

Article 2: Administrative Code

Division 42: City of San Diego Living Wage Ordinance
(Added 6/6/2005 by O-19386 N.S.)

§ 22.4201 Purpose and Intent

The *City* awards many taxpayer-funded agreements to *businesses* that provide *services* to the public and to the *City* or that are intended to promote economic development, job creation, and retention. The *City* also owns, operates, manages, or leases sports, entertainment, or convention facilities and contracts with *businesses* to use these facilities or provide *services* at these locations to the public. It is the experience of the *City* that many of these *services* to the public and to the *City* are provided by workers who live at or below the poverty line. This Division provides that when agreements, including *service contracts*, *financial assistance agreements*, and *City facilities agreements* are extended by the *City* to *businesses* these taxpayer funded benefits are used in a way that advances the interests of the *City* as a whole, by creating jobs that keep workers and their families out of poverty. This Division therefore requires *covered employers* and their subcontractors to pay their employees a wage that will enable a full-time worker to meet basic needs and avoid economic hardship. Paying *services* employees a living wage is intended to improve the quality of *services* provided to the *City* and to the public by reducing high turnover, absenteeism, and instability in the workplace. This Division also promotes the *City's* policies and programs that seek to meet the employment and economic development needs of the *City* and its workforce. *Businesses* that do not fall into any of the above described categories are not required to comply with this Division.
(Added 6-6-2005 by O-19386 N.S.)
(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

§22.4202 Citation

This Division shall be cited as the City of San Diego Living Wage Ordinance.
(Added 6-6-2005 by O-19386 N.S.)

§22.4205 Definitions

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

Affordable Care Act means the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, and any subsequent federal legislation and applicable federal regulations.

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

City facility agreement means an agreement between the *City* and a *business* for the lease, use, or management of a *City facility*. *City facility agreement* includes (a) subleases or other agreements for use of the *City facility* for thirty 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 ninety 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.

Compensated leave means any paid leave for illness, vacation, or personal need provided by a *covered employer* to a *covered employee*, but does not include paid holidays that are provided by a *covered employer* under the *covered employer's* established policy.

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

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

Financial assistance agreement means an agreement between the *City* and a *business* to provide direct financial assistance with the expressly articulated and identified purpose of encouraging, facilitating, supporting, or enabling: (a) economic development, job creation, or job retention; or (b) tourism, arts, and cultural programs. As to economic development, job creation, or job retention, this Division applies to *financial assistance agreements* with a combined value over a period of five years of \$500,000 or more. As to tourism, arts, and cultural programs, this Division applies to *financial assistance agreements* with a combined annual value of \$750,000 or more. Direct financial assistance includes funds, below-market loans, rebates, deferred payments, forgivable loans, land write-downs, infrastructure or public improvements, or other action of economic value identified in the *financial assistance agreement*. Financial assistance does not include below-market leases to non-profit organizations or indirect financial assistance, such as that provided through broadly applicable tax reductions or services performed by *City* staff. *Financial assistance agreement* includes subcontracts to perform *services* at the site that is the subject of the *financial assistance agreement* or for the program that is the subject of the *financial assistance agreement*.

Financial assistance recipient means any *business* that has entered into a *financial*

assistance agreement. For 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 means benefits related to medical, dental, vision, and other health services, and excludes benefits related to retirement, disability, accidental death and dismemberment insurance, and life insurance.

Health benefits rate means a minimum dollar amount per hour toward the cost of *health benefits* for *covered employees* and their dependents.

Prime service contractor means any *business* that enters into a contract for *services* directly with the *City*.

Service contract means a contract between the *City* and a *business*, and any applicable subcontracts or franchises, to furnish *services*. For purposes of this Division, *service contract* includes all contracts for *services* provided through the managed competition program under Charter section 117(c).

Service contractor means any *business* that has been awarded a *service contract* subject to this Division. For 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, street cleaning and housekeeping;

- (h) Landscaping;
- (i) Laundry services;
- (j) Office/clerical;
- (k) Parking services;
- (l) Pest control;
- (m) Security services;
- (n) Ushers and wheelchair attendants;
- (o) Ticket takers;
- (p) Warehouse workers;
- (q) Waste collection and waste disposal, including recycling;
- (r) Right-of-way maintenance;
- (s) Water and wastewater maintenance; and
- (t) Service workers in the medical field, including emergency medical technicians and paramedics.

Unfair immigration-related practice has the same meaning as in California Labor Code section 1019(b)(1).

Willful violation means a *covered employer's* intentional failure or refusal to perform an act which is required under this Division. Such failure or refusal need not be based on a deliberate malicious purpose or intent to defraud. A *covered employer's* failure or refusal to comply with this Division is *prima facie* evidence of a *willful violation* if the contract for *services* states that this Division applies.

(Added 6-6-2005 by O-19386 N.S.)

(Amended 11-24-2008 by O-19809 N.S.; effective 1-1-2010.)

(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

(Amended 3-2-2016 by O-20607 N.S.; effective 4-1-2016.)

§22.4210 Applicability of Living Wage Ordinance

- (a) This Division shall apply to:
 - (1) any *service contract*, including any applicable subcontract, that is entered into, awarded, amended, renewed, or extended. Compliance with this Division is required during the term of the *service contract*.
 - (2) any *financial assistance agreement* subject to the \$500,000 threshold, including any applicable subcontract. Compliance with this Division is required for a period of five years after the threshold amount has been received by the *business*.
 - (3) any *financial assistance agreement* subject to the \$750,000 threshold, including any applicable subcontract. Compliance is required for one year after the threshold amount has been received by the *business*.
 - (4) any *City facility agreement*, including any applicable sublease, subcontract, or concession agreement. Compliance with this Division is required during the term of the *City facility agreement*.
- (b) *City facility agreements* shall not be subdivided into two or more contracts that logically should be made as a single transaction if the purpose of the subdividing is to avoid the requirements of this Division.
- (c) For any contract subject to this Division, the *prime service contractor* must use its own employees to perform at least fifty percent of the work described in the contract.

(Added 6-6-2005 by O-19386 N.S.)
(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)
(Amended 3-2-2016 by O-20607 N.S.; effective 4-1-2016.)

§22.4215 Exemptions

- (a) The following contracts are exempt from the requirements of this Division:
 - (1) contracts subject to federal or state law or regulations that preclude the applicability of this Division's requirements;
 - (2) contracts that involve programs where the *City* shares management authority with other jurisdictions, unless all the signatory jurisdictions agree to the applicability of this Division's requirements to the contract;

- (3) contracts for *services* by any other governmental agency;
 - (4) contracts for public works construction;
 - (5) cooperative procurement contracts, including contracts that use a bidding process that substantially complies with *City* requirements;
 - (6) contracts for the purchase of goods, property, or the leasing of property;
 - (7) contracts for professional services, as described in California Labor Code Section 515(a), such as design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other services. The exemption for professional medical contracts shall not extend to *service contracts* for emergency medical personnel, including emergency medical technicians and paramedics;
 - (8) contracts where compliance with this division is not in the best interests of the *City* as certified by the *City Manager* and approved by the *City Council*.
- (b) *City facility agreements* are not exempt from the requirements of this Division.
- (c) The following *businesses*, even if otherwise qualified as a *covered employer*, are exempt from the requirements of this Division:
- (1) *Businesses*, including their parent and subsidiary entities, employing twelve or fewer employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, so long as the *City* determines that the *business*, including any of its subcontractors, will not need to retain more than twelve employees to perform work related to a *service contract*, *financial assistance agreement*, or *City facility agreement*.
 - (2) *Businesses* organized under Internal Revenue Service Code, section 501(c)(3) to provide community-based social services, other than child care services, and whose highest paid officer earns a salary that, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest paid *covered employee*.

- (d) The definitions of *service contract*, *financial assistance agreement*, or *City facility agreement* shall be liberally interpreted so as to further the policy objectives of this Division.

(Added 6-6-2005 by O-19386 N.S.)

(Amended 11-24-2008 by O-19809 N.S.; effective 1-1-2010.)

(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

(Amended 3-2-2016 by O-20607 N.S.; effective 4-1-2016.)

§22.4220 Payment of Living Wage and Provision of Benefits

- (a) *Covered employers* subject to this Division must pay *covered employees* the hourly wage rate and *health benefits rate* posted on the *City's* web site for that fiscal year.
- (b) The hourly wage rates will be upwardly adjusted each July 1 to reflect the change in the Consumer Price Index for All Urban Consumers for the San Diego – Carlsbad – San Marcos Metropolitan Statistical Area for the twelve-month period preceding December 31. The *health benefits rate* will be consistent with the *Affordable Care Act* and any other applicable federal and state law provisions. Prior to April 1 of each year, the *City* will calculate the new rates and provide notice to all *covered employers* by posting on the *City's* web site the rates in effect for the next fiscal year.
- (c) *Covered employers* must provide to each *covered employee* a minimum of eighty hours per year of *compensated leave*. *Compensated leave* must vest as accrued, in accordance with applicable state law and *covered employer* policies. Part-time employees must accrue *compensated leave* at a rate proportional to full-time employees. A *covered employee*, working under a *service contract* to provide *services* for the *City* of one day or less, must be paid additional wages in an amount equal to the proportional rate of *compensated leave*, in lieu of receipt of *compensated leave*.
- (d) *Covered employees* must be eligible to use accrued days off after the first six months of employment or consistent with employer policy, whichever is earlier.
- (e) *Covered employers* must also permit *covered employees* to take a minimum of eighty hours of uncompensated leave per year to be used for the illness of the *covered employee* or a member of his or her immediate family, when the *covered employee* has exhausted all accrued *compensated leave*.

- (f) This section does not mandate the accrual from year to year of uncompensated leave.
- (g) The *City* will provide *covered employers* with credit toward the total amount of *compensated leave* required under this Division for the paid sick leave they must provide under the California Healthy Workplaces, Healthy Families Act of 2014.
- (h) *Covered employers* must pay *covered employees* the state prevailing wage rate as specified in section 22.3019 if the prevailing wage rate is higher than the wage rate specified in this Division. For purposes of this section, “wage rate” means the sum of required hourly wages, *health benefits*, and *compensated leave*.

(Added 6-6-2005 by O-19386 N.S.)

(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

(Amended 3-2-2016 by O-20607 N.S.; effective 4-1-2016.)

§22.4225 Reporting and Notification Requirements

- (a) Every *service contract*, *financial assistance agreement*, and *City facility agreement* must require that the party contracting with the *City* be subject to the terms of this Division and all regulations and rules promulgated under this Division and that all applicable subcontractors, sublessees, and concessionaires comply with the terms of this Division and all regulations and rules promulgated under this Division.
- (b) Each *covered employer* must notify *covered employees* at the time of hire and must annually distribute a notice with the first paycheck to occur after July 1 to its *covered employees* of the requirements of this Division, the possible availability of health insurance coverage under the *Affordable Care Act*, and the possible availability of the Earned Income Tax Credit.
- (c) Each *covered employer* must file a living wage certification with the *City Manager* within thirty days of becoming a *covered employer*. *Covered employers* must ensure that all applicable subcontractors, sublessees, and concessionaires file a living wage certification within thirty days of becoming covered by the requirements of this Division. The living wage certification must be completed on a form provided by the *City Manager*.

- (d) Each *covered employer* must file with the *City Manager* an annual report documenting compliance with this Division. The *covered employer* must maintain records documenting compliance for at least three years, but is not required to maintain records for more than seven years, after the *City's* final payment on the *service contract, financial assistance agreement, or City facility agreement*. Such records must be made available to the *City* upon request. The records to be maintained must include all wage records, proof of payment for *health benefits, covered employee name, address, date of hire, job classification, rate of pay, cost and amount paid for health benefits, hours worked in each pay period, and paid and unpaid time off (accrued and used)*.
- (e) Each *covered employer* must post a notice informing *covered employees* of their rights under this Division, and any applicable exemptions from the hourly wage rate requirements of this Division. The poster must be at the site of work, or a site frequently accessed by *covered employees*, in a prominent and accessible place where it can easily be seen by *covered employees*. Each *covered employer* must update this notice annually and within thirty days of receiving notice from the *City* of the amended hourly wage rates under this Division.

(Added 6-6-2005 by O-19386 N.S.)
(Amended 11-24-2008 by O-19809 N.S.; effective 1-1-2010.)
(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)
(Amended 3-2-2016 by O-20607 N.S.; effective 4-1-2016.)

§22.4230 Enforcement and Remedies

- (a) A *covered employee* claiming a violation of this Division may file an action against a *covered employer* in a court of competent jurisdiction within three years after discovery of the alleged violation.
- (b) The court may award the following monetary damages to a *covered employee* who proves a violation of this Division:
 - (1) For failure to pay the required hourly wage on applicable *service contracts, financial assistance agreements, and City facilities agreements*, the difference between the hourly wage required by this Division and the amount actually paid to the *covered employee*, plus interest, and penalties for *willful violations*.

- (2) For failure to pay the *health benefits rate* on applicable *service contracts, financial assistance agreements, and City facilities agreements*, the difference between the *health benefits rate* required by this Division and the amount actually paid towards the *health benefits rate* for the *covered employee*, plus interest, and penalties for *willful violations*.
 - (3) For retaliation for exercise of any rights provided for under this Division, reinstatement, back pay, or any other relief that a court may deem appropriate.
 - (4) For a *willful violation* of this Division, a penalty of up to three times the amount of damages awarded pursuant to section 22.4230(b)(1) and/or (b)(2).
 - (5) Reasonable attorneys' fees and costs to a *covered employee* who prevails in any such private action.
- (c) The court may award reasonable attorneys' fees to a *covered employer* who prevails if the *covered employee's* suit is found to be frivolous.
- (d) A *covered employer* shall not:
- (1) Retaliate against a *covered employee* who alleges non-compliance with this Division or cooperates with an investigation regarding compliance with this Division. Retaliation includes but is not limited to *unfair immigration-related practices*, or any other discriminatory practice that violates federal or state law; or
 - (2) Discharge, reduce in compensation, or otherwise discriminate against any *covered employee* for complaining with regard to the *covered employer's* practices with respect to this Division, for opposing any practice proscribed by this Division, for participating in proceedings related to this Division, for seeking to enforce his or her rights under this Division by any lawful means, or for otherwise asserting rights under this Division.

- (e) A *covered employee* claiming a violation of the Division may file a complaint with the *City*. The *City* shall investigate and address any alleged violation of this Division's requirements, and shall convey the results of the investigation to the complainant within sixty days, with reasonable thirty-day extensions. However, the *City's* failure to investigate an alleged violation or otherwise enforce any of the provisions of this Division does not create any right of action to recover damages from the *City* by any person, including but not limited to an aggrieved *covered employee*.
- (f) Whether based upon a complaint or otherwise, where the *City Manager* has determined that a *covered employer* has violated this Division, the *City Manager* shall issue a written notice to the *covered employer* that the violation is to be corrected within thirty days. If the *covered employer* does not demonstrate to the *City Manager* within such period that it has substantially cured any material violation, the *City Manager* shall take one or more of the following enforcement actions:
 - (1) Declare a material breach of the *service contract*, *financial assistance agreement*, or *City facility agreement* and exercise the *City's* contractual remedies, which are to include, but not be limited to, suspension or termination of the *service contract*, *financial assistance agreement*, or *City facility agreement* and the return of monies paid by the *City* for services not yet rendered.
 - (2) Institute proceedings under Chapter 2, Article 2, Division 8 to debar the *covered employer* from future *City* contracts for three years or until all penalties or restitution have been fully paid, whichever occurs last.
 - (3) Request a determination of non-responsibility under Chapter 2, Article 2, Division 30.
 - (4) Request that the City Attorney bring a civil action against the *covered employer* seeking any legal remedies, including but not limited to:
 - (A) Where applicable, payment to the *covered employee* of all unpaid wages or *health benefits* prescribed by this Division, plus interest;
 - (B) A fine payable to the *City* in the amount of up to one hundred dollars (\$100) per *covered employee* for each violation for each day the violation remains uncured; and

- (C) The *City's* administrative costs.
- (5) Refer violations of this Division to appropriate local, state, and/or federal agencies and authorities.
- (g) If a *covered employer* is determined by the *City Manager* to have violated this Division two or more times in a two-year period, the *City Manager* shall take enforcement action pursuant to section 22.4230(f), even if the *covered employer* has substantially cured any material violations.
- (h) A violation of this Division is not subject to prosecution as a misdemeanor or infraction, notwithstanding any other provision of this Code.
- (i) This Division is not to be construed to limit a *covered employee's* right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights, nor is exhaustion of remedies under this Division a prerequisite to the assertion of any other such right.

("Enforcement" added 6-6-2005 by O-19386 N.S.)

(Amended 11-24-08 by O-19809 N.S; effective 12-24-2008.)

(Retitled to "Enforcement and Remedies" and amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

§22.4235 Administration

- (a) The *City Manager* shall develop and implement administrative policies, rules, and regulations to carry out the intent of this Division, including procedures for handling complaints by *covered employees*. The *City Manager* shall monitor compliance, including conducting periodic reviews of appropriate records maintained by *covered employers* to verify compliance and to investigate claimed violations. To secure compliance with this Division, the *City Manager* is authorized to take any appropriate enforcement action pursuant to Chapter 1, Article 2, Division 1 of this Code.
- (b) The *City Manager* is authorized to create a citizens advisory committee for the purpose of making recommendations regarding how the policies and purposes of this Division may be advanced.

- (c) On July 1 of each year, or as soon thereafter as is practicable, the *City Manager* shall submit an annual report to the City Council generally describing the effects of the City of San Diego Living Wage Ordinance upon the *City*.

(Added 6-6-2005 by O-19386 N.S.)

(Amended 11-24-2008 by O-19809 N.S.; effective 1-1-2010.)

(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

§22.4240 Collective Bargaining Agreements

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

(Added 6-6-2005 by O-19386 N.S.)

(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)

§22.4245 Severability

All provisions in this Division are intended to be consistent with all applicable federal and state laws. If any provision of this Division is declared legally invalid by a final judgment rendered in a court of competent jurisdiction, the provision declared invalid shall be deemed to be severable to the extent that the remaining provisions of this Division can be enforced in a manner that substantially carries out the objectives of this Division.

(Added 6-6-2005 by O-19386 N.S.)

(Amended 2-26-2014 by O-20352 N.S.; effective 3-28-2014.)