

**City of San Diego**

**RULES IMPLEMENTING THE LIVING WAGE ORDINANCE**

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## RULES IMPLEMENTING THE LIVING WAGE ORDINANCE

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

### A. DEFINITIONS

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

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

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

***City*** means the City of San Diego, its organizational subdivisions, agencies, offices, or boards, but does not include independent agencies, such as the Housing Authority, Redevelopment Agency, and the Retirement Board, each of which is encouraged to adopt its own living wage policy.

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

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

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

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

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

***City facility employer*** means any *business* that has entered into a *City facility agreement*. For the purposes of this division, *City facility employer* includes any sublessee, subcontractor, or concessionaire that retains employees to provide *services* at a *City facility*.

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

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

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

***Covered employee*** means:

- (a) any individual employed on a full-time, part-time, temporary, or seasonal basis by:
  - (1) a *service contractor* with regard to any hours worked in performance of a *service contract*;
  - (2) a *financial assistance recipient* who works at least 20 hours a month at the site that is the subject of the *financial assistance agreement* or at least 20 hours a month on the program that is the subject of the *financial assistance agreement*; or
  - (3) a *City facility employer* with regard to any hours worked at a *City facility*.
- (b) But *covered employee* does not include:
  - (1) individuals who, in addition to wages, receive academic credit for their work from an accredited educational institution;
  - (2) individuals who participate in job training and education programs that have as their express purpose the provision of basic job skills or education; and
  - (3) an owner of a *business*.

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

***Financial assistance agreement*** means an agreement between the *City* and a *business* to

provide direct financial assistance with the expressly articulated and identified purpose of encouraging, facilitating, supporting, or enabling: (a) economic development, job creation, or job retention; or (b) tourism, arts, and cultural programs. Direct financial assistance includes funds, below-market loans, rebates, deferred payments, forgivable loans, land write-downs, infrastructure or public improvements, or other action of economic value identified in the *financial assistance agreement*. Financial assistance does not include below-market leases to non-profit organizations or indirect financial assistance, such as that provided through broadly applicable tax reductions or services performed by *City* staff. *Financial assistance agreement* includes subcontracts to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

***Financial assistance recipient*** means any *business* that has entered into a *financial assistance agreement*. For the purposes of this division, *financial assistance recipient* includes all subcontractors retained by a *business* to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

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

***Incidental services*** means services that are:

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

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

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

**Service contractor** means any *business* that has been awarded a *service contract* subject to this division. For the purposes of this division, *service contractor* includes all *subcontractors* or franchisees retained by a *business* to perform any or all of the functions covered by a *service contract*.

**Services** means the following types of employment activities and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this division and designated in a *City facility agreement*, *financial assistance agreement*, or *service contract*:

- (a) Automotive repair and maintenance;
- (b) Cashiers;
- (c) Child care;
- (d) Concessions/retail sales;
- (e) Facility and building maintenance;
- (f) On-site food service/preparation;
- (g) Janitorial, custodial, and housekeeping;
- (h) Landscaping;
- (i) Laundry services;
- (j) Office/clerical;
- (k) Parking services;
- (l) Pest control;
- (m) Security services;
- (n) Ushers and wheelchair attendants;
- (o) Ticket takers; and
- (p) Warehouse workers.

**Subcontractor** includes sublessees and concessionaires.

**Wages** means the amount paid to a *covered employee* as compensation for labor performed. The term does not include any amount paid to a *covered employee* not directly related to the

labor performed, such as for parking, uniforms, meals, and contributions to retirement plans. Aside from a *covered employee's* hourly wages, wages may only include commissions earned by a *covered employee* if the *covered employer* keeps accurate records verifying the amount paid to a *covered employee* for each pay period and follows the requirements set forth in these Rules.

## **B. APPLICABILITY OF LWO**

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

### **a. Service Contracts.**

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

**b. Agreements to Purchase or Rent Property, Goods or Equipment.** Agreements to

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

c. **City Facility Agreements.** *City facility agreement* means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility* that generates \$350,000 or more in annual gross receipts to the business. *City facility agreements* apply to Petco Park; Qualcomm Stadium; San Diego Sports Arena; San Diego Convention Center; and San Diego City Concourse.

(1) A *City facility agreement* includes:

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

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

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

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

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

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

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

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

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

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

2. **Anti-Retaliation Provision.** The LWO's prohibition against retaliation (SDMC § 22.4230(b)) is not limited to *covered employers*. The anti-retaliation provision is separate from the LWO's wage and benefits provisions and applies to all *businesses*, even if those *businesses* are exempt from the LWO's wage and benefits provisions.
3. **Presumption of Coverage.** An agreement, request for proposal, request for bid, or request for quote for any of the agreements in the foregoing paragraph (Rule B.2) is presumed to be covered by the LWO unless specifically exempted by the LWO or these Rules.
4. Agreements shall not be subdivided into two or more contracts that logically should be made as a single transaction if the purpose of the subdividing is to avoid the LWO requirements.
5. Leases and licenses that involve *services* to be performed on *City facility* property are presumed subject to the LWO.
6. The Purchasing Agent has the final authority in determining whether an agreement is subject to the LWO.

## C. EXEMPTIONS

1. **Categorical Exemptions.** Except for *City facility agreements*, the following categories of agreements shall be exempt from the LWO:
  - a. Contracts subject to federal or state law or regulations that preclude applicability of the LWO.
  - b. Contracts where the *City* shares management authority with other jurisdictions unless all those jurisdictions agree to the applicability of the LWO.
  - c. Contracts for *services* by other governmental entities.
  - d. Public works construction, recycling, or solid waste management franchise contracts.
  - e. Cooperative procurement contracts.
  - f. Contracts for purchase of goods, property, or a lease of property with *City* as lessee, unless the contracts include a component for services that are more than *incidental services*.
  - g. Contracts for design, engineering, financial, technical, legal, banking, medical



management, operating, advertising, or other professional services.

- h. Contracts where compliance with the LWO is not in the best interests of the *City* as certified by the *City Manager* and approved by the *City Council*.

**2. Exemptions Requiring Purchasing Agent's Approval.** In order to qualify for the following exemptions, contractors must submit an Application for Exemption on the form included in Appendix B. The exemption is not valid until the Purchasing Agent approves the contractor's application, via a Certificate of Exemption.

- a. *Businesses* employing 12 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, if the *City* determines the *business*, including its *subcontractors*, will not need to retain more than 12 employees to perform work related to the subject agreement.

(1) The number of employees includes:

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

(2) Along with the Application for Exemption, the contractor must provide written documentation of the number of employees. A letter on the contractor's letterhead and signed by an officer who is authorized to legally bind the entity shall be sufficient.

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

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

(1) A copy of the most recent IRS letter indicating that the *business* has been recognized as a non-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

(2) A statement showing that the *business*'s highest paid officer's salary, when

calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid full-time employee.

- (a) The “lowest paid full-time employee” refers to the lowest paid full-time employee of the *business*, regardless of whether that employee works on the *City* agreement.
  - (b) In calculating the salary of the highest paid officer and the wage rate of the lowest paid full-time employee, items such as cash allowances for car expenses, meals, parking, or the value of pension plan contributions shall not be included.
- c. Collective Bargaining Agreement: A collective bargaining agreement may exempt a contract from the LWO provided such waiver or exemption is explicitly stated in the collective bargaining agreement.
- (1) If the collective bargaining agreement does not specifically indicate that it is exempt from, or waives, the provisions of the LWO, the employer shall submit written confirmation from the union representing the employees that the union and the employer have agreed that the collective bargaining agreement supersedes the LWO.
  - (2) The provisions of the LWO shall not be interpreted to require an employer to reduce the wages and benefits required by a collective bargaining agreement.
- d. Negotiation of Collective Bargaining Agreement: An employer subject to the LWO may apply for provisional exemption from the LWO if the employer and the union are engaged in negotiations and the issue of supersession of the LWO has been proposed. If provisional exemption status is granted, it is valid until the end of the negotiation process.
- (1) The employer must provide sufficient documentation with the application and shall provide status reports upon request from the *City*.
  - (2) At the end of the negotiation process, the employer shall provide the Purchasing Agent with a copy of the final collective bargaining agreement to verify whether it supersedes the LWO and the effective dates.
    - (a) If the final collective bargaining agreement supersedes the LWO, the employer shall be exempt for the time period covered by the effective dates. However, the employer remains subject to all applicable provisions of the LWO for the time period not covered by that collective bargaining agreement and if the employer has not complied with the LWO during the time period not covered by that collective bargaining agreement, the employer shall make retroactive corrections.

- (b) If the final collective bargaining agreement does not supersede the LWO, the employer shall be required to comply with all applicable LWO requirements, including the wage and benefits provisions. Compliance shall also be required retroactively to the date the employer first became subject to the LWO. If necessary, the employer shall provide retroactive payments to *covered employees*.

**3. Determination of Exemption.** The Purchasing Agent shall review Applications for Exemption and provide a final determination within 10 working days of receipt of all forms and documentation.

- a. A determination by the Purchasing Agent that a bidder or employer is exempt from the LWO exempts the bidder or employer only for the agreement for which the application was submitted. Approval does not exempt the bidder or employer for any other bid or agreement.
- b. An exemption approval does not extend to any *subcontractor* unless the *subcontractor* separately applies for and is granted an exemption from the LWO or unless the Purchasing Agent has categorically exempted the agreement.
- c. If the Purchasing Agent categorically exempts an agreement from the LWO, then neither the prime contractor nor any *subcontractor* working on the agreement will be subject to the LWO.
- d. An exemption from the LWO granted by the Purchasing Agent does not extend to the anti-retaliation provision of the LWO. Notwithstanding the Purchasing Agent's determination that an agreement is exempt, the employer and *subcontractors* are required to comply with the prohibition against retaliation.

## **D. EMPLOYER REQUIREMENTS**

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

### **1. LWO Requirement of Minimum Compensation.**

- a. *Covered employers* must pay *covered employees* a "living wage" which shall be no less than the minimum initial compensation as defined in the LWO and included in Attachment A. If the employer offers no health benefits, the *covered employer* shall pay the *covered employee* at least the full cash living wage rate. If the *covered employer* offers health benefits, the terms must be in accordance with the LWO and these Rules.
- b. The Purchasing Agent shall upwardly adjust wage rates each fiscal year, effective July 1, to reflect the change in the regional Consumer Price Index for All Urban

Consumers. The Purchasing Agent shall provide notice of the new wage rate by publishing an announcement of such wage adjustments on the *City's* website.

- c. *Coveredemployers* are required to pay the living wage rate and benefits to *covered employees* working on the *City* agreement for each hour the employee works on the subject agreement. Benefits include health care or cash equivalent, compensated days off, and uncompensated days off.
- d. A *coveredemployer* shall not use tips or gratuities earned by a *coveredemployee* to offset the amount required by the LWO.

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

- a. If the *covered employer* elects not to provide health and medical care insurance, the full cash living wage rate must be paid to a *covered employee*.
- b. If the *covered employer* elects to provide a *covered employee* with health and medical care insurance, proof of the provision of health benefits must be submitted to the Purchasing Agent not later than 10 calendar days after a request for such documentation.
  - (1) If the submitted documentation does not demonstrate that health benefits are provided in accordance with the LWO and these Rules, the *coveredemployer* will be considered to be out of compliance with the LWO until sufficient documentation is received.
  - (2) In addition to remedies provided for by the LWO, failure to provide the requested information may result in payment being withheld until documents are submitted.
- c. If the *covered employer* elects to provide health and medical care insurance through a plan costing less than the minimum dollar amount per hour as specified in the LWO, the difference shall be added to the *coveredemployee's* hourly wage rate as cash payment.
- d. A co-premium may be required of a *coveredemployee* only if the cost of health and medical care insurance is greater than the minimum dollar amount per hour as specified in the LWO.

**3. Compensated and Uncompensated Time Off.** A *coveredemployer* must provide a *coveredemployee* working on the *City* agreement at least 10 compensated days of fper year for sick leave, vacation, or personal necessity at the *coveredemployee's* request, and 10 additional uncompensated days of fper year for sick leave for illness of the *covered employee* or an immediate family member, when the *coveredemployee* has exhausted all

accrued compensated days off.

- a. A *covered employee* shall accrue a minimum of 10 compensated days of fper year of full-time employment based on the *coveredemployee's* regularly scheduled work hours. A part-time *coveredemployee* shall accrue compensated days of fin increments proportional to that accrued by a full-time *coveredemployee*.
  - (1) A *coveredemployer* may not unreasonably deny a *coveredemployee's* request to use an accrued compensated day off.
  - (2) A *coveredemployee's* request for time of fis presumed to be a request for paid time of funless the *coveredemployee* has specifically asked that unpaid time off is used.
  - (3) A *coveredemployee* shall be eligible to use accrued paid days of fafter the first 6 months of employment or consistent with company policy, whichever is sooner.
  - (4) A *coveredemployee* shall accrue time of funless the *coveredemployee* has been on a leave of absence without pay for over 30 calendar days.
  - (5) Upon return to work following an unpaid leave of absence of more than 30 calendar days, a *coveredemployee* shall begin to accrue compensated days of fat the appropriate applicable full-time or part-time rate.
- b. Paid holidays that are provided under established employer policy shall not be counted toward the provision of the 10 compensated days off.
  - (1) Payment of premium pay for work performed on a holiday does not constitute a compensated day of ffor purposes of the LWO.
  - (2) For a holiday to qualify as one of the minimum 10 paid days of frequired under the LWO, a *covered employee* who works on a holiday must be allowed to take another paid day of fin lieu, even if the *coveredemployee* is provided with premium pay for the hours worked on the holiday.
- c. Unused compensated days of faccrued by a *coveredemployee* working on a subject agreement shall be carried over for at least one year, with the carryover date based on the date of accrual.
- d. The LWO does not require the *covered employer* to cash out compensated days off upon a *covered employee's* termination unless otherwise required by law.
- e. A *covered employer* may choose to provide *coveredemployees* with more compensated days of fthan is required under the LWO and these Rules.
- f. The Purchasing Agent may allow a *coveredemployer's* established compensated

time of policy to remain in place, even though it does not meet the accrual rate and eligibility deadlines required in these Rules, if the Purchasing Agent determines all of the following conditions are met:

- (1) The *covered employer's* established policy provides *covered employees* with more than 10 paid days of fper year;
  - (2) At least a portion of the paid days of fare available for use by *covered employees* within the first year of employment; and
  - (3) The Purchasing Agent determines requiring the covered employer to change its policy to comply with these Rules will result in *covered employees* receiving fewer benefits.
- g. At least 10 uncompensated days of fshall be made available, as needed, for personal or immediate family illness after a *covered employee* has exhausted his or her compensated days off. Whether a *covered employee* may take uncompensated time of fbefore exhausting accrued compensated time of fshall be determined by the *covered employer*. Accrual from year to year of uncompensated days of fis not mandated by the LWO.
- h. A *covered employer* working on or under the authority of a subject agreement who fails to provide *covered employees* with time of fin accordance with the requirements of the LWO and these Rules shall provide the affected *covered employees* with the time of fretroactive to the effective date of the agreement or amendment. A *covered employer* required to provide *covered employees* with time of fretroactively shall:
- (1) Calculate the amount of compensated time of fthe *covered employee* should have accrued under the LWO and pay the *covered employee* the cash value at the wage rate the *covered employee* was earning when the compensated time-off should have accrued.
  - (2) Calculate the amount of uncompensated time of fthat the *covered employee* should have accrued under the LWO and add the additional amount of uncompensated time-off the *covered employees* should have earned to the uncompensated time-off already accrued by the *covered employee*.

#### **4. LWO Notice to Employees.**

- a. A *covered employer* shall post a copy of the LWO Notice to Employees included in Appendix B in a prominent place in an area frequented by employees.
- b. A *covered employer* shall notify each current employee, and each new employee at time of hire, of his or her rights under provisions of the LWO by providing employees with a copy of the LWO Notice to Employees in Appendix B.

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

**6. Reporting Requirements.**

- a. Each *covered employer* shall file an LWO Certification of Compliance with the Purchasing Agent within 30 days of becoming a *covered employer*.
  - (1) *Covered employers* are required to ensure that all applicable *subcontractors* file an LWO Certification of Compliance within 30 days of becoming covered by the LWO.
  - (2) The LWO Certification of Compliance shall be completed on the form included in Appendix B.
  - (3) Failure to file an LWO Certification of Compliance may result in payment being withheld until the document is submitted.
- b. Contractors shall maintain, and shall require *subcontractors* covered by the LWO to maintain, payroll records on *covered employees* containing the following information:
  - (1) Name.
  - (2) Address.
  - (3) Date of hire.
  - (4) Job classification.
  - (5) Rate of pay.
  - (6) Paid and unpaid time off (accrued and used).
  - (7) Hours worked in each pay period.
- c. Contractors and *subcontractors* shall retain records sufficient to document that employers have provided LWO benefits to *covered employees*. *Covered employers* shall make these records available for inspection to the *City* upon request. *Covered employers* shall make a *covered employee's* individual records available for inspection to the *covered employee* upon such a request.
- d. Contractors and *subcontractors* must maintain the records referred to in these Rules for 3 years after the *City's* final payment on the contract.

7. **Contractor Annual Reports.** Each *covered employer* shall file an annual report with the Purchasing Agent regarding compliance with the LWO. The Purchasing Agent shall prescribe the contents and due date of the report. The *City* may require a contractor to submit additional reports.
8. **City Access to Employer Records to Monitor Compliance with the LWO.** A *covered employer*, subject to the LWO, shall allow authorized *City* representatives access to work sites, upon request, to monitor compliance and investigate employee *complaints*. A *covered employer* shall submit, upon request, copies of payrolls, health benefit statements, and related documents to comply with the LWO. The *City* may require the *covered employer* to submit other documentation. Failure to submit documents or allow access to the work sites as requested may be deemed as non-compliance with the LWO. In addition to remedies provided for by the LWO, such non-compliance may result in a recommendation that the *covered employer's* subject agreement be terminated and/or payments to the *covered employer* be withheld until access is provided and documentation is submitted.
9. **Disclosure of Documents and Information.** Documents and information obtained in the course of administration of the LWO become *City* records. Disclosure is subject to provisions and limitations of the California Public Records Act. Consistent with the Public Records Act, documents and information obtained during the course of an investigation or inquiry shall remain confidential while the investigation or inquiry is ongoing.
10. **Subcontractors Subject to the LWO.** A *subcontractor* performing work or providing *services* on an agreement subject to the LWO shall also comply with the LWO unless the *subcontractor* qualifies for an exemption. A *subcontractor* may be subject to the LWO even if the prime contractor has been granted an exemption.
  - a. A prime contractor is responsible for informing its *subcontractor* of the *subcontractor's* obligation to comply with the LWO. Language obligating the *subcontractor* to comply with the LWO shall be included in each subcontract between the prime contractor and the *subcontractor*.
  - b. If the Purchasing Agent finds that a prime contractor intentionally entered into separate agreements to keep subcontracts below the 90-day or \$25,000 thresholds, the *City* may determine that the separate subcontracts are subject to the LWO.
  - c. If the Purchasing Agent finds that an employer classified a worker as an independent contractor in order to avoid complying with the LWO, the Purchasing Agent may require the employer to comply with the LWO and/or recommend terminating the employer's agreement. The Purchasing Agent may consider the following factors in determining whether a worker is a bona fide independent contractor:
    - (1) Whether the worker has the right to control or discretion to determine how to perform the work required under the *City* agreement.



- (2) Whether similar workers in the industry or field are customarily engaged as independent contractors for the type of work.
- (3) Whether the worker has any substantial investment other than personal services in the business.
- (4) Whether the worker has control over the time and place of work.
- (5) Whether the worker supplies his or her own tools or equipment, if they are normally used by persons engaged in such work.
- (6) Whether the worker hires employees.

## E. ADMINISTRATIVE RECORDKEEPING AND REPORTS

1. **LWO Administrative Records and Reports.** The Purchasing Agent shall maintain a list of all subject and exempt agreements and a file of all *complaints*, findings, and results. The Purchasing Agent may provide special reports and recommendations on significant issues of interest to the City Council.
2. **Report to Council.** The Purchasing Agent shall provide a report to the City Council generally describing the effects of the LWO upon the City.
3. **Annual LWO Wage Rate Adjustment.** Beginning July 1, 2007, the hourly wage rates and health benefits rate shall be upwardly adjusted each July 1 to reflect the change in the regional Consumer Price Index for All Urban Consumers for the twelve-month period preceding December 31 of the previous year. Prior to April 1 of each year, the *City* shall calculate the new rates and provide notice by posting on the *City's* website the rates in effect for the next fiscal year.

## F. MONITORING AND INVESTIGATION

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

1. **Review of Agreements.** The Purchasing Agent will ensure that standard LWO contract language is incorporated into all agreements subject to the LWO.
2. **Employer Monitoring.** The Purchasing Agent will monitor the operations of *covered employers* to ensure compliance by conducting site visits and payroll audits. The Purchasing Agent may review the provision of wages and benefits by a *covered employer* as part of site visits. A *covered employer* shall cooperate with the Purchasing Agent when a meeting, a site visit, or documentation is requested. Cooperation includes providing:
  - a. Full access to the work site for employer and employee interviews.

b. Copies of certified payrolls, timesheets, health and benefit statements, employee policy manuals, and any other document that would assist in determining if a *covered employer* is providing or has provided the wages and benefits required by the LWO.

**3. Investigation in Response to Specific Concerns or Complaints.** The City may initiate an investigation when there is a specific concern or complaint about a *covered employer*. If a *covered employee* alleges noncompliance with the LWO or retaliation by the contractor as a result of an allegation, the *City* may, in its sole discretion, initiate an investigation pursuant to these Rules.

**4. Employer's Failure to Reasonably Cooperate.** If a *covered employer* fails to produce requested documentation, fails to allow access to the work site or the *covered employees* for employee interviews, or otherwise unreasonably fails to cooperate, the Purchasing Agent may consider the *covered employer* to be out of compliance with the LWO. In addition to remedies provided in the LWO, the Purchasing Agent may request payments to the *covered employer* be withheld until the *covered employer* cooperates.

## G. ENFORCEMENT

**1. Notice to Employer of LWO Violations.** If the Purchasing Agent determines that an employer is not in compliance with the LWO, the Purchasing Agent will notify the employer of the determination and allow the employer 10 working days to correct the violation. The Purchasing Agent retains the discretion to allow the employer additional time to make corrections if the employer demonstrates a good faith effort to comply.

**2. Remedies.** If an employer continues to fail to comply and no resolution is imminent, the Purchasing Agent may pursue available remedies including:

- a. Withholding of contract payments.
- b. Termination of the contract for cause.
- c. Debarment from future *City* agreements, leases, and licenses for up to 3 years.
- d. Any other remedy that may be available to the *City*.

**3. Prime Contractor Responsible for Subcontractor.** A *covered employer* who is a prime contractor is responsible to:

- a. Inform covered *subcontractors* of their obligation to comply with the LWO;
- b. Include language requiring the *subcontractor* to comply with the LWO in each subcontract between the prime contractor and a covered *subcontractor*;
- c. Require covered *subcontractors* to file a Certificate of Compliance within 30 days of

becoming a *covered employer*; and

d. Cooperate with the *City's* investigation of covered *subcontractors*.

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

## H. EMPLOYEE COMPLAINT PROCESS

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

writing, on the LWO Employee Complaint Form, which is included in Appendix B.

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

**City of San Diego****CURRENT LIVING WAGE RATES**

<b>EFFECTIVE DATES</b>	<b>CASH WAGE + HEALTH BENEFITS</b>	<b>FULL CASH WAGE</b>
July 1, 2007 – June 30, 2008	\$10.34 + \$2.07 per hour in Health Benefits	\$12.41 per hour
July 1, 2006 – June 30, 2007	\$10.00 + \$2.00 per hour in Health Benefits	\$12.00 per hour

For additional information, please contact:

Purchasing & Contracting Department  
1200 Third Avenue, Suite 200  
San Diego, CA 92101  
Phone: 619/236-6000  
Fax: 619/533-3236

**City of San Diego**

**LIVING WAGE ORDINANCE  
NOTICE AND FORMS**

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

NOTICE:

Living Wage Ordinance Notice to Employees (English, Spanish)

FORMS:

Living Wage Ordinance Certification of Compliance

Living Wage Ordinance Application for Exemption

Living Wage Ordinance Employee Complaint Form (English, Spanish)

## LIVING WAGE ORDINANCE



## ORDENANZA DEL SUELDO DIGNO

### NOTICE TO EMPLOYEES

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

### THESE ARE YOUR RIGHTS...

#### MINIMUM HOURLY PAY:

- \$10.34/hour plus at least \$2.07/hour in health benefits  
OR
- \$12.41/hour without health benefits.
  - If health benefits cost less than \$2.07/hour, the difference is added to the hourly wage.
  - Rates are adjusted annually; current rates are effective until July 1, 2008.

#### MINIMUM DAYS OFF PER YEAR:

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

#### RETALIATION IS PROHIBITED:

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

### FOR MORE INFORMATION

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

### AVISO PARA EMPLEADOS

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

### ESTOS SON SUS DERECHOS...

#### COMPENSACIÓN MÍNIMA POR HORA:

- \$10.34/hora más un mínimo de \$2.07/hora para beneficios médicos O
- \$12.41/hora sin beneficios médicos.
  - Si beneficios médicos cuestan menos de \$2.07/hora, la diferencia es añadida al salario.
  - El sueldo es ajustado anualmente; el sueldo corriente es en vigencia hasta Julio 1, 2008.

#### DÍAS LIBRES, AL MÍNIMO, CADA AÑO:

- 10 días pagados de vacación, enfermedad, o razones personales Y
- 10 días sin pagar de enfermedad personales o familia.
  - Días libres son agregados a los días festivos.
  - Días libres son ajustados por horas trabajadas al sueldo digno.

#### LA REPRESALIA SE PROHIBE:

- Los empleadores no pueden despedir, reducir la paga, ni discriminar contra un trabajador para quejar.

### PARA MAS INFORMACION

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

**CITY OF SAN DIEGO**  
Purchasing & Contracting Department  
Living Wage Administration  
1200 Third Avenue, Suite 200  
San Diego, CA 92101  
619/533-3948

07.01.07

# LIVING WAGE ORDINANCE CERTIFICATION OF COMPLIANCE



Send form to:

**CITY OF SAN DIEGO**  
Purchasing & Contracting Department  
Living Wage Administration  
1200 Third Avenue, Suite 200  
San Diego, CA 92101

## COMPANY INFORMATION

Company Name:

Company Address:

Company Contact Name:

Contact Phone:

## CONTRACT INFORMATION

Contract Number (if no number, state location):

Start Date:

Contract Amount:

End Date:

Purpose/Service Provided:

## TERMS OF COMPLIANCE

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

- (a) Pay covered employees a wage no less than the minimum initial compensation of \$10.34 per hour (adjusted annually on July 1).
- (b) Provide covered employees a health benefit of \$2.07 per hour (adjusted annually on July 1) or, if any lesser amount is applied toward a health plan, to add this difference to the hourly wage rate as cash payment.
- (c) Provide a minimum of 10 compensated days off per year for vacation, sick leave, or other personal need at the employee's request and to provide 10 additional uncompensated days off for personal or family illness when accrued compensated days off have been used.
- (d) Inform all covered employees of their possible right to Federal Earned Income Tax Credit within 30 days of contract start.
- (e) Permit access for authorized City representatives to work sites and relevant records to review compliance with the LWO.
- (f) Prohibit retaliation against any employee who alleges non-compliance with the requirements of the LWO.

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

## CONTRACTOR CERTIFICATION

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

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## FOR OFFICIAL CITY USE ONLY

Date of Receipt:

LWO Analyst:

Contract Number:



# LIVING WAGE ORDINANCE APPLICATION FOR EXEMPTION



Send form to:

**CITY OF SAN DIEGO**  
Purchasing & Contracting Department  
Living Wage Administration  
1200 Third Avenue, Suite 200  
San Diego, CA 92101

## COMPANY INFORMATION

Company Name:

Company Address:

Company Contact Name:

Contact Phone:

## CONTRACT INFORMATION

Contract Number (if no number, state location):

Start Date:

Contract Amount:

End Date:

Purpose/Service Provided:

## EXEMPTION BASIS

Check one option and submit required supporting documentation.

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

Required documentation: Correspondence on company letterhead and signed by a legally authorized officer documenting number of employees.

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

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

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

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

- Other – Cite LWO Municipal Code section:** \_\_\_\_\_

Required documentation: Correspondence explaining basis of request for exemption.

## CONTRACTOR CERTIFICATION

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

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Title of Signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

## FOR OFFICIAL CITY USE ONLY

- Not Approved – Reason: \_\_\_\_\_

- Approved

LWO Analyst: \_\_\_\_\_

Date: \_\_\_\_\_

**EMPLOYEE COMPLAINT FORM  
FORMULARIO DE QUEJAS**



Send form to:

**CITY OF SAN DIEGO**  
Purchasing & Contracting Department  
Living Wage Administration  
1200 Third Avenue, Suite 200  
San Diego, CA 92101

**COMPANY INFORMATION  
INFORMACIÓN SOBRE LA COMPAÑÍA**

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

**EMPLOYEE INFORMATION  
INFORMACIÓN SOBRE EL EMPLEADO**

Your Name: <i>Su Nombre:</i>	Social Security Number: <i>Número de Seguridad Social:</i>
Address: <i>Dirección:</i>	
Telephone number <i>Número de teléfono</i>	Home: <i>Residencia:</i>
Work: <i>Trabajo:</i>	Overtime Rate Paid: <i>Sueldo por horas extras:</i>
Hourly Rate Paid: <i>Sueldo por hora:</i>	How long have you worked for this company? <i>¿Cuán largo le tiene trabajó para esta compañía?</i>
Current job title: <i>Título de Trabajo:</i>	If Yes, how much do you pay for your benefits? <i>¿Si Sí, cuánto le hace paga por sus beneficios?</i>
Do you receive health benefits? <i>¿Recibe usted beneficios médicos?</i>	

**EMPLOYEE COMPLAINT  
QUEJA DE EMPLEADO**


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

\_\_\_\_\_  
Signature · *Firma del Empleado*

\_\_\_\_\_  
Date · *Fecha*

**FOR OFFICIAL CITY USE ONLY  
PARA LA OFICINA DE LA CIUDAD SOLAMENTE**

Date of Receipt:	LWO Analyst:	Contract Number:
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