

# **RULES IMPLEMENTING THE LIVING WAGE ORDINANCE**

Effective July 1, 2016, Revised November 21, 2025



## **Office of Labor Standards & Enforcement**

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# 1. INTRODUCTION

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## 1.1 STATEMENT OF AUTHORITY

The Office of Labor Standards and Enforcement (OLSE) adopts these Rules Implementing the Living Wage Ordinance (Rules) pursuant to San Diego Municipal Code (SDMC) section 22.4235 (a) of the Living Wage Ordinance (LWO or the Ordinance). The Ordinance is codified as Chapter 2, Article 2, Division 42 of the SDMC. These Rules shall govern the administration and enforcement of the LWO.

The Living Wage Program (LWP) is empowered to develop and implement rules and procedures to carry out the intent of the LWO.<sup>1</sup> This includes establishing guidelines for handling complaints, conducting investigations, making compliance determinations, and determining appropriate remedies for violations of the Ordinance.

## 1.2 PURPOSE

The purpose of these Rules is to provide guidance and notice for covered employers to ensure full compliance with the requirements of the LWO and detail complaint procedures and labor rights for covered employees. Additionally, these Rules provide City of San Diego departments and staff with clear guidelines on the administration of contracts and agreements subject to the LWO. These Rules also provide notice of the procedures and requirements applicable to appeals from determinations made pursuant to the Ordinance, as well as hearings over those appeals, providing standards, ensuring consistent practices, and providing clear guidance to parties and hearing officers.

In developing these Rules, OLSE prioritized fulfilling the legislative intent of the LWO and providing clarification of Ordinance sections to facilitate efficient program administration. In case of any conflict between the Rules and the LWO, or any other ordinance, the Ordinance shall govern. All covered employers, including subcontractors and independent contractors who perform work or provide services pursuant to an agreement subject to the LWO, are required to abide by the requirements of the LWO and these Rules.

## 1.3 DEFINITIONS AND CLARIFICATIONS

The definitions outlined in SDMC §22.4205 of the LWO are hereby incorporated herein by reference. Additionally, the following definitions are provided, refined, and extrapolated from SDMC §22.4205 for the purposes of readability and clarity in these Rules:

**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.

**Complaint** means a report or allegation of a violation of the LWO, whether submitted by a covered employee, another individual, an organization, or initiated by the City based on information received or observed.

**Covered employee**, also referred within these Rules as employee, means:

1. Any individual employed on a full-time, part-time, temporary, or seasonal basis by:
  - a. **Service Contractors:** Employees working any hours in connection with the performance of a service contract; or

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<sup>1</sup> SDMC §22.4235(a)

- b. **Financial Assistance Recipients:** Employees who work at least 20 hours per month at the site or on the project covered by a financial assistance agreement.
- 2. Exclusions from Covered Employee definition:
  - a. **Students:** Individuals who receive academic credit in addition to wages for their work from an accredited educational institution.
  - b. **Job Trainees:** Individuals participating in job training and education programs designed specifically to provide basic job skills or education.
  - c. **Executive, Administrative, or Professional Employees:** Employees who qualify as executive, administrative, or professional under California Labor Code section 515(a). To be excluded, these employees must:
    - i. Regularly exercise discretion and independent judgment in their duties.
    - ii. Spend more than 50% of their work time engaged in exempt duties.
    - iii. Earn a salary of at least twice the state minimum wage for full-time employment.

If the description of an “executive, administrative, or professional employee” is amended in the California Labor Code, such description shall also apply to these Rules.

- d. **Bona Fide Volunteers:** Individuals who perform work or provide services to a nonprofit organization recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code for civic, charitable, or humanitarian purposes without the expectation of receiving wages, compensation, or other remuneration for their services. Volunteers offer services freely and without coercion, and regular employees have not been displaced to accommodate the volunteer.

**Covered employer**, also referred within these Rules as employer or covered contractor, means a *service contractor, financial assistance recipient*, or any authorized agent thereof.

**Hourly wage** refers to the mandated base hourly wage rate that must be paid directly to covered employees for their work. This rate represents the minimum amount that an employee earns for each hour of work, before any additions such as overtime, bonuses, tips, or other forms of compensation.

**Living Wage Program** or LWP, means the City of San Diego’s Office of Labor Standards & Enforcement (OLSE) Living Wage Program, which is responsible for monitoring compliance with the LWO, including but not limited to the investigation of alleged violations from complainants and *covered employees*.

**Managerial employee** and **supervisory employee** is someone who earns above the living wage rate and has the authority to make key decisions about other employees, such as hiring, promoting, disciplining, directing their work, or handling grievances. This authority must involve independent judgment and go beyond routine tasks or clerical duties.

**Minimum Wage** has the same meaning as in SDMC §39.0104.

**Retaliation** means any threat, discipline, discharge, demotion, suspension, reduction in work hours, or any other adverse employment action against any employee for exercising or attempting to exercise any right guaranteed by the LWO.

**Services** means the services and employment activities specifically listed in SDMC § 22.4205 (a)-(t) and any other non-managerial, non-supervisory, or non-professional services that are consistent with the intent of this Division and designated in a *financial assistance* agreement or *service contract*. See Appendix B for expanded definitions of covered services. These expanded definitions are provided for guidance and clarification purposes only and may be updated or amended as necessary to ensure consistency with the LWO and these Rules.

**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). This also includes cost-neutral and revenue-generating contracts.

**Service contractor** means any *business* that has been awarded a *service contract* subject to this Division, including nonprofit businesses, unless specifically exempted under section 22.4215(c)(2). For the purposes of the LWO, *service contractor* also includes all subcontractors or franchisees retained by a *business* to perform any or all of the functions covered by a *service contract*.

**Wages** means the amount paid to a *covered employee* as compensation for labor performed, consistent with California Labor Code §200. 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.

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

## **2. LIVING WAGE ORDINANCE INTERPRETATION**

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### **2.1 AUTHORITY FOR ENFORCEMENT**

The Office of Labor Standards and Enforcement's (OLSE) Living Wage Program is the City's designated enforcement office for the Living Wage Ordinance.<sup>2</sup>

### **2.2 CONTRACTUAL OBLIGATIONS**

The Living Wage Ordinance and these accompanying Rules do not diminish or alter the contractual obligations agreed upon by any parties under an existing contract. Employers and employees must continue to uphold their respective responsibilities and commitment as outlined in their agreements, regardless of and in addition to the Ordinance's provisions or enforcement actions.

### **2.3 CONCURRENT LEGAL ACTION**

A covered employee retains the right to initiate legal action against a covered employer by filing a claim in a court of competent jurisdiction for violations under the Ordinance.<sup>3</sup> Filing a complaint with the LWP is not required before taking legal action, nor does submitting a complaint prevent the employee from pursuing other legal remedies. Nothing in the Ordinance or these Rules limits or prevents any party, including the City, from filing a separate private civil action, initiating criminal charges, or filing concurrent wage violation claims with appropriate local, State, or federal enforcement agencies. The City's failure to investigate an alleged violation or enforce any provisions of the LWO does not create any right of action to recover damages from the City by any person.<sup>4</sup>

### **2.4 SEVERABILITY**

The provisions of these Rules are independent and severable. If any portion is determined to violate the law, be invalid, or conflict with the Ordinance, such findings shall be applied as narrowly as possible. All unaffected provisions shall remain valid and enforceable.

### **2.5 LIBERAL CONSTRUCTION OF RIGHTS, NARROW CONSTRUCTION OF EXEMPTIONS**

In accordance with SDMC §22.4215(d), the definitions of *service contract* or *financial assistance agreement*, shall be liberally interpreted to further the policy objectives of the LWO. Exemptions from the Ordinance, however, shall be narrowly construed to ensure the fullest possible protection of covered employees.

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<sup>2</sup> SDMC §22.5701(c)(1)(C)

<sup>3</sup> SDMC §22.4230(a)

<sup>4</sup> SDMC § 22.4230(e)

### 3. APPLICABILITY OF LWO

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#### 3.1 TYPES OF COVERED AGREEMENTS

The LWO applies to the following types of covered agreements:<sup>5</sup>

A. Service Contracts

1. A service contract refers to any agreement between the City and a business, including any applicable subcontracts, for the provision of services. Compliance with the LWO is required during the term of any service contract, or applicable subcontract, that is entered, awarded, amended, renewed, or extended.
  - a. Service Contracts include cost-neutral service contracts, which are agreements in which the costs incurred by the City for providing specific services are entirely covered by the fees paid directly or indirectly, resulting in no net impact (profit or loss) to the City.
  - b. Service Contracts include revenue-generating contracts, which are agreements designed to produce income for the City while delivering services for the City.
2. Contracts for the purchase or rental of goods or equipment fall under the LWO only if a significant component of the contract involves providing services, as determined by the City department administering the contract. If the provision of services is incidental, the LWO does not apply. See Section 4 regarding LWO exemptions for more information.
3. The LWO only applies to service contracts in which the City is a party to the contract.

*Example:* The City leases office space from a landlord who manages all services related to the property for the use of City staff. The LWO would not apply to contracts between the landlord and service providers.
4. As-needed service contracts (e.g., on-call service contracts) are covered by the LWO.

B. Financial Assistance Agreements

1. Financial Assistance Agreements are agreements between the City and a business designed specifically to promote either Economic Development or Tourism, Arts, and Cultural Programs.
2. Economic Development Agreements focused on Economic Development, Job Creation, and/or Job Retention, with a combined value of \$500,000 or more, are subject to the LWO.
  - a. “Economic Development” refers to activities aimed at improving the economic well-being of the community, which may include initiatives that stimulate local business growth, attract new investments, and enhance infrastructure.
  - b. “Job Creation” refers to the process of providing new employment opportunities, typically through the establishment of new businesses or expansion of existing ones.

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<sup>5</sup> SDMC §22.4210 (a)(1-4)

- c. "Job Retention" refers to efforts made to keep existing jobs within a community or organization, often through support and incentives that prevent layoffs or business closures.
3. "Combined value" refers to the total financial worth of all agreements related to a specific project or initiative articulated in the Financial Assistance Agreement. It includes all funding sources, grants, contracts, or other financial commitments associated with economic development, job creation, or job retention activities, including below-market loans, rebates, deferred payments, forgivable loans, land write-downs, infrastructure or public improvements, or other actions of economic value identified in the agreement.
4. Five-year period refers to a continuous duration of five years, starting from the date of the first agreement or funding allocation. All agreements made within this period are aggregated to assess their total value.
5. Once the combined value of \$500,000 threshold is met, the financial assistance recipient is required to adhere to the requirements of the LWO for a subsequent period of 5 years.
6. For agreements for Tourism, Arts, and Cultural programs with a combine annual value of \$750,000 or more, compliance with the LWO must continue for one year after the threshold amount has been received by the business, or for the duration of the agreement if over \$750,000.

## **3.2 DETERMINATION OF COVERAGE**

### **A. Presumption of Coverage**

Any agreement for services listed under SDMC §22.4205, whether resulting from a competitive bidding process or not and whether formalized into a fully executed agreement or procured through a purchase order, is presumed to be covered by the LWO, unless explicitly exempt.

### **B. Catch-All Provision**

When assessing whether services fall under the LWO's definition of "*non-managerial, non-supervisory, or non-professional services*", the following factors must be considered prior to the execution of a contract:

1. Nature of Job Duties: The tasks should involve routine, operational, or manual labor, rather than strategic decision-making or managerial functions.
2. Decision-Making Authority: The individual(s) performing the service should have little to no authority to make independent decisions that impact the operation of the organization, including decisions related to policy, staffing, or budgeting.
3. Educational or Professional Credentials: The position should not require advanced degrees or professional licenses (e.g., CPA, law degree), but may require vocational certificates or basic training.
4. Wage Classification: The regular hourly wages of the staff performing the services should reasonably compare to living wage thresholds, ensuring that it is compensated at levels set for non-exempt, hourly workers.

5. Scope of Responsibility: The responsibilities are task-specific and do not include broad oversight of programs, projects, or departments.
6. Consultation with the LWP. Before executing any contract involving services that may fall under the LWO catch-all provision, City departments should first consult with their assigned Procurement Contracting Officer for an initial assessment. If questions remain, departments should then consult with their assigned City Attorney for further legal clarification. Should uncertainty persist, departments are required to seek a final determination from the LWP. The LWP maintains a list of services previously determined to fall under the catch-all provision available for City departments as reference.

### **3.3 USE OF OWN EMPLOYEES**

#### **A. Prime Contractor Performance Requirement**

Prime service contractors must use their own employees to perform at least fifty percent (50%) of the work under the service contract.<sup>6</sup>

#### **B. Duty to Submit Documentation**

Prime service contractors are required to submit accurate and complete documentation of the labor force used for a contract, including records demonstrating compliance with the 50% requirement. Upon request by the LWP, a prime service contractor must provide the following documentation regarding its labor force and any subcontractors, independent contractors, or leased employees involved in the contract:

1. Timecards or other attendance records
2. Work schedules
3. Copies of subcontracts
4. Payroll records
5. Lists of employees (including their contact information) performing work under the contract
6. Any additional records deemed necessary to verify compliance with the LWO and the 50% performance requirement.

The prime service contractor is required to submit documentation to the LWP within ten business days of the request, with reasonable requests for extension as approved by the LWP.

#### **C. Percentage Calculation**

The requirement that fifty percent of the work must be performed by the prime service contractor's own employees can be met by showing two factors:

1. The service contractor's own employees' wages constitute at least fifty percent of the total labor costs of the contracted work and

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<sup>6</sup> SDMC §22.4210(c)

2. The service contractor's own employees' cumulative hours constitute at least fifty percent of the total labor hours for the contracted work.

D. Own Employees

"Own employees" refers to individuals who are on the payroll of the prime service contractor, with taxes and benefits being paid by the contractor. The term excludes subcontractors, leased employees, and independent contractors.

E. Consequences for Non-Compliance

If a prime service contractor subcontracts more than 50% of a service contract, it will be deemed in violation of the LWO pursuant to SDMC §22.4230(f). Upon determination of non-compliance, the LWP may issue a Notice of Violation (See Rule 11, Enforcement) and recommend one or more of the following actions:

1. Cancellation of the contract
2. Return of contract funds
3. Breach of contract determination
4. Debarment
5. Assessment of Civil Penalties

F. Employer Burden to Demonstrate Compliance

When requested by the LWP, a prime service contractor must provide sufficient documentation to demonstrate compliance with the fifty percent (50%) self-performance requirement. If the contractor has subcontracted more than fifty percent (50%) of the work, the documentation must show that subcontracting in excess of the threshold was necessary, reasonable, and consistent with the San Diego Municipal Code and City contracting requirements.

### **3.4 STANDARD LWO CONTRACT LANGUAGE**

Unless otherwise provided for within these Rules, all City contracts, purchase orders, and agreements subject to the LWO must incorporate the standard LWO contract language. The LWP coordinates with City departments and the Office of the City Attorney to provide updated standard LWO contract language, as necessary.

## 4. EXEMPTIONS TO THE LWO

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### 4.1 CATEGORICAL EXEMPTIONS

Section 22.4215 of the LWO categorically exempts eight types of contracts executed by the City. Advanced determination by the LWP is not required for categorical exemptions, and City departments are not required to refer categorically exempt agreements to the LWP for compliance monitoring.

A. Contracts for Public Works Construction

SDMC §22.4215 (a)(4) exempts contracts for public works construction. This includes contracts subject to prevailing wage for the construction, reconstruction or repair of public buildings, streets, utilities, and other public works.

B. Cooperative Procurement Contracts

SDMC §22.4215 (a)(5) exempts cooperative procurement contracts, which means those awarded under SDMC §22.3208.

C. Contracts for the Purchase of Goods, Property, or the Leasing of Property

SDMC §22.4215 (a)(6) exempts contracts for the purchase of goods, property, or the leasing of property.

1. Purchase of Goods: This refers to contracts for the purchase of articles, commodities, materials, supplies, equipment, or insurance. Contracts for the purchase or rental of goods by the City are not subject to the LWO unless associated services are non-incidental.
2. Purchase and Lease of Property: This refers to contracts involving the sale or lease of City-owned property under SDMC Chapter 2, Article 2, Division 9, as well as contracts where the City leases private property for use in City operations. This includes agreements for both short and long-term leases.
3. Incidental Services: Contracts for the purchase or rental of goods or equipment that include non-incidental services are subject to the LWO. Incidental services are defined as services that are part of an agreement primarily for the purchase or rental of goods or equipment, performed on a non-recurring and irregular basis and determined by the City to be necessary for the performance of the contract. Services are not considered incidental, even if the primary purpose of the agreement is to purchase or rent goods or equipment, if the agreement requires services to be performed on a regular schedule. The City department administering the contract is responsible for making the determination if services are required on a regular schedule as part of the performance of the contract.

D. Contracts for Professional Services

Pursuant to SDMC §22.4215 (a)(7), contracts for professional services, as described in California Labor Code §515(a), are categorically exempt from the requirements of the LWO. This includes contracts for design, engineering, financial, technical, legal, banking, medical, management, operating, advertising, or other professional services. The exemption for

professional medical services does not apply to contracts for emergency medical personnel, which include emergency medical technicians (EMTs) and paramedics.

Factors for determining if services are considered professional for the purposes of LWO applicability, and thus categorically exempt, include:

1. Licensure and Certification: The service provider holds a California-issued professional license or certification in a regulated field (e.g., attorney, doctor, architect, engineer, CPA). The license must be current, issued by a recognized professional board, and related to the services provided to the City.
2. Advanced or Specialized Education: The individual or firm has completed advanced education or holds a specialized technical degree (such as a master's, doctorate, or equivalent certification) in their field. The service typically requires a graduate-level degree or specialized training beyond vocational or technical education.
3. Independent Judgment and Discretion: The service requires significant use of independent judgment, analysis, and discretion. Professionals such as consultants, auditors, and attorneys make decisions based on their expertise, rather than following pre-determined routines or instructions. The role often involves advising clients, providing expert opinions, or designing tailored solutions to complex problems.
4. Complex, Non-Routine Work: The tasks involved are complex and cannot be standardized. Professional services typically address unique problems, like designing infrastructure, providing legal representation, or developing customized financial plans. The work is generally project-based or advisory, rather than repetitive or manual.
5. Professional Accountability and Oversight: Professionals are held to high ethical standards and are typically subject to regulatory oversight (i.e., legal or medical boards) or adhere to a professional code of ethics. Accountability may also include continuing education and adherence to laws and standards specific to the profession.
6. Specialized Knowledge or Expertise: The service requires highly specialized knowledge or skills that are not easily transferable or replaceable.
7. Consulting or Advisory: The contract includes advisory services such as consulting, strategy development, or expert analysis, which require independent thought and specialized problem-solving.<sup>7</sup>

## **4.2 EXEMPTIONS REQUIRING CITY APPROVAL**

To qualify for an exemption under SDMC §22.4215(c), covered employers must apply for an exemption from the LWO to the LWP on the Application for Exemption form(s) included in Appendix A. An exemption is not valid until the LWP issues written approval of the covered employer's application.

The following types of businesses may be exempt from the LWO upon approval from the LWP:

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<sup>7</sup> SDMC §22.4215(b)

A. Small Business Exemption

A business may apply for an exemption if it employs 12 or fewer employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and the City determines that the business, including its subcontractors, will not need to retain more than 12 employees to perform work related to the subject agreement.

To determine the number of employees a business employs, the LWP will consider all the following:

1. The covered employer's employees as of the date the contract is signed.
2. The employees the covered employer reasonably believes it will hire during the contract.
3. The employees of the covered employer's parent and subsidiary entities, and
4. The employees of any subcontractors and/or independent contractors the covered employer proposes to use on any of the services covered by the contract.

Along with the Application for Exemption, the covered employer must provide written documentation verifying the number of employees. Acceptable documentation includes:

1. A letter on the covered employer's letterhead and signed by an officer who is authorized to legally bind the entity attesting that no more than 12 employees are needed to complete the work and if the business subsequently hires more than 12 employees, the business is aware they have a duty to notify the LWP and the contract will then be subject to the LWO.
2. A copy of the firm's previous two quarters State of California Employment Development Department Quarterly Contribution Return and Report of Wages (Continuation) [form DE9C].

The LWP may request additional documentation as part of the application process to verify compliance with other labor standards, such as payment of minimum wage.

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. Small Business Exemption: Sole Proprietors

A business operating as a sole proprietorship with no employees that will not use any subcontractors to complete the services to the City may apply for a small business exemption under SDMC §22.4215(c)(1). Along with the Application for Exemption, the covered employer must provide a Sole Proprietor Self-Attestation form. See Appendix A.

C. Non-Profit Businesses

A business organized under section 501(c)(3) of the United States Internal Revenue Code, 26 U.S.C. section 501(c)(3) to provide community-based social services, other than childcare services, may apply for an exemption under SDMC §22.4215(c)(1). 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 is recognized as a nonprofit corporation under section 501(c)(3) of the United States Internal Revenue Code.

2. A statement showing that the business' highest-paid officer's salary, when calculated on an hourly basis, is less than eight times the hourly wage rate of the lowest-paid covered employee. In calculating the salary of the highest-paid officer and the wage rate of the lowest-paid covered employee, compensation such as cash allowances for car expenses, meals, parking, or the value of pension plan contributions will not be included.

D. Collective Bargaining Agreements

Under SDMC §22.4240, a business that employs members of a collective bargaining unit under a collective bargaining agreement (CBA) may exempt a contract from the LWO, provided such waiver is explicitly stated in the CBA itself. The covered employer must provide a copy of the CBA with the Application for Exemption.

1. Alternative Acceptable Documentation

If the CBA does not specifically indicate that it is exempt from, or waives, the provisions of the LWO, the covered employer shall submit written confirmation from the union representing the employees that the union and the employer have agreed that the CBA supersedes the LWO.

The provisions of the LWO shall not be interpreted to require an employer to reduce the wages and benefits required by a CBA.

2. Provisional LWO Exemption for CBA in Negotiations

A covered employer may apply for a provisional exemption from the LWO if the employer and the union are engaged in negotiations and the issue or supersession of the LWO has been proposed. Any Application for Exemption must include some documentation confirming the employer and the union are engaged in negotiations regarding the LWO. If provisional exemption status is granted, it is valid until the end of the negotiation process.

At the end of the negotiation process, the covered employer must provide the LWP with a copy of the final collective bargaining agreement to verify that it supersedes the LWO and the effective dates.

If the final CBA supersedes the LWO, the employer shall be exempt for the time period covered by the effective dates.

If the final CBA 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.

### **4.3 DETERMINATION OF EXEMPTION**

- A. The LWP will review all Applications for Exemption and issue a final determination within a reasonable time period, generally no later than ten working days after receiving all required forms and documentation from the covered employer. If necessary, the LWP may consult with City Attorney's Office before issuing its determination.

- B. Unless otherwise stated, a determination by the LWP 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.
- C. An exemption approval does not automatically extend to any subcontractor. A prime service contractor is obligated to submit all Applications for Exemption on behalf of their subcontractor(s) to the LWP.
- D. If the Living Wage Ordinance categorically exempts an agreement from the requirements of the LWO, then neither the prime contractor nor any subcontractors working on the agreement will be subject to the LWO.
- E. The LWP will maintain a list of all businesses approved for LWO exemptions and the associated contracts, including business name, contract information, date of approval, type of services provided, and expiration date.

#### **4.4 RECISSION OF LWO EXEMPTION APPROVAL**

A. Discretionary Approval of Exemptions

The LWO exemption approval is granted at the sole discretion of the LWP. This approval may be rescinded if the covered employer no longer meets the exemption qualifications or if disqualifying information is discovered.

B. Notification of Recission

If an LWO exemption is rescinded, the LWP will issue a written notice to the covered employer. The notice will include an explanation of reasons for the recission, along with any relevant findings or supporting documentation.

C. Exemption Compliance Reviews

The LWP is authorized by the Ordinance to conduct compliance reviews to verify continued compliance with exemption requirements.<sup>8</sup> Covered employers are required to submit all requested documentation outlined in the request for records within the specified timeframe from the applicable notice to support their exemption status.

D. Failure to Provide Documentation

Covered employers are required to submit all requested documentation within the timeframe specified by the LWP to maintain exemption status. Failure to provide the requested documentation within the required timeframe will result in the revocation of the exemption. The covered employer may subsequently provide documentation demonstrating that the exemption criteria was met during the relevant period; however, until such documentation is produced and accepted by the LWP, the exemption will be deemed void.

E. Retroactive Enforcement

In cases where an exemption is rescinded, the LWP may enforce the LWO retroactively to the start date of the contract or to the date the exemption status was no longer met. This

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<sup>8</sup> SDMC §22.4235(a)

enforcement includes, but is not limited to, the assessment and recovery of back wages owed to covered employees.

#### **4.5 APPEAL PROCESS FOR DENIAL OR RECISSION OF LWO EXEMPTION**

A. Right to Appeal

A covered employer may contest the denial or rescission of an LWO exemption by the LWP.

B. Submission of Appeal

To initiate an appeal, the covered employer must submit a written request addressed to the Department Director within 10 business days of service of the notice from the LWP.

C. Contents of Appeal Request

The written appeal request must include:

1. The name and contact information of the business
2. A clear identification of the contract or agreement
3. A detailed statement explaining the reasons for contesting the decision, including relevant facts, arguments, and an explanation of why the business believes the decision was incorrect, and all relevant evidence or documentation supporting the appeal, such as records, correspondence, or other materials that substantiate the business's position.

Failure to include all required elements may delay or impact the appeal process.

D. Appeal Process

Upon the receipt of a timely written notice of appeal, the Department Director is responsible for designating a hearing officer and scheduling the hearing promptly. The following guidelines apply to these informal proceedings:

1. Designation of Hearing Officer. The Department Director will appoint a City staff member to conduct the hearing. The designated staff member must not work within the line of supervision of the Office of Labor Standards and Enforcement Program Manager and will not have been privy to details of the appellant's certification status. The designated staff member must not have participated in the decision to recommend denial or rescission of the LWO exemption.
2. Notice of Hearing. The Department Director will send written notice via e-mail and U.S. Postal Service to the appellant with the date, time, and location of the hearing at least 15 business days prior to the date of the hearing.
3. Submission of Information. The appellant must provide all information pertinent to the hearing to the designated hearing officer no later than 5 business days before the scheduled hearing date.
4. Decision Timeline. The appointed hearing officer shall render a written decision within 10 business days of the hearing's conclusion. If the case's complexity requires additional time, the decision timeline may be extended by an additional 10 business days.
5. Finality of Decision. The decision rendered by the hearing officer shall be the City's final decision.

6. Issuance of Written Decision. The written decision will be sent to the appellant via e-mail and U.S. Postal Service.
7. Failure to Appear. Failure to appear at the hearing is a waiver of the appellant's right to contest the denial or revocation of their LWO exemption. A hearing will not be rescheduled unless requested prior to the original scheduled date.
8. Right to Present Evidence. Appellants have the right to present evidence at the hearing. All evidence to be considered by the hearing officer or their designee will be retained by the Department Director. Formal rules of evidence and discovery do not apply.
9. Representation. Legal representation is not required. However, parties may have legal representation, if desired. Either party may designate an authorized representative (non-legal representative) at the hearing.
10. Hearing Location and Format. All hearings will be held at Civic Center Plaza during normal business hours. Hearings may be held virtually or telephonically.

## 5. EMPLOYER REQUIREMENTS

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### 5.1 REQUIREMENT TO PAY MINIMUM COMPENSATION

A. Payment of Living Wage

A covered employer must pay all covered employees a living wage, as required by the LWO<sup>9</sup> and these Rules. The current living wage rate and all historical wage rates are posted on the LWP webpage.

B. Wage Rate and Benefits

A covered employer is required to pay the living wage rate and benefits to covered employees for each hour the covered employee works on the subject agreement. Benefits include health benefits or cash equivalent, compensated leave time, and uncompensated days off.

C. Overtime Requirements

A covered employer must pay all covered employees' overtime at a rate of time and a half the current living wage rate, in accordance with applicable State and federal laws. This requirement includes compliance with the Fair Labor Standards Act (FLSA) and California Labor Code, which requires overtime pay for all hours worked in excess of eight hours in a single day or forty hours in a workweek. These overtime requirements apply to all work performed under contracts and agreements covered by the LWO.

D. Prohibition on Wage Reimbursement or Kickbacks

A covered employer is strictly prohibited from requiring employees to return any portion of their wages, including any amounts paid to meet the requirements of the LWO. This prohibition includes, but is not limited to, any form of direct or indirect kickbacks, payments, or wage deductions not authorized by law.

E. Wage Offset Prohibition

A covered employer shall not use tips, gratuities, commissions, service charges, in-kind benefits, overtime premiums, or bonuses earned by a covered employee to offset the wage rate required by the LWO.

### 5.2 COMPOSITION OF THE LIVING WAGE

A. Base Hourly Rate

The base hourly rate is the direct payment made to covered employees for all hours worked under the applicable LWO agreement. This rate serves as the minimum compensation that employees must receive for their labor. Any hours worked over eight hours in a day or forty hours in a work week must be paid at time and a half of this rate.

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<sup>9</sup> SDMC §22.4220(a)

B. Health Benefits Rate

In addition to the base hourly rate, the living wage includes a health benefits rate. This rate refers to the minimum dollar amount per hour toward the cost of health benefits for covered employees and their dependents. Health benefits include medical, dental, vision, and other health services, but excludes benefits related to retirement, disability, accidental death and dismemberment insurance, and life insurance.

C. Payment of Living Wage Rates

Covered employers have two payment options regarding how they can fulfill the requirement to pay the living wage rates:

1. Full Cash Wage Option: A covered employer may pay the covered employee the living wage as a full cash wage, which includes the hourly base rate and health benefits rate combined and paid directly to the employee with no deductions for health benefits. If the employer elects not to provide health benefits, the employer must pay the full cash wage to all covered employees.
2. Health Benefits Option: A covered employer may pay the covered employee the base hourly rate plus a separate health benefits payment towards a defined and established health benefits plan. Employers must maintain records, and provide to the LWP upon request, showing employees receive a credit towards health benefits.

If an employer elects to provide health benefits through a plan costing less than the minimum dollar amount per hour as specified in the LWO, the difference shall be added to the covered employee's hourly wage rate as a cash payment.

A health plan that costs more than the health benefits rate does not permit an employer to pay less than the base hourly rate to an employee.

A co-premium may be required of an employee only if the total cost of the health benefits exceeds the minimum dollar amount per hour as specified in the LWO. In such cases, the employee's share may not exceed the difference between the total cost of the health benefits and the LWO-specified minimum employer contribution.

A supplemental unemployment benefit (SUB) plan does not meet the definition of health benefits under the LWO.

D. Calculation of Back Wages

1. If a covered employer is found to be out of compliance with the requirement to pay living wage rates, back wages owed to covered employees will be based on the total deficiency in compensation. This includes the difference between the required hourly rate of pay (including health benefits) and the amount actually paid.<sup>10</sup>
2. For health benefits, the calculation will include the difference between the required health benefits rate and the amount the employer actually paid toward health benefits for the covered employee.<sup>11</sup>

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<sup>10</sup> SDMC §22.4230(b)(1)

<sup>11</sup> SDMC §22.4230(b)(2)

3. If documentation confirming hours worked and evidence of pay do not exist, the LWP may rely on a covered employee's own records or reasonable, realistic estimates to calculate back wages owed.

*Example:* The living wage rate is \$25 per hour, with a base rate of \$20.00 per hour and a health benefits rate of \$5.00 per hour. The employer does not provide health benefits to their employees, and paid a covered employee \$20 per hour for 500 hours of work on a covered services contract. The employee would be entitled to \$2,500 in back wages:

$(\$25 \text{ living wage rate} - \$20 \text{ rate of pay}) \times 500 \text{ hours} = \$2,500$

### **5.3 COMPLIANCE WITH ALL LABOR STANDARDS**

#### **A. Service Contracts**

In accordance with SDMC §22.3004(c), contractors and subcontractors must comply with all local, State, and federal laws, including health and safety, labor and employment, and licensing laws, throughout the term of the contract.

#### **B. Minimum Wage**

Regardless of any exemption from the LWO, all covered employers are required to comply with the City of San Diego Earned Sick Leave and Minimum Wage Ordinance (SDMC Chapter 3, Article 9, Division 1). This includes ensuring all employees, including those not covered by the LWO, are paid at least the current City minimum wage rate while performing work within the geographic boundaries of the City, and complying with all other requirements of the Earned Sick Leave and Minimum Wage Ordinance. These requirements apply to all employees, irrespective of their status under the LWO, ensuring that no worker earns less than the legally mandated minimum wage.

#### **C. Prevailing Wage**

When a contract is subject to the requirements of both the LWO and State and/or federal prevailing wage laws, the covered employer must pay a covered employee the highest wage rate, as determined by the sum of the required hourly wages, health benefits, and compensated leave.

#### **D. Referral to Appropriate Authorities**

If an investigation under the LWO identifies labor or employment violations outside the jurisdiction of the LWP, the matter will be referred to the appropriate authorities for further action.<sup>12</sup> The LWP retains the authority to collaborate with relevant local, State, or federal agencies to address violations beyond its enforcement scope.

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<sup>12</sup> SDMC §22.4230(f)(5)

## **5.4 LWO HEALTH BENEFITS**

### **A. Proof of Benefits**

If a covered employer elects to provide a covered employee with health benefits as part of their compensation, the covered employer must submit proof of the provision of such benefits to the LWP upon request.

### **B. Failure to Submit Documentation**

Failure to submit the requested health benefits documentation, or submission of documentation that does not demonstrate full compliance with the LWO, may be treated as evidence of non-compliance. In such cases, the LWP may proceed with enforcement based on the best available evidence, including employee testimony and reasonable estimates of hours worked and benefits owed. A covered employer may cure this deficiency by submitting documentation that demonstrates health benefits were provided and received by covered employees.

### **C. Adjustment of Back Wages**

If a covered employer provides sufficient documentation demonstrating that health benefits were provided and received by covered employees, the calculation of back wages and owed benefits will be adjusted based on the evidence submitted.

## **5.5 COMPENSATED LEAVE**

### **A. Requirement to Provide Compensated Leave**

1. A covered employer must provide covered employees with a minimum of 80 hours of compensated leave hours per year.
2. Compensated leave can be used for illness, vacation, or personal need.
3. A covered employer may choose to provide covered employees with more compensated leave than is required under the LWO.
4. Covered employers must maintain records showing the accrual and use of compensated leave and documentation showing that employees received written or electronic notice of both their right to take compensated leave and their available compensated leave balances. Failure to provide and/or maintain these records creates a rebuttable presumption that the covered employer is in violation of this requirement and failure to provide compensated leave to their employees.

### **B. Accrual of Compensated Leave**

1. Minimal Accrual Rate. Covered employees must accrue a minimum of 80 compensated leave hours per year. Part-time employees must accrue compensated leave at a proportional rate compared to full-time employees. For purposes of calculating proportional accrual, covered employees must accrue compensated leave at a rate equivalent to, or greater than, one hour for every 25 hours worked. Covered employees who work full-time, presumptively 40 hours per week for 50 weeks per year, must accrue

at least 80 compensated leave hours per year. All compensated leave hours vest as they accrue.

2. Front-Loading Leave. Covered employers may front-load the required 80 hours of leave per year to covered employees in separate paid time off buckets, such as PTO, vacation, and paid sick leave, as long as the combined amounts of compensated leave equal no less than 80 hours per calendar year. All compensated leave hours vest as they accrue.

*Example:* An employer with an established employee leave policy that provides 5 days (40 hours) of paid vacation per year and 5 days of paid sick leave (40 hours) per year is compliant with the LWO.

3. Establishing a Benefit Year. Covered employers may designate their own benefit year (e.g., calendar, anniversary date, fiscal year, etc.) If a covered employer does not specify an established benefit year or is found in violation of LWO compensated leave requirements, the LWP may use a calendar year or City of San Diego fiscal year (Jul 1- Jun 30) as the default benefit year for calculating back wages owed for compensated leave, depending on the circumstances of the investigation and whichever is more beneficial to the employees.

C. Use of Compensated Leave

1. Employee Rights. A covered employer may not unreasonably deny a covered employee's request to use accrued compensated leave.
2. Default to Paid Leave. A covered employee's request for time off is presumed to be a request for paid time off, unless the covered employee specifically asks to use unpaid time off.
3. Eligibility. A covered employee shall be eligible to use accrued compensated leave after the first 90 days of employment, or consistent with company policy of local, State, and/or federal laws and requirements, whichever is sooner.

D. Unused Compensated Leave

1. Vested Benefit. Unused compensated leave accrued by a covered employee working under a subject agreement is considered a vested benefit and must be paid out upon termination of employment, in accordance with California Labor Code section 227.3, as amended, and applicable federal laws, unless otherwise specified by a CBA.
2. Carryover. Unused compensated leave carries over to the next benefit year, unless the covered employer has an established, written leave policy that replenishes paid time off at the beginning of each benefit year with no less than 80 hours and/or 10 days.

- E. Short-Term Services. For services of one day or less, covered employees must be paid additional wages equivalent to the proportional rate of compensated leave in lieu of receiving leave hours. This requirement is not necessary for covered employers with established leave policies that provide covered employees with 80 hours or more of compensated leave per benefit year. The calculation for additional wages for services less than one day is:

**Additional Wage Rate = (Employee's Hourly Rate of Pay÷25) × Total Hours Worked**

*Example:* An employee with an hourly rate of \$20 per hour who works 8 hours on a short-term services contract would be calculated as:  $(\$20 \div 25) \times 8 = \$6.40$  additional wages

F. Established Compensated Leave Policy

The LWP may determine that a covered employer's established compensated leave policy complies with the LWO, even if it does not strictly adhere to the accrual rate and eligibility deadlines outlined in the LWO or these Rules. In making this determination, the LWP will consider the following factors:

1. Whether the policy provides more than 80 hours or 10 days of paid leave per year.
2. Whether paid leave is available to covered employees within the legal requirements of local, State, and federal paid sick leave laws.
3. Whether requiring modification of the policy would reduce the benefits available to covered employees.

G. Paid Holidays

Paid holidays that are provided under an established employer policy shall not be counted toward the provision of the 80 compensated leave hours.<sup>13</sup> The payment of premium pay for work performed on a holiday does not constitute compensated leave for the purposes of the LWO. For a holiday to qualify as one of the minimum 80 compensated leave hours required under the LWO, a covered employee who works on a holiday must be allowed to take another paid day off in lieu, even if the covered employee is provided with premium pay for the hours worked on the holiday.

H. Bereavement Leave

Bereavement leave provided under the California Family Rights Act (CFRA) does not count toward the total compensated leave required under the LWO.

I. Paid Sick Leave

1. Covered employers may receive a credit towards the total amount of compensated leave required under the LWO for paid sick leave provided under SDMC and State sick leave laws.
2. To receive credit for sick leave hours accrued, sick leave balances must appear on covered employees' itemized wage statements, in compliance with Labor Code section §226(a).
3. Unused sick leave is not required to be paid out to an employee at the termination of employment, unless otherwise dictated by local and/or State laws.

J. Failure to Provide Compensated Leave

Failure to provide compensated leave as required by the LWO constitutes a willful violation of the LWO and may be deemed material breach of the contract, which may result in contract termination or other enforcement actions.

If a covered employer fails to provide the required compensated leave, the LWP will assess damages owed. Compensated leave damages will be calculated as the total value of the

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<sup>13</sup> SDMC §22.4205

compensated leave hours that should have been accrued by the employee, paid at the employee's hourly rate of pay, per benefit year, less any compensated leave provided.

*Example:* An employee with an hourly rate of \$20 per hour worked full-time or 2000 hours on a City services contract in a fiscal year. The employee should have accrued the full 80 hours of compensated leave based on the hours worked ( $2000 / 25 = 80$ ). Their employer provided 40 hours of paid sick leave and no other compensated leave. The employee would be entitled to the payment of an additional 40 hours of compensated leave at their regular rate of pay in compensated leave damages, whether the employee requested the use of compensated leave or not.

**40 hours X \$20 regular rate of pay = \$800 in compensated leave damages**

## 5.6 UNCOMPENSATED LEAVE

### A. Requirement to Provide Unpaid Leave

A covered employer must provide a covered employee working on an agreement subject to LWO requirements at least eighty (80) hours of uncompensated leave hours as needed, per benefit year.<sup>14</sup> This leave may be used as needed for personal or immediate family illness after the covered employee has exhausted all compensated leave hours provided by the employer.

### B. Concurrent with State and Federal Leave

Uncompensated leave hours provided under the LWO may run concurrently with other leave entitlements under federal or State laws, such as the Family and Medical Leave Act (FMLA), or the California Family Rights Act (CFRA), provided the covered employee qualifies for such leave. If the employee does not qualify for State or federal leave, the 80 hours of uncompensated leave under the LWO must still be made available.

### C. Accrual of Leave

Unlike compensated leave, uncompensated leave is not accrued on an hourly basis but must be available to eligible employees at the start of the benefit year, or as otherwise specified by written agreement.

### D. Written Notice and Records

Covered employers must provide written notification of the uncompensated leave benefit to all covered employees, including details about its availability and conditions for use, at the start of employment or upon the effective date of this requirement. An employer's written notice to employees in compliance with the annual notice requirements under the LWO meets this notice requirement.

Employers must maintain records of uncompensated leave provided and make these records available to the LWP upon request. Failure to maintain and provide records will create a rebuttable presumption that the employer is in violation of this requirement.

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<sup>14</sup> SDMC §22.4220(e)

E. Unused Uncompensated Leave

Any unused hours of uncompensated leave at the end of the benefit year have no monetary value and do not carry over to subsequent years. Uncompensated leave is not a vested benefit and does not entitle the employee to any financial or other compensation upon termination of employment.

F. Failure to Provide Uncompensated Leave

Failure to provide uncompensated leave as required by the LWO constitutes a willful violation of the LWO and may be deemed a material breach of the contract, which may result in contract termination or other enforcement actions. Employees who are denied uncompensated leave and can provide documentation of their request, along with proof of denial by their employer, may be entitled to recover damages. Additionally, the LWP may assess a penalty of \$100 per covered employee per benefit year for failure to provide uncompensated leave benefits.

## **5.7 NOTICE & POSTING**

A. Notice to Employees

1. Initial Notification. Covered employers must notify all covered employees of their rights under the LWO at the time of hire.
2. Annual Notification: Covered employers must distribute written notice with the first paycheck issued after July 1 to covered employees. This notice must include the requirements of the LWO, information about the possible availability of health insurance coverage under the Affordable Care Act, and information about the possible availability of the Earned Income Tax credit. See Appendix A.

B. On-Site Posters

1. Each covered employer must post a notice informing covered employees of their rights under the LWO and any applicable exemptions from the hourly wage rate requirements.
2. The poster must be displayed at the worksite or at the location frequently accessed by covered employees. It must be placed prominently and in an easily accessible location where it can be clearly seen by all covered employees. Covered employers must update posters annually, or within thirty days of receiving notice from the City of amended hourly wage rates under the LWO.
3. If covered employees do not have access to a regular break room based on the type of services provided, the required postings may be provided in an electronic format accessible to all covered employees (e.g. an online payroll or time entry system).

C. Failure to Provide Notice & Posting

Failure to display the required postings at the work site is subject to a penalty of \$100 per site visit conducted by the LWP; this penalty is payable to the City.

Employers who fail to provide written notice to employees informing them of their rights under the LWO may be assessed a penalty of \$100 per benefit year that the employer failed to provide the required written notice under the applicable LWO agreement. This penalty is payable directly to the affected employees. These penalties do not preclude other remedies or enforcement actions.

## 5.8 EMPLOYER RECORDS

### A. Duty to Maintain Records

Covered employers must create and maintain contemporaneous written or electronic records documenting compliance with the LWO for at least three years.<sup>15</sup> For the purposes of the LWO, “three years” means three full calendar years from either the date of record creation or the termination date of the agreement subject to the LWO, whichever is later.

### B. Required Records

Covered employers must maintain the following records for all covered employees:

1. Wage Records: Including itemized wage statements/pay stubs, payroll records, and any supporting documentation of wages paid, including State and federal tax documents.
2. Health Benefits: Proof of payment for health benefits, including cost breakdowns and amounts paid by the employer.
3. Employee Information: Including full names, addresses, dates of hire, job classifications, and rates of pay.
4. Hours Worked: Employers must create and maintain detailed records of hours worked in each pay period and identify the employee hours worked under the applicable LWO contract or agreement.
5. Time Off: Employers must create and maintain records of accrued and used compensated and uncompensated leave.

### C. Access to Records

Records must be made available to the LWP upon request, including during an investigation, audit, or compliance review. Records must be organized, legible, complete, and submitted in a manner that is not overly cumbersome. Disorganized, illegible, or incomplete records are deemed non-compliant and may result in enforcement action.

### D. Failure to Produce Records

Failure to produce requested records within thirty days of a formal request may be treated as evidence of non-compliance with the LWO. In such cases, the LWP may rely on the best available evidence, including employee testimony and reasonable estimates of hours worked, wages paid or owed, and leave accrued or used.

Submitting false, fabricated, or altered records constitutes a violation of the LWO. Employers may not create new documentation to retroactively comply with a records request.

### E. Civil Penalty

Covered employers who fail to maintain or produce the required records may be subject to a civil penalty of \$100 per day for each day the records are not produced after the 30-day request deadline. The LWP may impose alternative penalties or corrective actions, depending on the severity of the violation, including but not limited to, civil penalty for producing false or fabricated records, recommendation for contract termination, or additional enforcement actions as authorized under the SDMC and LWO.

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<sup>15</sup> SDMC §22.4225(d)

## 6. LIVING WAGE PROGRAM ADMINISTRATION

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### 6.1 ADMINISTRATIVE RECORDS

#### A. Covered Agreements

The LWP shall maintain a list of all subject and exempt agreements for at least five years following the termination of the agreement, including all applications for exemptions and any approvals or denials of such applications.

#### B. Complaint and Audit Files

The LWP shall maintain a file of all complaints, investigations, compliance audits, and results for at least five years following the conclusion of an investigation.

### 6.2 ANNUAL REPORTS TO CITY COUNCIL

#### A. Reporting Period

The LWP shall prepare and provide an annual report to the City Council detailing the activities of the Program and the effects of the LWO.<sup>16</sup> The annual reporting period is the City's fiscal year (July 1 to June 30).

#### B. Contents of Report

The annual report shall provide a summary of LWO compliance monitoring and enforcement activities, training, and outreach efforts, and the LWP updates and administration. A list of all service contracts referred to the LWP for monitoring shall be included in the annual report; the list shall include the category of service, contractor name, and total amount of contracts awarded.

#### C. Publicly Available

A copy of the annual report to Council shall be posted on the LWP webpage.

#### D. Monthly Reports

To assist in providing accurate data for annual reports, the LWP shall provide monthly compliance data to the OLSE Program Manager.

### 6.3 ANNUAL LIVING WAGE RATE ADJUSTMENTS

#### A. Calculation

1. Per SDMC §22.4220(b), the LWP calculates the annual wage adjustment using data from the U.S. Department of Labor's Bureau of Labor Statistics (BLS).<sup>17</sup>

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<sup>16</sup> SDMC §22.4235(c)

<sup>17</sup> [www.bls.gov](http://www.bls.gov)

2. The annual increase is calculated using the average monthly Consumer Price Index for All Urban Consumers (CPI-U) for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area, covering the period from January to December of the previous year.
3. The new adjusted living wage rate is determined by multiplying the previous base hourly rate by the percentage increase in the average CPI-U, then adding that amount to the previous base rate.
4. If the CPI-U reflects a negative change, the living wage rate will remain unchanged for that year.

B. Health Benefits Rate

The health benefits rate shall increase using the same CPI percentage increase as the base hourly rate.

C. Effective Period

The adjusted living wage rates take effect on July 1 and remain in effect until June 30, aligning with the City's fiscal year.

D. Notification of Rate Increases

Upon calculating the new living wage rates, the LWP shall issue written notifications to the OLSE Program Manager and all relevant City departments, providing notice of the upcoming living wage rate increases. The LWP shall post the adjusted living wage rates on the LWP webpage and issue written notification to all affected contractors by April 1. The LWP shall maintain historical data on all living wage rates and increases for reference and reporting purposes.

E. Adjustments Due to Minimum Wage Increases

1. If the City of San Diego, State, or federal minimum wage increases above the base hourly rate currently in effect, the living wage base hourly rate will automatically adjust to match the highest minimum wage. This adjustment will take effect on the same date the new minimum wage becomes effective. The next annual living wage adjustment will be based on the most recent adjusted living wage rate.
2. If the living wage rate is adjusted due to a minimum wage increase, the LWP will notify all affected City departments and covered employers as soon as possible. The adjusted living wage rates will be posted on the LWP webpage, and updated notices will be issued.

## 7. COMPLIANCE MONITORING

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The LWP is responsible for monitoring covered employer compliance with the LWO.<sup>18</sup> This includes collecting compliance documentation, conducting site visits, reviewing certified payrolls, and performing compliance audits.

### 7.1 LWO CERTIFICATION OF COMPLIANCE

All covered employers are required to file a LWO Certification of Compliance with the LWP.<sup>19</sup> Covered employers must also ensure that all applicable subcontractors file a LWO Certification of Compliance with the LWP. The following procedures detail how covered employers can meet this Ordinance requirement. A LWO Certification of Compliance is included in these Rules as Appendix A.

#### A. Service Contracts

1. Formal Contracts: Covered employers submit an executed LWO Certification of Compliance with their bid documents. The Purchasing & Contracting Department will provide the LWP a copy upon execution of the contract.
  - a. Options to Renew: Contractors are not obligated to resubmit a signed LWO Certification of Compliance for any options to renew exercised by the City.
  - b. Subcontractor Substitution or Additions: Should a prime contractor substitute subcontractors or add additional subcontractors throughout the course of the contracted services, the prime contractor is responsible for ensuring any new subcontractors submit a signed LWO Certification of Compliance and submit documentation to the LWP.
2. Purchase Orders: For purchase orders subject to the LWO, covered employers have two compliance options.
  - a. During Purchase Requisition Process: The covered employer may submit a Certification of Compliance to the City department that is preparing the purchase order. The completed certification must be submitted to the Purchasing & Contracting Department, who will submit it to the LWP for recordkeeping and compliance monitoring.
  - b. Annual Certification: A covered contractor may complete an Annual Certification of Compliance, which eliminates the need to submit individual compliance documentation for subsequent purchase orders issued to the same covered employer within the same fiscal year. Once filed, the Annual Certification of Compliance applies to all purchase orders for the contractor for the remainder of the City's fiscal year. The LWP will maintain a list of all contractors who have an Annual Certification of Compliance on file and make this list available to City departments to streamline the purchase order process.

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<sup>18</sup> SDMC §22.4235

<sup>19</sup> SDMC §22.4225(c)

B. Financial Assistance Agreements

Financial aid recipients must file a LWO Certification of Compliance upon receipt of a financial assistance agreement. The Economic Development Department will provide the LWP a copy upon execution of the financial assistance agreement.

## **7.2 ANNUAL COMPLIANCE REPORT**

Covered employers are required to file an annual report documenting compliance with the LWO.<sup>20</sup> The following procedures detail how employers meet this requirement.

A. Who is Required to Submit A Report

Prime service contractors and financial assistance recipients must submit an Annual Compliance Report documenting adherence to the LWO. An Annual Compliance Report is not required for covered employers who perform services for the City only under purchase orders that are not tied directly to a formally executed, multi-year service contract.

B. Notice

The LWP will issue annual correspondence to each covered employer by July 31, notifying them of this requirement and providing necessary forms. A copy of the Annual Compliance Report is included in Appendix A.

C. Due Date

Annual Compliance Reports are due to the LWP within 30 days of a covered employer's receipt of notification.

D. Failure to Comply

Failure to submit an Annual Compliance Report is considered a willful violation of the LWO and may be deemed a material breach of contract, which may result in enforcement, including but not limited to contract suspension or termination, withholding of payments, assessment of civil penalties, or debarment from future City contracts.

## **7.3 ACCESS TO WORK SITES & SITE VISITS**

A. Duty to Allow Access

Covered employers must allow the LWP staff access to work sites to observe work conditions, verify compliance, and interview employees.

B. Failure to Provide Access

Refusal to provide access to work sites or to allow employee interviews is considered a willful violation of the LWO and may be deemed a material breach of contract, which may result in enforcement, including but not limited to contract suspension or termination, withholding of payments, assessment of civil penalties, or debarment from future City contracts.

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<sup>20</sup> SDMC §22.4225(d)

C. Site Visits Procedures

Site visits are conducted by the LWP to obtain information, verify LWO compliance, and interview covered employees and workers present. The primary goal is to gather evidence of the number of employees working onsite, establish hours worked, discuss employer duties and obligations under the LWO with workers, and confirm living wage notices are accessible.

1. Advance Notification and Coordination: Site visits will generally be unannounced to ensure an accurate assessment of compliance. Coordination with City departments may occur to confirm workers will be on-site and facilities will be accessible.
2. Safety Protocols: Site visits must be conducted during normal business hours unless workers are only available in the evenings or other non-regular hours. LWP staff should check in at the site upon arrival to ensure proper coordination with site personnel. The safety of Living Wage staff is a priority; site visits should be conducted in teams to enhance safety and ensure support in case of emergencies.
3. Worker Interviews: Covered employers may not choose which employees are interviewed and may not prevent LWP access to workers. Interviews will take place where management cannot hear or see the interview. Any person providing translation services on behalf of an employee must allow an employee being interviewed to respond to questions from LWP staff independently and must not answer questions on behalf of an employee. The LWP staff should provide business cards and LWO information to workers. All interviews should be documented using the standard program interview forms.
4. Verification of Required Posters: Living Wage staff will verify that LWO notices and posters are prominently displayed in a conspicuous location accessible to all workers. Failure to post required notices should be documented and included in the site visit summary.
5. Site Visit Summary: Living Wage staff should prepare a detailed site visit summary for the investigation which includes date and time of visit, names of workers interviews, photos of posters and worksite conditions, and any compliance issues observed. The site visit summary should be documented in the investigation file promptly after the site visit.

## **7.4 CERTIFIED PAYROLL RECORDS**

A. Submission Requirement

Contractors and subcontractors providing services directly to the City under a services contract executed under SDMC §22.3203 with a total contract amount greater than \$150,000 are required to submit certified payrolls to the LWP using the City's web-based compliance monitoring system.

B. Frequency

Certified payrolls must be submitted at least monthly throughout the duration of the contract, and include all hours worked by covered employees on the subject contract.

C. Exemptions to Submission Requirements

1. Excluded Agreements: Certified payroll record submission is not required for financial assistance agreements or purchase orders not tied to formally executed multi-year service contracts.
2. Undue Hardship Exemptions: Covered employers may request an exemption from the certified payroll record submission requirement if compliance would create an undue hardship in executing the contract. Employers must submit a written request to the LWP detailing the specific reasons for the undue hardship. Submission requirements remain in effect while the request is under review. The LWP will review the request and issue a determination in writing, which will apply for the duration of the contract.
3. Prevailing Wage Requirements: Contracts subject to both the LWO and State and/or federal prevailing wage laws are not exempt from the certified payroll submission requirement. Covered employers must submit certified payroll records as required under State and/or federal prevailing wage laws. Where the submission frequency under prevailing wage laws differs from these Rules' monthly requirement, the frequency specified in the prevailing wage laws and regulations will control.

D. Consequences of Non-Compliance

Failure to submit certified payrolls to the LWP is considered a willful violation of the LWO and may be deemed a material breach of contract, which may result in enforcement, including but not limited to contract suspension or termination, withholding of payments, assessment of civil penalties, or debarment from future City contracts.

## **7.5 COMPLIANCE AUDITS**

A. Authority

The LWP is required to conduct periodic audits to ensure compliance with the LWO. Compliance audits may be initiated within three years after the final payment on a subject contract.<sup>21</sup>

B. Annual Compliance Audit Plan

The LWP will develop an annual compliance audit plan based on risk assessments and staffing capacity, targeting industries with a high risk of non-compliance based on data-driven research.

C. Notice of Compliance Audit

1. Covered employers selected for compliance audits will be provided at least 30 calendar days to submit requested documentation showing compliance with the LWO.
2. Employers may submit a written extension request, not to exceed 30 calendar days, to provide compliance documentation.

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<sup>21</sup> SDMC §22.4235

3. If violations of the LWO are identified during the compliance audit, the LWP shall issue a Notice of Violation (See Rule 11, Enforcement). The covered employer will have 30 calendar days from service of the Notice of Violation to cure the identified violations.

D. Cooperation During Compliance Audits

1. Covered employers must provide all requested documentation necessary to verify compliance with the LWO, including, but not limited to, payroll records, employee timecards, work schedules, subcontracts, and any other pertinent documents.
2. Failure to provide timely and complete documentation, or submitting falsified or incomplete records, limiting communication with employees, or otherwise obstructing or delaying the compliance audit process, may be deemed a willful violation of the LWO and a material breach of contract.

E. Consequences of Non-Cooperation

If a covered employer fails to fully cooperate with a compliance audit, the LWP may proceed with the investigation using the best available evidence. This may include information obtained from covered employees, credible testimony, or reasonable estimates of hours worked, wages paid or owed, and leave provided or denied.

## 8. LWO COMPLAINT PROCEDURES

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### 8.1 FILING A COMPLAINT

#### A. Authority to Investigate Complaints

The LWP is the City's designated body for investigating complaints under the LWO. Filing a complaint with the LWP is an optional administrative remedy that is encouraged to expedite compliance and resolve violations. This process does not restrict or limit a covered employee's right to pursue legal action independently.

#### B. Statute of Limitations

1. Complaints must be filed within three years of the alleged violations. Acceptance of complaints filed beyond this period is at the discretion of the LWP.
2. The statute of limitations may be tolled in the following situations:
  - a. While a covered worker exhausts remedies available under an applicable CBA.
  - b. When a covered employee could not reasonably know their rights under the LWO due to employer actions, such as failure to post required notices and posters.

#### C. Who Can File a Complaint

1. Any person or entity may file a complaint, including covered employees, community groups, labor organizations, agents, or attorneys representing workers.
2. Complaints may be submitted anonymously. Anonymous complaints will be given the same initial review as other complaints. However, anonymous complaints limit communication with the complainant and may result in a limited investigation.
3. The LWP does not legally represent covered employees and is not obligated to provide complaint status updates to third-party organizations while a complaint is under investigation.

#### D. Complaint Format

1. Complaints can be submitted in several ways, including:
  - a. Online: Completing the LWO online complaint form directly on the OLSE webpage
  - b. Phone: Speaking with an OLSE representative at (619) 236-6084
  - c. Email: Sending complaint details to [ContactLWO@sandiego.gov](mailto:ContactLWO@sandiego.gov)
  - d. Mail: Sending a written complaint to the Office of Labor Standards and Enforcement-Living Wage, 1200 Third Ave, Suite 900, MS CCP9-CD San Diego, CA 92101
  - e. In-person: In-person complaints are only accepted and processed if they arise during an LWP site visit.
  - f. Referral: City departments may contact the LWP to refer a complaint and/or tip based on the information or observations during contract administration.

2. Complaints must include sufficient details and documentation to establish the basis of the allegation(s), such as:
  - a. Pay records (e.g., timesheets, itemized wage statements/pay stubs)
  - b. Work agreements
  - c. Records or estimations of days and hours worked
  - d. Communications (e.g., text messages, emails, employer policies and handbooks)
  - e. Evidence of work performed, and payment(s) received (e.g., cash receipts, electronic payment transactions such as Venmo, PayPal, or CashApp, etc.).
3. Translation services are available to workers to file complaints in their native language upon request. Complainants, or their representatives, should contact the LWP directly for assistance.

E. Complaint Intake

1. Complaint Validation: Before initiating an investigation, the LWP will determine whether a complaint is investigable and within the LWP's jurisdiction. A complaint will be considered investigable when it contains sufficient information to determine a likelihood of a violation under the LWO, including the covered employer's name, whether the alleged violation occurred within the prior three years, and that the work was conducted under an agreement subject to the LWO.
2. Initial Burden of Proof: The complainant bears the initial burden of demonstrating sufficient information to make the complaint investigable and within the jurisdiction of the LWP. If, upon review, the LWP determines that the alleged violations do not fall under the LWO or are otherwise outside the program's jurisdiction, the complainant will be notified in writing. When appropriate, the LWP will also provide information on the proper agency to which the complaint may be directed.
3. Complainant Interviews: When deemed necessary, and if resources allow, the LWP may conduct initial interviews with complainants to gather additional information. This process may include:
  - a. Reviewing the nature of the complaint and the specific allegations.
  - b. Clarifying any details about the type of work performed, work hours and locations, employer(s) involved, alleged violations, and potential witnesses.
  - c. Gathering supporting evidence, such as pay records, timesheets, correspondence (e.g., text messages or emails) and work agreements.
  - d. Explaining the investigation process, including potential next steps, timelines, and how the LWP will maintain confidentiality throughout the investigation.

## **8.2 NOTICE OF ACCEPTANCE**

### **A. Notice of Complaint Status**

1. If a complaint is accepted, the LWP will issue a Notice of Acceptance to the complainant, confirming that an investigation has been initiated.
2. If a complaint is not accepted, the LWP will notify the complainant in writing, providing the reasons for rejection. The notification will include, if possible, a referral to the appropriate government agency or entity where the complainant may file their complaint.

### **B. Complaint Status Updates**

The LWP will provide periodic updates to complainants on the status of the complaint investigation, as resources allow. These updates are not bound to a specific timeframe and will avoid divulging sensitive or excessive information that could compromise the investigation's integrity. Upon the conclusion of an investigation, a covered employee who filed the complaint will receive written notification of the outcome within sixty (60) days.

## **8.3 NOTICE OF COMPLAINT AND REQUEST FOR DOCUMENTATION**

### **A. Format of Notice**

1. Upon the acceptance of a complaint, the LWP will issue a Notice of Complaint and Request for Documentation to the covered employer.
2. If the complaint involves a subcontractor, the prime service contractor will also be included in the Notice of Complaint and Request for Documentation to ensure accountability.
3. The Notice of Complaint and Request for Documentation will detail the allegations, specify the required documentation to be submitted for review, and provide instructions for submission.

### **B. Timeframe to Respond**

1. Employers will be provided at least fourteen calendar days to respond to the Notice.
2. Employers may request a reasonable extension, which must be submitted in writing and received by the LWP prior to the original due date specified in the Notice of Complaint and Request for Documentation.

### **C. Failure to Respond**

1. Failure to respond to a Notice of Complaint and Request for Documentation within the required timeframe is a willful violation of the LWO.
2. Employers who fail to respond or provide the requested documentation may be assessed a civil penalty of \$100 per day for each day the response is delayed. Penalties are payable to the City and may accrue until compliance is achieved.

## 8.4 CONFIDENTIALITY DURING INVESTIGATIONS

To promote the reporting of violations and ensure cooperation during investigations, the LWP upholds strict confidentiality standards.

### A. Protection of Complainant and Witness Information

1. The LWP will maintain the confidentiality of complainants and any individuals assisting in investigations. This includes names, addresses, and other identifying information as well as statements or evidence provided by complainants and witnesses. Confidentiality will be preserved to the extent permitted by law to protect individuals from retaliation or harm.
2. Complainants and witnesses will be informed of the LWP's confidentiality practices at the start of an investigation. Participants will also be advised of circumstances where disclosure may be legally required. Prior to disclosing any information, the LWP will evaluate the necessity and minimize exposure of sensitive details whenever possible.

### B. Safeguarding Proprietary Business Information

Proprietary or sensitive business records and information obtained during investigations will be protected. Disclosure of such information will be limited to situations required by law or necessary for enforcing the LWO.

### C. Confidentiality of Investigative Materials

All information collected during investigations, including complainant identities, worker interviews, and supporting documents, will remain confidential to the extent permitted by law. Records will be securely stored and accessible only to authorized personnel involved in the investigation.

## 9. RETALIATION

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### 9.1 PROTECTIONS AGAINST RETALIATION

- A. Employers are strictly prohibited from engaging in retaliation against any employee for exercising rights provided by the LWO.<sup>22</sup>
- B. These protections apply to any employee who reasonably and in good faith reports a violation of the LWO to their employer, to the City or the LWP, or to any governmental agency responsible for enforcing wage and hour laws applicable to the employer. These protections also extend to employees who mistakenly, but in good faith, allege noncompliance with the LWO.
- C. Employers shall not take any action that would discourage a reasonable worker from engaging in protected activity. Company policies, or statements by employers or their agents that would be understood by a reasonable worker to threaten against any activity protected under the LWO or these Rules, are considered unlawful retaliation.

### 9.2 ADVERSE EMPLOYMENT ACTIONS

- A. Retaliation refers to any threat, discipline, discharge, demotion, suspension, reduction in work hours, or any other adverse employment action taken against an employee for exercising or attempting to exercise any right guaranteed by the LWO. Unfair immigration-related practices are also considered an adverse employment action.
- B. Any adverse action taken in advance of protected activity shall constitute unlawful retaliation if it is taken either because the employer believes a worker will or may engage in protected activity, or as a means of preventing workers from engaging in protected activity.
- C. When an employer takes an adverse employment action within ninety (90) calendar day of an employee exercising rights under the LWO, the LWP will consider that timing a significant factor in assessing whether retaliation has occurred. The employer may be asked to provide documentation and evidence demonstrating that the action was based on legitimate business reasons unrelated to the employee's protected activity.

### 9.3 RIGHTS PROTECTED UNDER THE LWO

The following employee rights are protected under the LWO, and an employer may not retaliate against an employee for their exercise of these rights:

- The right to request and receive payment of the living wage.
- The right to request and use compensated and uncompensated leave.
- The right to receive written notice of the LWO requirements.

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<sup>22</sup> SDMC §22.4230(d)

- The right to file a complaint for alleged violations of the LWO with the LWP.
- The right to participate in any administrative or judicial action regarding violations of the LWO, including providing information, documentation, and/or witness statements to the LWP or any other enforcement agency during an investigation.

#### **9.4 SEPARATE CLAIM FOR RETALIATION**

The LWP shall consider retaliation complaints as separate and distinct from any potentially related complaint for the purpose of determining frequency of violations, files, or other remediation. A wage or benefit violation is not required for a valid retaliation claim.

#### **9.5 REMEDIES**

- A. The LWP will enforce the Ordinance's anti-retaliation protections in a manner that will make an aggrieved employee whole for the harm suffered. This may include reinstatement, backpay, and accrual of benefits that would have been earned absent unlawful retaliation. Backpay shall be calculated based on an employee's regular schedule and regular rate of pay from the date of the retaliatory adverse action until the date of the Notice of Violation, or the employer's remedial action, whichever occurs later.
- B. If an employer engages in retaliation against a covered employee, the employer may be subject to a civil penalty of triple back wages or \$1,000, whichever is greater, for each violation.<sup>23</sup>
- C. An employer who engages in retaliation against a covered employee for exercising any right provided by the LWO may also be assessed a civil penalty of up to \$1,000 per violation, payable to the City. The LWP may reduce this assessed civil penalty, as necessary and within the discretion of the LWP, based on the following factors:
  1. Employer's cooperation with an investigation and willingness to provide employee remedies, as determined by the LWP.
  2. Employer's history of noncompliance with the LWO and other labor laws and standards.
  3. Degree of retaliation (e.g., suspension, termination) and facts surrounding the adverse action.

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<sup>23</sup> SDMC 22.4230(b)(4)

## 10. INVESTIGATIONS

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### 10.1 PRIORITY OF INVESTIGATIONS

- A. The SDMC requires the LWP to investigate all alleged violations of the LWO<sup>24</sup> and conduct periodic compliance reviews.<sup>25</sup> The LWP has discretion to prioritize investigations based on the seriousness and specifics of the issues reported and program resources available.
- B. Investigations are categorized into: (1) complaint-based and (2) compliance audit-based investigations. Complaint-based investigations take priority over compliance audit-based investigations.

### 10.2 INITIATING AN INVESTIGATION AND SCOPE OF INVESTIGATIONS

#### A. Written Notice to Employer

Whether based upon a complaint, compliance audit, tip, or referral, the LWP shall initiate an investigation when there is a specific concern or complaint about a covered employer related to the LWO. Employers receive written notice of an investigation based on the following type of investigation:

- 1. Notice of Compliance Audit: Initiated as part of a compliance audit.
- 2. Notice of Complaint and Request for Documentation: Initiated by complaint, tip, or referral.

#### B. Scope of LWO Investigations

- 1. When the LWP initiates an investigation, it is not restricted to the individual complainant, the specific allegations outlined in the complaint, or the specific contract or location.
- 2. During an investigation, the LWP may investigate compliance across all:
  - a. Covered workers, not just those directly tied to the complaint.
  - b. Job sites operated by the employer, whether named in the initial complaint or not.
  - c. Covered contracts and agreements involving the employer to ensure compliance.
- 3. There is no limit to the number of investigations the LWP may conduct involving a covered employer. Separate complaints or audits may trigger additional investigations, if warranted.
- 4. To optimize resources and streamline processes, the LWP may consolidate multiple complaints and/or compliance audits into a single comprehensive investigation. Consolidation does not diminish the scope or importance of any individual allegation but allows for efficient resolution of overlapping issues.

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<sup>24</sup> SDMC §22.4230(e)

<sup>25</sup> SDMC §22.4235(a)

### 10.3 INVESTIGATION CASE FILE

Each investigation conducted by the LWP shall be thoroughly documented to ensure transparency, accountability, and compliance with the LWO. Each investigation shall be assigned a unique case number. Investigations can be combined or separated at the discretion of the LWP, as deemed necessary or appropriate to effectively address the circumstances of the case.

### 10.4 RESOLUTION OF AN INVESTIGATION

#### A. Closing an Investigation

The LWP may close an investigation when:

1. The investigation determines that the complaint is unsubstantiated, or the allegations fall outside the jurisdiction or authority of the LWP.
2. A compliance audit identifies no violations under the LWO.
3. The employer provides proof of complete restitution to all underpaid employees and remedies for all identified violations following the issuance of a Notice of Violation.
4. The complainant fails to cooperate with the LWP, including when the complainant does not provide requested information during the investigation, or formally withdraws their complaint.
5. The employer fails to respond to a Notice of Violation within 30 days and/or the employer fails to cure identified violations. In such cases, the enforcement process may proceed to a Notice and Order; however, the investigation itself will be closed.
6. The LWP refers identified violations to another government enforcement agency or office for further action.

#### B. Enforcement and Collection Efforts May Continue

The City may continue to pursue enforcement and collections efforts after the LWP closes an investigation.

#### C. Notice of Complaint and/or Compliance Audit Resolution

Within 60 calendar days of resolving an investigation<sup>26</sup>, the LWP will issue written notices to both the complainant and the affected employer, if applicable. The notice shall include a summary of the investigation, any identified violations, and restitution and/or remedial actions taken by the employer.

#### D. Maintaining the Investigation File

The LWP shall maintain records of an investigation for at least five years following the closure of an investigation. The investigation files shall include an investigation summary of actions taken, evidence collected and reviewed, correspondence, and documentation of employee restitution.

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<sup>26</sup> SDMC §22.4230(e)

## **10.5 PUBLIC RECORDS ACT & INVESTIGATION FILE**

Documents and information obtained during 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 an investigation or inquiry shall remain confidential while the investigation or inquiry is ongoing.

# 11. ENFORCEMENT

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## 11.1 NOTICE OF VIOLATION

### A. Issuance of Notice

If an investigation determines violations under the LWO, the LWP shall issue a written Notice of Violation to the employer.<sup>27</sup> The Notice will include the following:

1. A summary of the investigation findings;
2. A detailed description of the specific LWO violations;
3. Citations of the violated code provisions;
4. A list of actions required to correct or remedy the violations;
5. A detailed breakdown of amounts owed to each covered employee and an explanation for the amounts owed (e.g., underpayment of wages, denial of leave);
6. Identification of the specific contract(s) and/or agreement(s) subject to the LWO;
7. An outline of all potential civil penalties and interest that may be assessed if the Notice of Violation is not cured within the provided deadline; and
8. A specified timeline for compliance and the due date to cure the violations.

### B. Service of Notice

The Notice of Violation may be served personally or by registered mail in accordance with SDMC, Chapter 1, Article 1, Division 3. A copy will also be served electronically as a courtesy to ensure immediate delivery.<sup>28</sup> Prime service contractors will receive a copy of the Notice of Violation issued to subcontractors.

### C. Timeframe to Respond

The covered employer has 30 calendar days from the date of the Notice of Violation to submit a written declaration to the LWP.<sup>29</sup> The written declaration must either:

1. Demonstrate that no violation under the LWO occurred.
2. Certify that all identified violations have been cured and provide documentation; or
3. Dispute the amounts assessed.

### D. Extension of Time

The LWP may grant a reasonable extension of time for an employer to respond to a Notice of Violation upon written request. The extension request must be submitted and received within the initial 30-day response period.

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<sup>27</sup> SDMC §22.4230(f) and §12.0103

<sup>28</sup> SDMC §11.0301

<sup>29</sup> SDMC §22.4230(f)

## **11.2 CORRECTIVE PAYMENTS**

### **A. Lump-Sum Payments Required**

Employers must issue full payment of all amounts owed to covered employees in one lump sum, as outlined in the Notice of Violation, within the specified deadline.

### **B. Submission of Payment Records**

Employers must submit requested documentation to the LWP showing that corrective payments were made. The types of documents requested may include:

1. Copies of paychecks or direct deposit statements
2. Updated wage statements reflecting corrected wages, benefits, and/or hourly rates
3. Documentation of accrued leave adjustments, if applicable (e.g., corrected PTO or sick leave balances)
4. Signed acknowledgements from each covered employee confirming receipt of payment and understanding the corrected wages

## **11.3 DISPUTE OF AMOUNTS ASSESSED**

### **A. Submission of Documentation**

Employers disputing the amounts assessed must submit supporting documentation that is complete, accurate, and directly addresses the violations outlined in the Notice of Violation.

### **B. Timeframe for Submissions**

Supporting documentation must be submitted within 30 calendar days of the Notice of Violation. Late submissions will not be considered unless extenuating circumstances are demonstrated or a formal request for an extension has been granted by the LWP. If the employer fails to meet this deadline, the Notice of Violation becomes final, and all assessed amounts will be immediately due. If a request for reconsideration and supporting information is submitted after the 30-day deadline, the LWP reserves the right to disregard the submission.

### **C. Issuance of Amended Notices**

If the employer submits clear and convincing evidence that affects the determination of back wages owed or mitigates the violations, the LWP will review the documentation and may issue an amended Notice of Violation. The amended notice will reflect the revised amounts or findings and include an updated response deadline.

## 11.4 NOTICE AND ORDER

### A. Issuance of Notice

If an employer fails to cure the violations identified in the Notice of Violation within 30 calendar days, or within the timeframe allotted from an LWP granted extension, the LWP will issue a Notice and Order.<sup>30</sup> The Notice will include:

1. A detailed description of the specific LWO violations that remain uncured and citations of the violated Code provisions;
2. A breakdown of amounts owed to each covered employee, including any assessed penalties for willful violations and accrued interest;
3. A summary of all civil penalties assessed and owed to the City, including the start and end dates for the accrual of penalties;
4. An estimate of administrative costs that will be requested if compliance is not achieved and an administrative enforcement hearing becomes necessary;
5. A description of all required remedial actions to correct the outstanding violations, with established timeframes for completion; and
6. Information on appropriate hearing procedures, as required by Sections 12.041 through 12.0413 of the SDMC.

### B. Service of Notice

The Notice and Order may be served personally, or by registered mail, in accordance with SDMC, Chapter 1, Article 1, Division 3, a copy will also be served electronically as a courtesy to ensure immediate delivery.<sup>31</sup>

### C. Timeframe to Respond

The employer has 14 calendar days to submit a written response to the Notice and Order. A valid response consists of either:

1. Submitting evidence of compliance and/or proof of payment of wages owed, or
2. Filing a request for an appeal and administrative enforcement hearing.

### D. Extension of Time

The LWP may grant reasonable extensions of time to respond to the Notice and Order, provided that the employer's written request for an extension is submitted and received with the original response period.

## 11.5 ADMINISTRATIVE ENFORCEMENT HEARING PROCESS

### A. Notice of Administrative Enforcement Hearing

If the employer fails to cure violations or appeals the Notice and Order, the LWP will schedule an Administrative Enforcement Hearing in accordance with SDMC, Chapter 1, Article 2, Division 4.

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<sup>30</sup> SDMC §12.0804

<sup>31</sup> SDMC §11.0301

The LWP will attempt to coordinate with the employer to agree on a mutually acceptable hearing date.

B. Service of Notice

The LWP shall serve a Notice of Hearing no less than ten calendar days prior to the hearing.<sup>32</sup> The Notice may be served personally.<sup>33</sup>

C. Failure to Appear

Failure to appear or send a representative to the hearing shall be deemed a waiver of the right to a hearing.<sup>34</sup>

D. Administrative Enforcement Hearing Procedures

1. Hearings will follow SDMC §12.0408 and the City's Administrative Hearings Program policies and procedures, which will be provided to the employer in the Notice of Hearing.
2. The LWP bears the burden of proof, demonstrating violations by a preponderance of evidence.<sup>35</sup>
3. The LWP will submit a report to the Hearing Officer and the employer at least 10 days prior to the hearing, detailing the facts of the investigation, including copies of all proposed exhibits and evidence, a summary report of the case, and request to affirm all assessed underpayment of wages, civil penalties, accrued interest, and administrative costs.

E. Administrative Enforcement Order

Following an Administrative Enforcement Hearing, the Hearing Officer will issue an Administrative Enforcement Order, affirming, denying, or amending the Notice and Order.<sup>36</sup> Failure to comply with the Order will result in enforcement actions under SDMC §22.4230(f).

## **11.6 ENFORCEMENT ACTIONS UNDER SDMC §22.4230(F)**

Following the issuance of an Administrative Enforcement Order, the LWP shall take one or more of the following enforcement actions, at its discretion, under the LWO:

A. Declare a Material Breach of Contract or Request a Determination of Non-Responsibility

The LWP may forward a copy of the Administrative Enforcement Order to the Purchasing & Contracting Department along with a memorandum requesting the initiation of breach of contract procedures and/or non-responsibility proceedings. This enforcement action is most appropriate when the employer has an active contract with the City and/or continually engages in business with the City, and the LWO violations are ongoing or repeated.

B. Institute Debarment Proceedings

See Rule 11.7

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<sup>32</sup> SDMC §12.0403

<sup>33</sup> SDMC §§11.0301, 12.0403(d)

<sup>34</sup> SDMC §§12.0410 and 12.0503

<sup>35</sup> SDMC §12.0408(b)-(c)

<sup>36</sup> SDMC §12.0411

C. Request City Attorney Bring a Civil Action

The LWP may forward a copy of the Administrative Enforcement Order to the Office of the City Attorney, along with a memorandum requesting a civil action to recover wages, civil penalties, interest, and administrative costs. This enforcement action is most appropriate when the employer has failed to comply with the Administrative Enforcement Order, restitution, penalties, and administrative costs remain unpaid despite repeated efforts to secure compliance, and the severity of the violations, such as significant wage theft or willful noncompliance, warrants legal action to ensure accountability.

D. Refer Violations to Appropriate Agencies and Authorities

See Rule 11.8.

## **11.7 DEBARMENT**

A. Debarment Defined

Debarment is the administrative action taken by the City that results in a business being prohibited from bidding on, being awarded, or performing work on a contract for a defined period. Debarment is codified in SDMC, Chapter 2, Article 2, Division 8. Failure to pay living wages is grounds for debarment of up to three years<sup>37</sup> or until all penalties or restitution have been fully paid, whichever occurs last.<sup>38</sup>

B. Criteria for Initiating Debarment

The LWP will evaluate the following criteria when determining whether debarment proceedings are warranted:

1. Multiple Violations: The employer has committed two or more violations of the LWO within a two-year period (See Rule 11.9)
2. Egregious Violations: Violations that demonstrate willful, reckless, or fraudulent disregard for compliance with the LWO, including but not limited to falsification of payroll records submitted to the LWP and/or retaliation against employees for reporting violations or cooperating with investigations.
3. Failure to Cure Violations: The employer has failed to correct material violations within the timeframe specified in a written notice issued by the LWP, such as a Notice of Violation or Notice and Order.
4. Nonpayment of Penalties or Restitution: The employer has not paid assessed penalties, administrative costs, or restitution owed to employees and/or the City after a final determination of liability.
5. History of Noncompliance with Other Labor Standards: The employer has a documented history of noncompliance with other local, State, or federal labor laws while performing work under a City contract, which affect compliance with the LWO, hinder LWP investigations, and/or affect the financial safety or health of covered employees performing services on behalf of the City.

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<sup>37</sup> SDMC §22.0807(8)

<sup>38</sup> SDMC §22.4230(f)(2)

C. Process for Initiating Debarment

1. If warranted, the LWP will initiate debarment proceedings following the issuance of a Notice and Order, or after all administrative hearings have been exhausted and employee restitution, civil penalties, and/or administrative costs remain outstanding and unpaid by the employer.
2. The debarment process will follow the procedures required by SDMC, Chapter 2, Article 2, Division 8 and detailed in Administrative Regulation 25.90.
3. The LWP will compile and submit all relevant documentation, including evidence of violations, corrective actions taken, and any communications with the employer.

## **11.8 REFERRAL TO OTHER ENFORCEMENT AGENCIES OR PROGRAMS**

A. General Policy

Noncompliance with the LWO, including failure to pay required living wage rates or provide compensated leave, constitutes wage theft. The LWP may refer complaints or violations of the LWO to the City Attorney, District Attorney, California Department of Industrial Relations, or any appropriate local, State, or federal agency responsible for the enforcement of wage theft laws.<sup>39</sup>

B. Referral For Criminal Wage Theft

California Penal Code §487(n) makes the intentional theft of wages from an employee or independent contractor a form of grand theft if the amount stolen exceeds \$950 from a single employee or \$2,350 in aggregate from two or more employees in a 12-month period. Covered employers who fail to take corrective actions regarding wages owed to covered employees may be referred to enforcement agencies for prosecution for wage theft.

C. Referral During Investigations

At any time during an investigation, the LWP may refer a complaint or case to another agency for violations of local, State, or federal laws. This referral will close the investigation but will not preclude any further City involvement or cooperation thereafter.

D. Case Assessment and Coordination

The LWP will assess each case to determine the appropriate referral. The LWP will work with enforcement agencies to ensure violators are held accountable under applicable laws. The LWP will utilize the following criteria to determine if a case referral is appropriate:

1. Jurisdiction: Whether the identified violation falls under the enforcement authority of the agency being considered for referral.
2. Severity of Violation: The seriousness of the violation, including financial impact on affected employees and whether the violation constitutes criminal wage theft.
3. Resources and Expertise: Whether the LWP has the capacity and specialized expertise to address the violation effectively, or if another agency is better equipped to handle the case.

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<sup>39</sup> SDMC §22.4230(f)(5)

4. Pattern of Noncompliance: If the violation is part of a recurring or systemic pattern of noncompliance requiring broader enforcement action.
5. Urgency: The immediacy of harm to employees or others, which may require swift intervention by another agency.
6. Collaboration Opportunities: Whether joint enforcement with another agency would result in a more effective resolution.

## **11.9 MANDATORY ENFORCEMENT ACTIONS FOR REPEATED VIOLATIONS**

### **A. Enforcement Requirement**

Per SDMC §22.4230(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."

### **B. Applicability of Mandatory Enforcement Actions**

Mandatory enforcement applies to an employer with two or more LWO violations within a two-year period, regardless of whether the violations have been cured. The two-year period is calculated from the dates of the initial and subsequent Notices of Violation.

### **C. Criteria for Mandatory Enforcement Actions**

1. Violations are willful and demonstrate intentional disregard for compliance or
2. Violations remain uncured or
3. Violations are not attributable to good-faith mistakes (e.g., clerical errors promptly corrected)

### **D. Enforcement Procedures**

Mandatory enforcement actions must follow standard procedures outlined in these Rules, including:

1. Issuance of a Notice of Violation
2. Issuance of a Notice and Order
3. Exhaustion of the administrative appeal process, as described in the SDMC and these Rules.

### **E. Process for Mandatory Enforcement**

1. In cases of repeated violations within a two-year period, the LWP will recommend one or a combination of the enforcement actions listed in SDMC §22.4230(f), utilizing the same criteria detailed in Rule 11.6.
2. The LWP will determine enforcement actions based on contract nature, violation severity, and other relevant factors.

## 12. CALCULATING CIVIL PENALTIES & INTEREST

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### 12.1 CIVIL PENALTIES

#### A. Authority

Any person violating any provision of the San Diego Municipal Code may be subject to the assessment of civil penalties.<sup>40</sup> Departments are authorized to develop and implement policies to guide in the assessment of civil penalties for administrative citations.<sup>41</sup> Violations of the Living Wage Ordinance may include the assessment of civil penalties.<sup>42</sup>

#### B. Assessment of Civil Penalties

Civil penalties are assessed in a Notice and Order when an employer fails to comply with a Notice of Violation.<sup>43</sup> Civil penalties may be payable to the City of San Diego. Other enforcement mechanisms will remain available for both the City and aggrieved employees.<sup>44</sup>

#### C. Considerations for Determining Penalties

When determining the appropriate penalties, the LWP will evaluate the following factors<sup>45</sup>:

1. Nature of the violation(s): The type of non-compliance and specific LWO provisions violated.
2. Level of seriousness: Degree to which the violation impacts compliance with the LWO.
3. Good Faith Effort: Whether the employer made a good faith mistake that was corrected within 30 days of the Notice of Violation, whether this is a first offense, whether the violation reflects a pattern or practice by the employer, whether the employer cooperated in good faith with the LWP investigation.
4. Economic Impact on the Employer: Consideration of whether the penalty imposes undue financial hardship on the employer.
5. Ease of Correction: The complexity or simplicity of remedying the violation.
6. Additional Factors: Any other relevant circumstances that may influence the penalty assessment.

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<sup>40</sup> SDMC §12.0803(a)

<sup>41</sup> SDMC §12.0908

<sup>42</sup> SDMC §§22.4230(b), 22.4230(f)(2)

<sup>43</sup> SDMC §12.0803(c)

<sup>44</sup> SDMC §§ 12.0802, 22.4230(f)(4)

<sup>45</sup> SDMC §12.0805(c)

D. LWO Civil Penalty Schedule

The LWP may impose the following penalties for uncured violations of the LWO:<sup>46</sup>

| <b>LWO Violation</b>                                                                                          | <b>SDMC Section</b>    | <b>Penalty Amount</b>                                     |
|---------------------------------------------------------------------------------------------------------------|------------------------|-----------------------------------------------------------|
| Failure to pay living wage rates, including hourly rate and/or health benefit rate, to covered employees      | SDMC §22.4220(a)       | \$100 per covered employee per day                        |
| Retaliation                                                                                                   | SDMC §22.4230(d)(1)(2) | \$1,000 per instance                                      |
| Failure to provide compensated leave to covered employees.                                                    | SDMC §22.4220(c)       | \$100 per employee per year of non-compliance             |
| Failure to provide uncompensated leave to covered employees.                                                  | SDMC §22.4220(e)       | \$100 per employee per year of non-compliance             |
| Failure to use own employees to perform at least 50% of the contracted work.                                  | SDMC §22.4210(c)       | \$250 per contract                                        |
| Failure to submit annual compliance report                                                                    | SDMC §22.4225(d)       | \$500 per contract                                        |
| Failure to create and maintain records in compliance with the LWO                                             | SDMC §22.4225(d)       | \$500 per investigation                                   |
| Failure to comply with employee notice requirements                                                           | SDMC §22.4225(b)       | \$100 per employee                                        |
| Failure to comply with LWO posting requirements                                                               | SDMC §22.4225(e)       | \$100 per site visit and/or investigation                 |
| Failure to furnish business records following written request by the LWP, including certified payroll records | SDMC §22.4225(d)       | \$100 per day following the due date of records requested |

## 12.2 WAIVER OR REDUCTION OF ASSESSED PENALTIES

A. Discretionary Penalty Reductions

The LWP may reduce penalties at its discretion, considering the specific circumstances of the complaint and investigation. Factors that may influence the reduction of penalties include, but are not limited to:

1. The timeliness of the employer's responses to inquiries or requests for documentation
2. The level of cooperation demonstrated by the employer during the investigation
3. The extent and nature of harm caused to the employee(s) as a result of the violation(s)
4. Whether the employer took proactive steps to rectify issues prior to the investigation or
5. The financial hardship penalties would impose on the employer, provided such hardship does not undermine the purpose of the LWO.

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<sup>46</sup> SDMC §12.0803(d)

B. Waiver for Good Faith Mistakes

For a single violation of the LWO within a two-year period, the LWP will waive all penalties if the employer demonstrates the following:

1. The violation resulted from a good-faith mistake, such as a clerical error or misunderstanding of the LWO requirements.
2. The employer took prompt corrective action to remedy the violation(s), including pay all compensation to affected employees, where applicable, within 30 calendar days of receiving a written Notice of Violation; and
3. The employer provides evidence of steps taken to prevent similar mistakes in the future, such as employee training, updates to payroll systems, updating employee handbooks and provides evidence of such steps to the LWP.

C. Exclusions from Waiver Eligibility

Penalty waivers will not be granted in cases of:

1. Willful violations or intentional disregard of the LWO
2. Repeated LWO violations within the preceding two-year period
3. Retaliation against employees for exercising their rights under the LWO; or
4. Falsification of records or other fraudulent activities

## 12.3 INTEREST

A. Applicability of Interest

Interest shall apply to all unpaid wages owed to covered employees resulting from an employer's failure to pay the mandated living wage rates.<sup>47</sup> Interest is due and payable to the covered employee.

B. Calculation of Interest

1. Interest will accrue at the rate of 10% per year, consistent with California Labor Code §98.1(c).
2. This annual interest rate will apply to all unpaid wages and health benefit contributions required by the Ordinance.
3. Interest shall be calculated as simple interest and will not compound.

C. Accrual Period

Interest begins accruing from the due date for the employer's response to the Notice of Violation. Accrual will continue until full payment is made to affected employees.

D. Calculation Formula

Interest is calculated using the following formula:

Interest = Principal Amount Due × (0.10 ÷ 365) × Number of Days Accrued

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<sup>47</sup> SDMC §22.4230(b)(1)-(2)

*Example:* If an employer owes \$1,000 in unpaid wages and the payment is 100 days late from the due date specified in the Notice of Violation, the interest calculation would be:

$\$1,000 \times (0.10 \div 365) \times 100 = \$27.40$  in interest.

The total amount owed to the employee would be \$1,027.40.

E. Allocation of Payments

Payments made to resolve a violation will first be applied to the principal amount due (unpaid wages or health benefits) and then to the accrued interest.

F. Notification of Interest Amount

The LWP shall provide written notice to the employer specifying that interest shall accrue starting after 30 days of the issuance of the Notice of Violation if the violation(s) remain unresolved.

G. Exceptions or Adjustments

The LWP reserves the right to waive or reduce accrued interest under certain circumstances, such as financial hardship or demonstrated good faith efforts to comply with the LWO.

## **12.4 GENERAL FUND**

All civil penalties collected by the LWP are deposited into the City's General Fund.

## APPENDIX A - NOTICES AND FORMS

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The notices and forms listed in this Appendix are the only versions approved by the City of San Diego for use in connection with these Rules. When these Rules reference a notice or form, the current version included in Appendix A must be used. All approved notices and forms are also available on the Living Wage Program's webpage.

### NOTICES:

LWO Notice to Employees: [English](#), [Spanish](#), [Vietnamese](#)

LWO Employee Receipt Acknowledgement: [English](#), [Spanish](#), [Vietnamese](#)

[Affordable Care Act Information](#)

[Earned Income Tax Credit Information](#)

### FORMS:

[LWO Certification of Compliance](#)

[Annual LWO Certification of Compliance for Purchase Orders](#)

[LWO Application for Exemption](#)

[LWO Sole Proprietor Self-Attestation Form](#)

[Annual Compliance Report: City Contracts](#)

LWO Employee Complaint Form: [English](#), [Spanish](#)

## APPENDIX B - CLARIFICATION OF COVERED SERVICES

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- **Automotive repair and maintenance services:** refers to services aimed at keeping vehicles in optimal working condition, extending their lifespan, and ensuring their safety and reliability. These services include routine maintenance such as oil changes, filter replacements, fluid checks, tire rotations, and wheel alignments. They also cover engine and transmission repairs, brake system inspections, and electrical system diagnostics and repairs. Additionally, services involve maintaining the suspension and steering systems, exhaust and emission systems, cooling systems, and fuel systems. Tire services, battery maintenance, HVAC repairs, and body and glass repairs are also part of this work. Diagnostic services play a crucial role in identifying issues, while inspection and certification services ensure compliance with safety and emissions regulations. Emergency repair services provide urgent assistance for unexpected breakdowns, ensuring vehicles remain safe and functional.
- **Cashiers:** includes frontline employees responsible for managing financial transactions and providing customer service in various retail, service, and hospitality environments. This role involves processing payments, including cash, credit/debit cards, checks, and mobile payments; operating point of sale (POS) systems to scan items, entering prices, applying discounts; greeting customers; answering questions about products, services, store policies, and promotions; addressing customer concerns; processing returns and exchanges; and resolving customer issues.
- **Childcare:** refers to the comprehensive range of services and support provided to children and minors under 18 years of age, to ensure their well-being, safety, and development while their parents or guardians are unavailable or not present. Childcare services include attending to children's basic needs, including feeding, diapering, toileting, and maintaining personal hygiene, providing early childhood educational support, language development, literacy, and math concepts, and play-based learning activities.
- **Concessions/retail sales:** refers to customer-facing operations at venues and events and includes activities and responsibilities involved in selling products or services to customers, typically in settings such as stadiums, arenas, theaters, and other public venues. These services focus on providing goods, such as food, beverages, merchandise, apparel, souvenirs, and other retail items, to customers. Duties may include processing payments, including cash, credit/debit cards, checks, and mobile payments, operating point of sale (POS) systems, customer assistance, food preparation and handling, cleaning of counters and equipment, and inventory management.
- **Facility and building maintenance:** refers to the comprehensive set of services and activities required to ensure that a building and its associated facilities are kept in optimal working condition, are safe, clean, and fully functional. This work encompasses routine upkeep, repairs, and improvements to the physical structure, mechanical systems, and surrounding grounds. The goal of facility and building maintenance is to preserve the value of the property, ensure a safe environment for occupants, and maintain the efficient operation of the building's systems.
- **On-site food service/preparation:** refers to the range of activities and responsibilities involved in preparing, cooking, and serving food directly at a specific *City* location. These services include, but are not limited to, bartenders, waitstaff, servers, caterers, buffet line attendants, kitchen staff, chefs, and cooks.

- **Janitorial, custodial, street cleaning, and housekeeping:**
  - **Janitorial services:** these services typically involve the routine cleaning of indoor spaces, including floor care (sweeping, mopping, vacuuming, polishing, and carpet cleaning), restroom maintenance (cleaning and sanitizing, replenishing supplies), trash removal (collecting and disposing of waste from trash bins and recycling containers), surface cleaning (dusting, wiping), and may include specialized cleaning, such as window washing, sanitizing high-touch areas, and cleaning HVAC vents.
  - **Custodial services:** these services may overlap with janitorial services but may also include basic maintenance tasks such as minor repairs, changing light bulbs, and reporting issues to maintenance staff, security duties such as locking and unlocking doors and setting alarms, and event setup and breakdown.
  - **Street cleaning:** involves maintaining the cleanliness and orderliness in public outdoor spaces, including streets, sidewalks, parks, and plazas. May include collecting and disposing of litter, debris, and other refuse from streets and public areas, operating street-sweeping vehicles to clean streets and curbs, cleaning and removing graffiti, and performing seasonal maintenance tasks, such as snow removal, leaf collection, and clearing storm drains.
  - **Housekeeping:** involves cleaning and organizing residential spaces, including homes, apartments, and hotels/motels; preparing rooms for guests by making beds, changing linens, cleaning bathrooms, and restocking amenities; general cleaning; laundry services; deep cleaning; and other daily and periodic associated tasks.
- **Office/clerical:** refers to a wide range of administrative tasks that support the daily operations of an office or organization. Clerical staff typically handle tasks related to communication, documentation, data management, and customer service. Duties may include filing and organizing paper and electronic files; data entry into databases, spreadsheets, and digital systems; copying and scanning; record keeping; answering phones; correspondence; reception duties; meeting coordination, scheduling and calendar management; mail handling; office supply management; travel arrangements; front-desk management invoicing and billing; expense tracking; basic bookkeeping such as reconciling accounts, processing payroll, and managing petty cash; report writing, and managing office forms, templates, and documents. Administrative support may include assisting executives, project support, workspace management, and meeting/event planning and coordination, which contribute to the overall efficiency and productivity of the workplace.
- **Parking services:** involves managing and maintaining parking facilities. Duties include overseeing daily operations, such as managing payment systems, enforcing parking regulations, and providing customer service. Parking attendants ensure the cleanliness and upkeep of parking areas, handle repairs and maintenance of equipment, monitor security through surveillance and on-site patrols, and coordinate parking logistics for special events.
- **Pest control:** refers to the practice of managing and eliminating unwanted pests that can pose risks to health, property, and the environment, and involves a variety of tasks designed to prevent, identify, and eradicate pests such as insects, rodents, wildlife, and specialized services like bee management. Treatment methods may include chemical treatments (pesticides/insecticides), physical methods (traps, barriers, and exclusion techniques), biological control, and environmental management.

- **Security services:** includes activities and responsibilities focused on protecting people, property, and information from threats such as theft, vandalism, unauthorized access, and other security risks. Security personnel are responsible for monitoring and patrolling premises to detect and prevent security breaches. This includes conducting regular inspections, controlling access to restricted areas, and checking identification to ensure only authorized individuals enter specific locations. They operate and monitor surveillance equipment, such as cameras and alarm systems, to detect and respond to suspicious activities, manage entry and exit points, and provide crowd control during events. Security personnel may also provide personal protection, such as escorting individuals safely to their destinations.
- **Ushers and wheelchair attendants:** customer service staff dedicated to ensuring guests, including those with disabilities, have a comfortable and enjoyable experience at events and venues. Ushers greet guests, check tickets, and direct them to their seats, while also providing information and assisting with crowd control. Wheelchair attendants and accessibility helpers focus on assisting guests with mobility challenges, helping them navigate the venue, access designated seating areas, and use accessibility features like ramps and elevators.
- **Ticket takers:** frontline staff responsible for verifying and collecting tickets from guests at events and venues. Their primary roles are to ensure only authorized individuals gain entry to the event or facility. They may greet guests, scan, or manually check tickets, and provide basic information about the venue or event, such as directions to seating.
- **Warehouse workers:** staff duties include receiving and unloading deliveries, checking for accuracy against purchase orders, storing items in designated locations, preparing items for shipping by labeling and organizing packages for distribution, operating machinery such as forklifts and pallet jacks, conducting inventory checks, and assisting with quality control.
- **Waste collection and waste disposal, including recycling:** services that include a series of activities aimed at managing the proper handling, transportation, and disposal of various types of waste materials to maintain public health, safety, and environmental sustainability. Waste collection workers are responsible for picking up waste from residential, commercial, and industrial locations, ensuring that trash, recyclables, and hazardous materials are separated according to regulations. They operate specialized vehicles and equipment to efficiently collect and transport waste to designated facilities, which may include appropriate landfills, incineration plants, or treatment facilities.
- **Right of way maintenance:** involves the upkeep and management of public areas, including roadways, sidewalks, medians, and land surrounding utility lines and pipelines. The primary goal of right-of-way maintenance is to ensure these spaces remain safe, accessible, and free from obstructions that may hinder transportation or utility services. Duties may include mowing grass, trimming trees and shrubs, removing debris, and controlling vegetation to prevent overgrowth that could obstruct visibility or access. Workers also repair and maintain infrastructure within the right-of-way, including signage, fences, drainage systems, and pavement. Duties may include removal of hazards, like fallen trees, to preserve the safety and functionality of transportation routes and utility corridors and contributing to the overall efficiency and safety of structures accessed by the public.
- **Services workers in the medical fields:** includes emergency medical technicians, paramedics, medical assistants, patient transporters, medical receptionists, phlebotomists, sterilization technicians, environmental service workers, and those whose roles support healthcare

operations and patient care. This category excludes doctors, nurses (including RNs and LVNs), mental health professionals, physicians, physician assistants, and any individuals required to be licensed by the State of California.