Contract; or
- (2) a contract under which a Business will provide services to a Financial Assistance Recipient, or to another Subcontractor, at a Financial Assistance Site.

Subcontractor means any Business that:

- (1) has entered into a contract under which it will assist a Service Contractor, or another Subcontractor, in performance of a Service Contract; or
- (2) has entered into a contract under which it will provide services to a Financial Assistance Recipient, or to another Subcontractor, at a Financial Assistance Site.

§ 22.4104. Effective Date.

This Division shall take effect 90 days after its enactment. This Division shall apply to any Service Contract or Financial Assistance Agreement entered into, awarded, amended, renewed or extended after that effective date, or any Subcontract related to such Service Contract or Financial Assistance Agreement. This Division shall apply to any work performed at a City Facility by a City Facility Employer six months after that effective date.

Notwithstanding the above, the effective date for Sections 22.4103, 22.4112 and 22.4118 shall be the date of this Division's enactment to enable the promulgation of the Regulations to implement this Division.

§ 22.4105. Covered Employers.

- (a) Service Contractors. Any Service Contractor is a Covered Employer during the term of the Service Contract.

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- (b) Financial Assistance Recipients. Any Financial Assistance Recipient is a Covered Employer during the term of the Financial Assistance Agreement.
- (c) City Facility Employer. Any City Facility Employer is a Covered Employer during such time as it retains one or more Employees to perform any of the services identified in the definition of City Facility Employer in §22.4103 at a City Facility.
- (d) Subcontractors.
- (1) Any Subcontractor assisting in the performance of a Service Contract is a Covered Employer during the term of that Service Contract.
- (2) Any Subcontractor providing services to a Financial Assistance Recipient, or to another Subcontractor, at a Financial Assistance Site is a Covered Employer during the term of the Financial Assistance Agreement.
- (e) Exemptions.
- (1) Small Businesses. No Business shall be considered a Covered Employer if the Business retained fewer than five employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and the City does not determine that the Business will need to retain more than five employees during the term of the Service Contract or Financial Assistance Agreement that would otherwise lead to coverage of the Business.
- (2) Exemption for Social Service Contractors. Social Service Contractors may apply for a one-year exemption from Covered Employer status.
- (A) To apply for an exemption, a Social Service Contractor shall, prior to entering into a Service Contract, provide to the CCO a written statement, prepared and signed by the Social Service Contractor, setting forth an explanation of the severe economic hardship to the Social Service Contractor or the substantial negative impact on services that would result from compliance with this Division. If the CCO determines

that the written statement and substantial evidence before him is adequate to justify the exemption, such that there is a clear showing that there would be severe economic hardship to the Social Service Contractor or substantial negative impact on services provided, then the CCO may grant the requested waiver. Exemption requests shall be decided prior to the City's entry into, renewal, amendment, or extension of a Service Contract with a Social Service Contractor that would result in application of this Division to the Service Contract.

- (B) Exemptions may be renewed on an annual basis. Renewal applications shall be determined under the same standards and procedures as initial applications.
- (C) The City shall make best efforts to fund Service Contracts that are likely to be held by Social Service Contractors at levels that will enable Social Service Contractors to comply with this Division without exemptions.

§ 22.4106. Covered Employees.

- (a) Employees of Service Contractors. Any Employee of a Service Contractor is a Covered Employee with regard to any hours worked in performance of a Service Contract.
- (b) Employees of Financial Assistance Recipients. Any Employee of a Financial Assistance Recipient is a Covered Employee with regard to any hours worked at the Financial Assistance Site.
- (c) Employees of City Facility Employers. Any Employee of a City Facility Employer is a Covered Employee with regard to any hours worked at a City Facility in performance of any of the services set forth in the definition of City Facility Employer, §22.4103 of this Division.
- (d) Employees of Subcontractors.
 - (1) If a Subcontractor is assisting in performance of a Service Contract, then any Employee of the Subcontractor is a Covered Employee with regard to any hours worked in assisting in performance of that Service Contract.

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- (2) If a Subcontractor is providing services to a Financial Assistance Recipient or to a Subcontractor at a Financial Assistance Site, then any Employee of the Subcontractor who works at least half of or his or her hours at the Financial Assistance Site is a Covered Employee with regard to such hours.
 - (e) Exemptions. The following persons shall not be considered Covered Employees:
 - (1) Individuals who, in addition to wages, receive academic credit for their work from an accredited educational institution, and work fewer than fifteen hours per week at the job in question.

§ 22.4107. Payment of Living Wage.

- (a) Payment of Living Wage Rate Required. Every Covered Employer shall pay no less than the Living Wage Rate to each Covered Employee.
- (b) Living Wage Rate. The Living Wage Rate shall be set at \$10.00 per hour and phased-in according to the following schedule. The Living Wage Rate for FY 2005 shall be \$9.00 per hour. The Living Wage Rate for FY 2006 shall be \$10.00 per hour

§ 22.4108. Provision of Health Benefits.

- (a) Health Benefits Required. Every Covered Employer shall provide Health Benefits to each Covered Employee. Providing Health Benefits means either:
 - (1) payment of at least the Health Benefits Supplement Rate toward the provision of health care benefits for each Covered Employee and his or her dependents; or
 - (2) payment of a wage rate of no less than the sum of the current living wage and the Health Benefits Supplement Rate.
- (b) Initial Health Benefits Supplement Rate. The Health Benefits Supplement Rate for FY 2005 shall be \$2.00 per hour.

§ 22.4109.

Annual Adjustments to Living Wage Rate and Health Benefits Supplement Rate.

- (a) Automatic Annual Adjustments. The Living Wage Rate and the Health Benefits Supplement Rate for 2005 and for each year thereafter shall be the previous year's rates, adjusted in proportion to the change in the CPI and the CPI-U for Medical Care, respectively, unless the City Council upwardly adjusts these figures by resolution, as described in this Section.
- (b) Optional City Council Adjustments. By March 15th of any year, the City Council may choose to upwardly adjust that year's Living Wage Rate and/or Health Benefits Supplement Rate by resolution, if the City Council finds that the change in the previous year's CPI-U and/or CPI-U for Medical Care do not accurately reflect increases in the cost of living in San Diego.
- (c) Effective Date of Yearly Rates. For 2005 and for each year thereafter, the Living Wage Rate and the Health Benefits Supplement Rate for that year shall take effect on July 1st of that year, and shall remain in effect until June 30th of the following year.
- (d) CCO Publication of Rate. By April 1st of each year, the CCO will publish the adjusted Living Wage Rate and Health Benefits Supplement Rate for that year, in the bulletin described in Section 22.4116. The Living Wage Rate and Health Benefits Supplement Rate published shall be determined as described in this Section.
- (e) Failure of CCO to Publish Adjusted Rate. If the CCO fails to publish that year's Living Wage Rate and Health Benefits Supplement Rate by April 1st of any year, the rates for that year shall be the previous year's rates, adjusted in proportion to the change in the CPI-U and CPI-U for Medical Care, respectively, until the CCO publishes that year's rates.
- (f) Notification of Subcontractors. Covered Employers shall notify all Subcontractors of the year's Living Wage Rate and Health Benefits Supplement Rate by May 1st of each year.

§ 22.4110. Leave Days.

Every Covered Employer shall provide to each Covered Employee at least ten compensated days off per year for sick leave, vacation, or personal necessity leave at each Covered Employee's request. Such days off shall vest at the end of

the applicable pay period. Part time employees shall accrue compensated days off in increments proportional to that accrued by full time employees. Covered Employees shall be eligible to use accrued days off after the first six months of employment or consistent with company 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.

All 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 his or her compensated days off for that year. This Section does not mandate the accrual from year to year of uncompensated days off.

Said paid and unpaid sick leave may run concurrently with an employee's Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA) leave entitlement if the employee is properly notified of the designation when the leave begins.

§ 22.4111. Relationship With Other Labor Standards.

- (a) **Minimum Standards.** This Division establishes minimum standards for wages, benefits and protections that must be extended to Covered Employees. Nothing in this Division shall be construed as prohibiting, conflicting with, or preempting any other obligation or law, including any collective bargaining agreement, that mandates the provision of higher wages, greater benefits, or increased protections to employees.
- (b) **Federal Preemption and Severability.** No part of this Division shall be construed as applying to any Employee or Employer where such coverage would be preempted by federal law. However, in such circumstances, only those applications of this Division for which coverage would be preempted shall be construed as inapplicable.
- (c) **No State Law Preemption.** Pursuant to California Labor Code, Section 1205, this Division applies in full to activities supported by funding or other assistance provided by the State of California.
- (d) **Supersession by Collective Bargaining Agreement.** Requirements of this Division may be waived, in full or in part, by the written terms of a bona fide collective bargaining agreement, provided that this Division is expressly referenced in the agreement, and that the agreement sets forth in

clear and unambiguous terms the desire of all parties to waive the requirements of this Division. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of any of the requirements of this Division.

§ 22.4112. City Compliance Officer Responsibility.

The CCO shall be designated by the City Council to be charged with ensuring application of this Division, and monitoring and enforcement of this Division, including but not limited to all responsibilities specifically identified in this Division. The CCO shall provide a semiannual report to the City Council on compliance with this Division by the City and Covered Employers, and on monitoring and enforcement actions taken by the CCO and the City.

§ 22.4113. Monitoring, Reporting, and Notification Requirements.

- (a) Notification of Employees. The City and Covered Employers shall notify Employees of the requirements of this Division, and of the possible availability of the Earned Income Tax Credit.
- (b) Notice of the application of this Division at City Facilities will be posted by the CCO.
- (c) Notice of Obligations of Division: The CCO will publish in a prominent place, preferably the City's web site, a copy of this Division and its regulations, the findings of the most recent annual report; any Notices issued pursuant to this Division, any related forms and the CCO's contact information and responsibilities.
- (d) Notification of Provision of Health Insurance. Each Covered Employer that chooses to comply with Section 22.4108(a) of this Division by paying for the provision of health care benefits as described in Section 22.4108(a)(1) shall notify the CCO and provide information sufficient to determine the value of health care benefits provided.
- (e) Annual Reporting Requirements. Each Covered Employer shall file with the CCO an annual report regarding compliance with this Division.
- (f) Material Term. Every Service Contract, Financial Assistance Agreement, City Facility Agreement, Subcontract, and Living Wage Certification shall include as material terms that during such time as any party is a Covered

Employer under the terms of this Division, that party shall comply with the terms of this Division and all regulations and rules promulgated under this Division, and shall require all Subcontractors to comply with the terms of this Division and all regulations and rules promulgated under this Division. Every Service Contract, Financial Assistance Agreement, City Facility Agreement, and Subcontract shall provide that the City and each Covered Employee are third-party beneficiaries of such material terms, and may enforce those terms through the remedies described in this Division.

- (g) Living Wage Certification.
 - (1) Each Covered Employer must file a Living Wage Certification with the CCO within ten days of becoming a Covered Employer. Covered Employers that retain Subcontractors must ensure that all Subcontractors that are Covered Employers file a Living Wage Certification within ten days of entering into said Subcontract.
 - (2) The Living Wage Certification shall be completed on a form provided by the CCO, and shall be signed under penalty of perjury.
- (h) CCO Review of Contracts. Prior to execution or public release, City agencies, departments, and divisions shall forward to the CCO Service Contracts, Financial Assistance Agreements, contracts related to operation of City Facilities, requests for proposals, and other relevant documents for CCO review. The CCO shall review such documents to ensure that they contain terms required by this Division and other provisions necessary to implement, monitor, and enforce the requirements of this Division.
- (i) The City shall make documentation submitted pursuant to this Division available to the public. The manner in which such documentation will be made available will be addressed in the regulations to be promulgated pursuant to §22.4118.

§ 22.4114. Retaliation Prohibited.

No Business shall retaliate against any Employee for filing a complaint regarding compliance with this Division, asserting his or her rights under this Division, assisting others in being informed of or asserting their rights under this Division, participating in public processes regarding this Division, or participating in any proceedings or using any civil remedies to enforce his or her rights under this Division. Protections of this Section shall apply to any person who mistakenly,

but in good faith, alleges noncompliance with this Division. Protections of this Section shall apply in conjunction with, and shall not displace, existing laws.

Retaliatory actions prohibited by this Section include any adverse change made in an individual's terms or conditions of employment, including, but not limited to, discharge, demotion, reduction in working hours, or any other type of disciplinary action.

§ 22.4115. Complaints Regarding Violations by the City and Covered Employers.

(a) Initiating a Complaint

Any person may file an administrative complaint with the Director of the CCO stating facts showing or tending to show that the City or a Covered Employer has violated this Division. Within ten business days, the Director of the CCO shall notify the entity against whom the complaint was filed that a complaint has been received.

(b) Investigation of Complaints.

The CCO's investigative unit shall review and investigate complaints filed under this Division. No complainant's or witness's identity shall be divulged to the entity that is the subject of the complaint without the complainant's consent. In the event a it is necessary to divulge the complainant's identity to complete the investigation, notice will be given to the complainant and consent sought to divulge his/her name.

(c) Initial Findings and Recommendations

Based upon the investigative unit's review and investigation, the Director of the CCO shall make an initial non-binding finding for each allegation stated in the complaint, that either:

- (1) the investigation produced sufficient evidence to find that the alleged violation did take place ("sustained");
- (2) the investigation failed to produce sufficient evidence to find whether the alleged violation took place ("not sustained");
- (3) the investigation produced sufficient evidence to find that the alleged violation did not take place ("unfounded");

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- (4) the allegation has been settled or otherwise resolved with the agreement of the interested parties; or
 - (5) the allegation has been withdrawn.

The Director of the CCO shall recommend to the City Manager, or his or her representative, appropriate action to be taken. That action may include additional investigation of the complaint, sanctions, remedies, or other action consistent with this Division. The initial non-binding findings and recommendations shall be made by the Director of the CCO within 120 calendar days of receipt of the complaint. The City Manager may extend this time limit at the request of the Director of the CCO and for good cause or if the parties agree to mediate the complaint pursuant to Division 11, Article 2 of Chapter 1 of the San Diego Municipal Code. The Director of the CCO shall notify the complainant and the entity against whom the complaint was filed within five business days of the initial findings and recommendations, including an explanation of the reasons justifying the initial findings.

(d) Hearings

- (1) If the Director of the CCO determines that one or more allegations are sustained, the entity against whom the complaint was filed shall be entitled to an administrative hearing on the allegations and an opportunity to participate in the administrative hearing. The entity against whom the complaint was filed must request an administrative hearing within fifteen calendar days of notice of the initial findings. The hearing shall be held before a Hearing Officer within sixty calendar days of issuance of the Director's initial findings.
- (2) Based upon the evidence presented at the administrative hearing, and within thirty calendar days of the hearing, the Hearing Officer may affirm or reject the initial findings and recommendations, may substitute different findings and order appropriate remedies, or may return the case to the Director of the CCO for further investigation and findings.
- (3) Except where they conflict with this Division or the rules and regulations established pursuant to this Division, the hearing shall be conducted pursuant to the administrative enforcement hearing

procedures set forth in Division 4, Article 2 of Chapter 1 of the San Diego Municipal Code.

(e) Remedies

When a complaint is sustained, the Hearing Officer shall order any one or more of the following actions:

- (1) Any remedy provided by law or agreed to by the entity against whom the complaint was filed;
- (2) Payment to Covered Employees of twice the monetary value of wages and/or benefits withheld in violation of this Division, plus interest, or treble such monetary value, plus interest, if the violation is found to have been willful;
- (3) reinstatement of any person terminated in violation of this Division, with back pay;
- (4) suspension and/or termination of Service Contracts or Financial Assistance Agreements between the Covered Employer and the City;
- (5) forfeiture or repayment of some or all of the Service Contract payments or Financial Assistance awarded by the City, up to the value of remedies set forth elsewhere in this Division or implementing regulations;
- (6) Recommendation to the City Manager and City Attorney for debarment of the covered employer from bidding and contract awards on City projects for a period of not more than three years, according to the procedures set forth in Division 8, Article 2 of Chapter 25 of the San Diego Municipal Code; and

(f) Appeals

An entity against whom a complaint was filed, or a complainant, may appeal the decision of the Hearing Officer by filing a request for an appeal in writing with the City Manager within ten calendar days from service of the notice of the decision. The City Manager, or his or her representative, shall within ten calendar days of receipt, grant or deny the request for an appeal. If the request for an appeal is denied, the Hearing Officer's

decision shall be the final administrative decision. If the request for an appeal is granted, the City Manager shall designate an Appeals Officer to hear the appeal. The appeal shall be heard and the Appeals Officer shall render a final administrative decision within forty-five calendar days of granting the request for an appeal. Except where they conflict with this Division or the rules and regulations established pursuant to this Division, the appeal hearing shall be conducted pursuant to the administrative enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.

§ 22.4116. Enforcement Actions.

- (a) General Enforcement Authority. The Enforcement Authority and Powers set forth in Chapter One, Article 2 of the San Diego Municipal Code are applicable to this Division.
- (b) Civil Action by City. The City shall have the power to enforce in law and/or equity, in any court of competent jurisdiction, the provisions of this Division, the regulations implementing this Division, the provisions of any Service Contract, Financial Assistance Agreement, any City Facility Agreement to which the City is a party or a third-party beneficiary, and the provisions of any Subcontract of which the City is a third-party beneficiary.
- (c) Civil Action by Private Party. Any natural person aggrieved by a violation of this Division or the regulations implementing this Division, and any third party beneficiary of a Service Contract, Financial Assistance Agreement, City Facility Agreement, or Subcontract, and any organization designated by such natural person or third party beneficiary to represent him or her, may bring an action against a Covered Employer to remedy such violation in any court of competent jurisdiction, and may be awarded relief as follows, in addition to other legal or equitable relief ordered by the court:
 - (1) for failure to comply with Sections 22.4107 through 22.4109 of this Division, or implementing regulations: The monetary value of wages and/or benefits wrongfully withheld, plus \$100.00 per pay period per violation, plus interest, or treble such monetary value, plus \$100.00 per pay period per violation plus interest, if the violation is found to have been willful; and/or

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- (2) for failure to comply with Section 22.4111 of this Division, or implementing regulations: reinstatement, back pay, or other legal or equitable relief the court may deem appropriate.

Reasonable attorney's fees and costs shall be awarded to any Employee or representative of an Employee that prevails in an action brought to enforce this Division. Any action to enforce this Division must be commenced no later than three years after the cause of action arose. Filing an administrative complaint or exhausting any process described in this Division or any implementing rules or regulations shall not be a prerequisite for instituting an action in court under this Section.

- (d) Remedies Not Exclusive. This Division and the remedies set forth herein shall not be construed to limit any party's right to bring legal action for 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.

The process in 22.4115 and 22.4116 is modeled on § 22.3505 et seq. – Complaints of Discrimination by City Contractors – in conjunction with § 12.010 et seq.

§ 22.4117. Relationship with Existing Procedures.

The provisions of this Division shall augment the City's existing procedures for award and administration of Service Contracts, grants, and Financial Assistance.

§ 22.4118. Development of Implementing Regulations.

Within sixty days of adoption of this Ordinance, the CCO shall present to the City Council for approval rules and regulations as may be necessary to implement this Division. After the initial rules and regulations are adopted by the City Council, the CCO shall continue to review and propose additions or modifications to such rules and regulations, as may be necessary to further implement this Division. Said Rules and Regulations will be forwarded to the City Council for consideration.

§ 22.4119. Severability.

In the event that any provision of this Division shall be held by any court of competent jurisdiction to be invalid or unenforceable, the remainder of this

Division shall remain uninterrupted in full force and effect, and the court's holding shall not invalidate or render unenforceable any other provisions herein.

§ 22.4120. Citizens Advisory Board on Responsible Wages and Benefits.

(a) Purpose and Intent.

It is the purpose and intent of this ordinance to create a Citizens Advisory Board on Responsible Wages and Benefits which shall study, consult and advise the Mayor, City Council, and City Manager on policy and programmatic objectives of the Responsible Wages and Benefits Ordinance.

This Board shall promote and encourage open dialogue on the impact on the City and its citizens of the payment of Responsible Wages and Benefits and Responsible Contractor Standards.

The Board shall also develop and make recommendations on how the Division should be monitored and implemented.

The Board shall also develop and make recommendations on how the objectives of creating and retaining family-supporting jobs in the City can be achieved.

The Board shall also develop and make recommendations on how the policies and purposes of the Division can be advanced, included proposed amendments and regulations.

It is further intended that this Board shall function as a method of community participation in recommending and reviewing policies, practices and programs related to this Division.

(b) Citizens Advisory Board on Responsible Wages and Benefits Established:

(1) There is hereby created a Citizens Advisory Board on Responsible Wages and Benefits consisting of 16 members who shall serve without compensation. The members shall be nominated by the Mayor and confirmed by the Council. The members shall serve for a two-year term and each member shall serve until his or her successor is duly nominated and confirmed. The expiration date of all terms shall be January 1. During January of each year, the Mayor may designate one member as chairperson; however, in the absence

of such designation, the Board shall on or after February 15, select a chairperson from among their members. The members shall be appointed in such a manner so that the terms of not more than eight members shall expire in any year. Any member missing three or more consecutive meetings shall forfeit membership on the Board unless good and valid reasons for such absences are presented to and approved by the Council.

- (2) All members of the Citizens Advisory Board on Responsible Wages and Benefits shall be residents of the City of San Diego unless such residency requirement is waived by the Council pursuant to Council Policy 000-13. The Board shall include one representative from each Council district, provided, however, that any Council Policy with respect to appointments to boards and commissions notwithstanding, the Mayor shall nominate these members of the Board by obtaining three candidates from each Council district and choosing a nominee therefrom. Four members shall be representatives from Covered Employers, four members shall be representatives of a labor union; four members shall be representatives of community based organizations, of which two such community based organizations advocate for the poor; and four members shall be representatives of Social Service Contractors. City staff, including the director of the CCO and his designees shall serve as ex-officio members of said Board.
- (3) The City Manager and CCO shall provide appropriate staff support to the Citizens Advisory Board on Responsible Wages and Benefits. The City Attorney shall provide appropriate legal services at each meeting.

(c) Duties and Functions

The Citizens Advisory Board on Responsible Wages and Benefits shall (1) adopt by a two-thirds vote of its members, bylaws governing the conduct of its meetings and activities, the establishment of subcommittees, and such other rules as may be necessary for the performance of its functions; provided that such bylaws shall specify that a quorum shall at all times consist of at least eight members and that any amendment to the bylaws shall require an affirmative vote of two-thirds of its members; (2) study and review the Responsible Wage and Benefits Ordinance, its implementation, options to address creating and retaining family-supporting jobs in the City and assuring responsible contractor standards; (3) make specific recommendations to the Mayor, City Council and

City Manager, including, by February 15th of each year, reviewing the changes in the CPI-U and the CPI-U for Medical Care for the previous year, and making a recommendation as to whether an upward adjustment to the Living Wage Rate and/or the Health Benefits Supplement Rate is warranted; (4) within one year of the effective date of this Division, make specific recommendations to the Mayor, City Council and City Manager regarding wage and benefit levels in the provision of Social Service Contracts including approaches to address the gap between the contract rates paid to the contractors and the cost to the contractors of providing the services, including providing a living wage to their employees; (5) review the procedures and regulations currently used to implement this Division and review proposals by the COO to modify procedures and regulations used to implement this Division, and make recommendations to the Mayor, City Council and City Manager.

[Worker retention provisions]

Section 2. That Chapter 2, Article 2, Division 28 of the San Diego Municipal Code, is amended by amending Section 22.2802, to read as follows:

§ 22.2802. Definitions.

As used in this Division:

- (a) [Stricken.] [definition of "City Facility."]
- (b) "Contract" means a contract, subcontract or other agreement let to a Contractor by the City primarily for the furnishing of services to the City or on behalf the City to any other entity, and does not include procurement contracts for the purchase or lease of goods, products, equipment supplies or other property, or professional service or construction contracts.
- (c) "Contractor" means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a one or more Contracts, subcontract or other agreement to provide Services at a City Facility under which the combined annual value of payments is in excess of \$25,000.
- (d) "Covered Employee" means an Employee, as defined in this division, who has been employed by the Terminated Contractor for a period of ~~12~~ six months or longer at the site or sites covered by the Terminated Contractor's contract with the City.
- (e) [No change.]
- (f) "New Contractor" means the Contractor who has been awarded the Contract ~~to provide Services at a City Facility,~~ who will replace the Terminated Contractor when the Terminated Contractor's contract terminates.
- (g) [Stricken.] [definition of "Services."]
- (h) "Terminated Contractor" means the Contractor providing services to the City or any other entity at a City Facility at

the point in time that a Contract for such services is awarded to a New Contractor.

[Responsible Contractor provisions]

Section 3. That Chapter 2, Article 2, Division 32 of the San Diego Municipal Code, is amended by the addition of Section 22.3224, to read as follows:

§ 22.3224. Contractor Standards.

- (a) Prior to awarding a *contract for services* under which payments may exceed \$25,000, the City's awarding department shall make a determination that the *bidder* is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars. Among the factors which shall be considered in making this determination, are: (1) financial resources; (2) technical qualifications; (3) experience; (4) organization, material, equipment, facilities and expertise necessary to carry out the work; (5) a satisfactory record of performance; (6) a satisfactory record of compliance with applicable statutes and regulations; and (7) a satisfactory record of business integrity.
- (b) As part of its bid, proposal, or other application for *contract for services* under which payments may exceed \$25,000, a *bidder* shall be required to submit a response to a questionnaire developed by the Equal Opportunity Contracting Director which will seek to determine if the contractor meets the standards set forth in paragraph (a) of this Section. The response to the questionnaire must be notarized and signed under penalty of perjury and submitted to the awarding department and the Equal Opportunity Contracting Director. The City shall make any such information available to the public. The *bidder* will remain obligated to update the answers to the questionnaire throughout the life of the contract. New information must be submitted to the awarding department and the Equal Opportunity Contracting Director no later than 30 days after knowledge to the bidder of such change. The City may consider failure to update the questionnaire or the provision of false information in the questionnaire as a material breach of the contract and may invoke any available remedies.
- (c) During the life of a *contract for services*, the contractor shall comply with all applicable state and federal laws, including health and safety, labor and employment, and licensing laws, that affect the employees, worksite or performance of the contract. Each contractor shall notify the awarding department and the Equal Opportunity Contracting Director, within

fourteen days upon receiving notification that a government agency has begun an investigation of the contractor that may result in a finding that the contractor is or was not in compliance with said laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by the contractor.

- (d) Federal Preemption and Severability. No part of this Division shall be construed to apply to any employee or employer where such coverage would be preempted by federal law. However, in such circumstances, only those applications of this Division for which coverage would be preempted shall be construed as inapplicable.