

ORDINANCE NUMBER O-19386

ADOPTED ON JUNE 6, 2005

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 41, RELATING TO WAGES AND HEALTH BENEFITS FOR CERTAIN CATEGORIES OF PERSONS EMPLOYED BY BUSINESSES THAT CONTRACT WITH THE CITY, RECEIVE FINANCIAL ASSISTANCE FROM THE CITY, OR WORK AT CERTAIN SPORTS, ENTERTAINMENT, OR CONVENTION FACILITIES IN THE CITY OF SAN DIEGO.

WHEREAS, it is important to the health and 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 leases land to, maintains an ownership interest in, or operates certain large sports, convention, or entertainment facilities, and operating at such facilities affords businesses significant financial benefits; 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 taxpayer 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 or use of City facilities do not provide health insurance to their employees, a situation that adversely affects employee performance and absenteeism and increases 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, the purpose of this policy is to ensure that businesses benefiting from taxpayer funds, or using certain facilities leased, owned, or operated by the City, provide their service employees both a living wage and either health benefits or a payment towards the cost of health insurance to their employees, thus enhancing the health and welfare of workers of the City of San Diego and their families; 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 a new division 41, titled “City of San Diego Living Wage Ordinance,” and by adding sections 22.4101 through 22.4145, to read as follows:

DIVISION 41

City of San Diego Living Wage Ordinance

§22.4101 Purpose and Intent

The *City* awards many taxpayer-funded agreements to private *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 private *businesses* these taxpayer funded benefits are used in a way that advances the interests of the *City* as a whole, by creating jobs that keep workers and their families out of poverty. 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 service 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. Private businesses that do not fall into any of the above described categories are not required to comply with this division.

§22.4102 Citation

This division shall be cited as the City of San Diego Living Wage Ordinance.

§22.4105 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:

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.

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; and (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*, 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. As to economic development, job creation, or job retention, this division shall apply 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 shall apply 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 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 employees and their dependents.

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, and 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.

§22.4110 Applicability of Living Wage Ordinance

(a) This division shall apply to:

- (1) any *service contract*, including any applicable subcontract, entered into, awarded, amended, renewed, or extended on or after July 1, 2006.

Compliance with this division is required during the term of the *service contract*. Notwithstanding the foregoing, *service contracts* for child care services are exempt from the requirements of this division until July 1, 2008.

- (2) any *financial assistance agreement* subject to the \$500,000 threshold, including any applicable subcontract, entered into, awarded, amended, renewed, or extended on or after July 1, 2006. 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 entered into, awarded, amended, renewed, or extended on or after July 1, 2007. 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 in effect on July 1, 2007.

Compliance with this division is required during the term of the *City facility agreement*.

(b) *Service contracts, financial assistance agreements, and 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.

§22.4115 Exemptions.

(a) Except for *City facility agreements*, 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, recycling, or solid waste management franchises;
 - (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 design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other professional services.
 - (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) 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 full-time employee.

§22.4120 Payment of Living Wage and Provision of Benefits

- (a) *Covered employers* subject to this division shall pay *covered employees* a wage of no less than \$10.00 per hour if the *health benefits rate* is paid, or no less than \$12.00 per hour if the *health benefits rate* is not paid. The *health benefits rate* is \$2.00 per hour. The rates are effective beginning July 1, 2006.
- (b) 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 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. Prior to April 1 of each year, the *City* shall 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* shall provide to each *covered employee* a minimum of ten compensated days off per year for sick leave, vacation, or personal necessity leave at the *covered employee's* request. Such days off shall vest as accrued. Part-time employees shall accrue such days at a rate proportional to full-time employees. *Covered employees* shall be eligible to use accrued days off after the first six months of employment or consistent with employer 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.

- (d) *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 all accrued compensated days off. This section does not mandate the accrual from year to year of uncompensated days off.

§22.4125 Reporting and Notification Requirements

- (a) Every *service contract, financial assistance agreement, and City facility agreement* shall 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* shall notify its *covered employees* of the requirements of this division and of the possible availability of the Earned Income Tax Credit.
- (c) Each *covered employer* shall 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 shall be completed on a form provided by the *City Manager*.
- (d) Each *covered employer* shall file with the *City Manager* an annual report regarding compliance with this division.

§22.4130 Enforcement

- (a) A *covered employee* claiming a violation of this division shall have the right to file an action against an employer in the appropriate court within one year after discovery of the alleged violation. The court may award any employee who files suit pursuant to this subdivision, the following:
- (1) For failure to pay the minimum wage required by this division, the difference between the minimum wage required herein and the amount actually paid to the employee, plus interest.
 - (2) For failure to pay the *health benefits rate*, the difference between the *health benefits rate* required by this division and the amount actually paid towards the *health benefits rate*, plus interest.
 - (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 court may award as a penalty up to treble the amount of monies to be paid as damages.
 - (5) 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 so prevails if the employee's suit is found to be frivolous.
- (b) A *business* is prohibited from any retaliation against an employee who alleges non-compliance with this division. Any such employee may report any alleged retaliation to the *City Manager*.

- (c) A *covered employee* claiming a violation of the division may file a complaint with the *City*. The *City* may, in its sole discretion, investigate and address any alleged violation of this division's requirements. However, the *City's* failure to investigate an alleged violation or otherwise enforce any of the provisions of this division shall not create any right of action or right to recover damages from the *City* by any person, including but not limited to an aggrieved employee.
- (d) The *City* has the discretion to terminate the *service contract, financial assistance agreement, or City facility agreement* and pursue any other legal remedies available to the *City*, including debarment, if the *covered employer* fails to comply with this division.
- (e) A violation of this division shall not be prosecuted as a misdemeanor, notwithstanding any other provision of the San Diego Municipal Code.
- (f) This division shall not be construed to limit an employee's right to bring legal action for a 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.

§22.4135 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.

- (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, 2007, or as soon thereafter as is practicable, the *City Manager* shall submit a report to the City Council generally describing the effects of the City of San Diego Living Wage Ordinance upon the *City*.

§22.4140 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.

§22.4145 Severability

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.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the ninetieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Catherine M. Bradley
Deputy City Attorney

CMB:jab
04/08/2005
05/19/2005 Rev.
Or.Dept:Rules
0-2005-9 (rev)