

ORDINANCE NUMBER O-19382 (NEW SERIES)

ADOPTED ON MAY 24, 2005

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2,  
DIVISION 28 OF THE SAN DIEGO MUNICIPAL CODE  
BY AMENDING SECTIONS 22.2801 AND 22.2802,  
RELATING TO RETENTION OF PERSONS EMPLOYED  
BY BUSINESSES THAT CONTRACT WITH THE CITY.

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

WHEREAS, the City wishes to minimize the hardship imposed on employees of City contractors when City service contracts change hands; NOW, THEREFORE:

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

Section 1. That Chapter 2, Article 2, Division 28, of the San Diego Municipal Code is amended by amending sections 22.2801 and 22.2802 to read as follows:

**§22.2801 Purpose and Intent**

- (a) The City awards many contracts to private firms to provide services to the City. The City also leases City Facilities to private firms to operate. These contractors and lessees may subcontract all or a portion of the services to others. At the conclusion of the term of a contract with the City or the expiration of a subcontract, the process of competition sometimes results in the award of the contract to a new or different contractor.
- (b) It is the experience of the City that the reasons for changing contractors do not necessarily include a need to replace workers presently

performing services who already have useful knowledge about the workplace where the services are performed. Incumbent workers may have invaluable knowledge and experience with the work schedules, practices, patrons or clients that are particular to the City Facility or the location where the services are rendered. Replacing these workers could decrease efficiency and result in a disservice to the City, the City Facility and its citizens. Retaining existing service workers could avoid such problems, enhance continuity of service to citizens, and reduce the likelihood of labor disruptions or disputes at the City Facility or the location where the services are rendered.

- (c) It is unacceptable that contracting decisions involving the expenditure of City funds could result in the immediate loss of employment to workers on a City service contract who did not cause or contribute to the need to change contractors. It is the intent of the Council to provide these incumbent employees with a reasonable opportunity to obtain possible employment with the new contractor. It is the additional intent of the Council to avoid or minimize the disruption in services which may be caused by a change in contractors.

#### **§22.2802 Definitions**

As used in this Division:

- (a) “City Facility” means sports, entertainment or convention building structures in excess of 17,000 square feet in floor space that are owned, operated or leased by the City.

- (b) “Contract” means a contract, subcontract or other agreement let by, or on behalf of, the City to provide Services at a City Facility or any other location, in excess of \$25,000 and with a term of more than ninety days. For the purposes of this Division, Contract does not include (i) procurement contracts for the purchase or lease of goods, products, equipment supplies or other property; (ii) professional service contracts; or (iii) construction contracts.
- (c) “Contractor” means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a Contract, subcontract, or other agreement to provide Services at a City Facility or any other location.
- (d) “Covered Employee” means an Employee, as defined in this division, who has been employed by the Terminated Contractor for a period of six months or longer at the site or sites covered by the Terminated Contractor’s contract with the City.
- (e) “Employee” means any service employee of a Contractor, including but not limited to: hotel employees; on-site restaurant, food service or banquet employees; concession employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; ticket takers; and clerical employees. “Employee” does not include managerial, supervisory, or confidential employees, or those persons required to possess an occupational license or certificate.

- (f) “New Contractor” means the Contractor who has been awarded the Contract to replace the Terminated Contractor when the Terminated Contractor’s contract terminates.
- (g) “Services” means those services performed by Covered Employees.
- (h) “Terminated Contractor” means the Contractor providing Services at a City Facility or any other location, at the point in time that a Contract for such Services is awarded to a New Contractor.

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

Section 3. 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

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