



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: October 10, 2007 [Rev signatures] REPORT NO: 07-144

ATTENTION: Budget and Finance Committee
Agenda of October 17, 2007

SUBJECT: Living Wage Ordinance Administration during Fiscal Year 2007

REFERENCE: Living Wage Ordinance: San Diego Municipal Code Chapter 2, Article 2, Division 42; and
Manager's Report No. 05-090, City Manager's Analysis of Proposed Responsible Wage and Benefits Ordinance

REQUESTED ACTION: Accept report.

STAFF RECOMMENDATION: Accept report.

BACKGROUND:

This report, in accordance with San Diego Municipal Code §22.4235(c), describes administration of the Living Wage Ordinance (LWO) during Fiscal Year 2007 (July 1, 2006 – June 30, 2007). The LWO requires employers for specified contracted City services to compensate employees who perform work on these contracts under a predetermined wage structure. The ordinance was adopted in June 2005 and applied to contracts as they were awarded, amended, renewed, or extended on or after July 1, 2006.

Implementation

Initial administrative activities to implement the LWO included identification of applicable contracts; inclusion of appropriate contract language in relevant documents; modification of existing record maintenance systems and databases; and development of a process to investigate and resolve complaints. Informational material was prepared for distribution to City staff, businesses, and the general public.

As prescribed by San Diego Municipal Code §22.4235(a), a document, *Rules Implementing the Living Wage Ordinance*, was developed and posted on Purchasing & Contracting Department's Vendor Information web page with other contract requirements. These *Rules* provide clarity and ensure consistency, including sections on applicability, exemptions, employer requirements, recordkeeping and reports, monitoring and investigation, enforcement, and an employee complaint process. The *Rules* are updated as necessary.

Appendices to the *Rules Implementing the Living Wage Ordinance* include:

- Current Living Wage Rates
- LWO *Notice to Employees* (English, Spanish)
- LWO *Certification of Compliance*
- LWO *Application for Exemption*
- LWO *Employee Complaint Form* (English, Spanish)

The *Rules Implementing the Living Wage Ordinance* and all notices and forms are available at http://www.sandiego.gov/purchasing/pdf/lwo_rules.pdf and are included with this report [see Attachment A].

Applicable Contracts

The LWO applies on service contracts with a term of more than 90 days and an annual value over \$25,000. For the City, primary services include landscaping, janitorial, security, and laundry services.

During the first year of the LWO, the ordinance applied as contracts were 1) awarded or 2) amended or renewed. The following chart shows the number of each type of contract:

LWO CONTRACTS IN FY07	
CONTRACT TYPE	NUMBER OF CONTRACTS
Newly awarded contracts	74
Amended or renewed contracts	<u>35</u>
TOTAL FY07 CONTRACTS	109

A list of all LWO contracts during Fiscal Year 2007, *Contracts with LWO Clause (July 1, 2006 – June 30, 2007)*, is attached to this report [see Attachment B].

Employer Requirements

A covered employer must meet the following LWO requirements:

- Pay covered employees \$10.34/hour plus \$2.07/hour for health benefits (rates are adjusted annually; Fiscal Year 2007 rates were \$10 + \$2).
- Provide 10 compensated and 10 additional uncompensated days off per year.
- Inform employees of their possible right to Federal Earned Income Tax Credit.
- Allow City access to LWO records.
- Prohibit retaliation against an employee for allegation of LWO non-compliance.

- Submit a *Certification of Compliance* for each applicable project.

An employer may request an exemption for the following reasons:

- The business employs fewer than 12 employees, including parent and subsidiaries.
- The business is a 501(c)(3) non-profit and the highest officer's pay is less than eight times the lowest workers pay.
- A collective bargaining agreement specifically supersedes the LWO.

Specific contracts are categorically exempt from the LWO:

- Public works construction, recycling or solid waste management franchise contracts.
- Cooperative procurement contracts or contracts with other government agencies.
- Contracts subject to Federal or State law that precludes applicability.
- Contracts for goods, property, or lease of property with City as lessee (unless services are more than incidental).
- Contracts for design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other professional services.

Complaints, Reports, and Audits

No formal, written complaints were received during Fiscal Year 2007, though several issues were raised and successfully addressed to preclude filing of a formal complaint. Responses were provided to requests for information from contractors, workers, and advocacy groups. During initial months, most of the requests were from contractors seeking details on requirements prior to submitting bids as well as workers inquiring whether jobs were covered by the LWO.

Requests will be made during Fiscal Year 2008 for covered employer annual reports required by San Diego Municipal Code §22.4225(c); every effort will be made to include such reports within existing contractual processes. Random and targeted compliance audits are planned during Fiscal Year 2008.

FISCAL CONSIDERATIONS:

The anticipated effect of the LWO on City service contracts was thoroughly analyzed in a Manager's Report published in April 2005. Page 18 of Manager's Report 05-090, *City Manager's Analysis of Proposed Responsible Wage and Benefits Ordinance*, estimated, "the additional cost impact to the City would be approximately 20.99%."

When a contract is renewed, there is a basis to capture cost increases attributable to the LWO through a comparison of prior and subsequent values. In Fiscal Year 2007, an option to renew was exercised on 35 contracts.

Generally, the cost to extend a contract is expected to be less than the cost to re-bid a contract due to expenses for development of specifications and requests for bids, solicitation,

advertisement, award, and confirmation of bonds and insurance. There are also operational costs associated with startup on a new contract. For these reasons, many contracts are prepared for an initial one or two year term with several options to renew. (The City of San Diego City Charter, Article VII, Section 99, caps the length of a service contract at five years without a public hearing and two-thirds Council approval.) This renewal procedure allows the City to retain satisfactory contractors while allowing an opportunity to re-bid if performance or terms are no longer beneficial to the City.

During the renewal process, a cost-of-living adjustment is awarded based on the regional Consumer Price Index (CPI). To achieve compliance with the LWO, each renewing contractor submitted justification itemizing prior employee costs with additional amounts needed to meet LWO requirements. These justifications were evaluated by department Procurement Specialists and approved when amounts were deemed reasonable and appropriate. The following chart summarizes cost increases for contract renewals during Fiscal Year 2007:

FY07 CONTRACT RENEWAL COST INCREASES ATTRIBUTABLE TO LWO						
PRIOR VALUE OF CONTRACTS	INCREASE DUE TO CPI		INCREASE DUE TO LWO		ACTUAL INCREASE	LWO % INCREASE
\$4,930,545	\$182,612	+	\$1,242,129	=	\$1,422,358	25.19%

An itemized list of each LWO contract renewed during Fiscal Year 2007, *Contract Renewal Cost Increases Attributable to LWO (July 1, 2006 – June 30, 2007)*, is attached to this report [see Attachment C].

The increase is expected to be the largest during this first year of ordinance implementation because wages were lifted across the board. The amount of increase, 25.19%, reflects the leap from base, frequently minimum wages with no health benefits, to the living wage. Future contract renewals will grant only a Consumer Price Index increase in accordance with San Diego Municipal Code §22.4220(b).

Cost increases for renewals may reflect a higher increase than the amount which will occur when contracts are competitively bid. When bidders must factor identical wages, the successful low bidder’s margin will result from efficiencies in overhead and administration.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None regarding this report.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Inquiries were made to specific contractors regarding how to best meet the needs of the business community. Almost universally, contractors expressed their willingness to comply with the LWO, but asked for 1) clarity and consistency regarding the requirements; and 2) to the extent possible, a minimal impact of additional paperwork. These requests were considered during development of *Rules Implementing the Living Wage Ordinance* with its notices and forms.

During preparation prior to the LWO effective date, discussions were held with living wage

administrators for several government agencies including Baltimore, with the oldest ordinance, and San Francisco, with arguably the most far-reaching ordinance. A field visit was made to the Department of Public Works in the City of Los Angeles whose LWO administration is recognized as high-performing in *The Living Wage* by Robert Pollin and Stephanie Luce. Generous advice was offered by these sources. All encouraged communication with social justice, labor, and faith-based advocates for a living wage.

The Center on Policy Initiatives was a lead proponent for passage of the LWO and has remained active and interested in the progress of its administration during its initial year. The Center on Policy Initiatives asked for lists of applicable contracts and submitted Freedom of Information Act requests regarding certain contract documents.

In recognition of the strong contributions made by a bilingual workforce in covered service contracts, both the *LWO Notice to Employees* and the *LWO Employee Complaint Form* are available in Spanish, as well as English. Purchasing & Contracting Department employees who are fluent in Spanish assist with translation services when required.

Educational LWO articles have appeared in a department quarterly newsletter distributed electronically to many City employees and available in a print version for contractors and other visitors to Purchasing & Contracting Department offices. A *Frequently Asked Questions* handout regarding the LWO is also displayed. Several times a year, the department sponsors a workshop for potential bidders entitled, "How to Do Business with the City"; this presentation includes information about LWO requirements. The Purchasing & Contracting Department Deputy Director and the LWO administrator addressed a session of the San Diego Labor & Employment Relations Association, upon request, to discuss the LWO.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders for the LWO are 1) residents of the City of San Diego; 2) covered employees; and 3) covered employers.

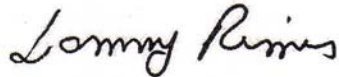
Residents have multiple interests at stake, some of which may appear to be at odds, even within a single individual. As taxpayers, implementation of the LWO certainly increases operational costs, though these costs may be offset by increased efficiencies. But as recipients of City services, an improvement to stability of a sufficiently-paid workforce is reflected in enhanced care of assets. As supporters of economic justice, an identity asserted by numerous San Diegans on political, religious, or simply moral grounds, many residents do not want their government to perpetuate substandard wages for services. And finally, some residents of San Diego *are* the covered employees and covered employers most effected by the LWO.

The impact to covered employees is obvious: an improved standard of living. The following chart compares possible annual earnings for a full-time worker (assume 52 weeks, 40 hours) at the rates in place during Fiscal Year 2007:

EMPLOYEE WAGE COMPARISON	
WAGE RATE	ANNUAL PAY
Minimum Wage @ \$7.50/hour	\$ 15,600
Living Wage, with paid health benefits @ \$10/hour	\$ 20,800
Living Wage, full cash payment @ \$12/hour	\$ 24,960

Covered employers are immediately impacted by the LWO because they must modify their business practices to ensure compliance. They must pay LWO wage rates with health benefits (it is the employer's discretion to provide health benefits or pay a full-cash wage), notify employees if a job requires living wages, and notify employees of their possible right to Federal Earned Income Tax Credit. Employers have had to become familiar with new regulations and incorporate changes into their bid estimates. Many covered employers with both LWO contracts and non-LWO contracts now have two tiers of pay for employees. However, a benefit for employers is the ability to offer generous wages and benefits to workers, a factor that should assist in employee retention with an overall growth in stability for the business.

Overall, the Living Wage Ordinance is being efficiently implemented and managed for the City of San Diego.



Tammy Rimes, Acting Director
Purchasing & Contracting Department



Rich Snapper
Acting Assistant Chief Operating Officer

[Attachment A: Rules Implementing the Living Wage Ordinance](#)

[Attachment B: Contracts with LWO Clause \(July 1, 2006 – June 30, 2007\)](#)

[Attachment C: Contract Renewal Cost Increases Attributable to LWO \(July 1, 2006 – June 30, 2007\)](#)