

**CITY COUNCIL OF THE CITY OF SAN DIEGO
SUPPLEMENTAL DOCKET NUMBER 3
FOR THE REGULAR MEETING OF
TUESDAY, JANUARY 28, 2014
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
ORDINANCES TO BE INTRODUCED:

The following item will be considered in the afternoon session which is scheduled to begin at 2:00 p.m.

ITEM-S501: Living Wage Ordinance Proposed Amendments. (Citywide.)

ITEM DESCRIPTION:

This report proposes various amendments to San Diego Municipal Code Chapter 2, Article 2, Division 42, intended to clean up, clarify and strengthen enforcement of the Living Wage Ordinance.

STAFF'S RECOMMENDATION:

Introduce the following ordinance:

(O-2014-83)

Introduction of an ordinance amending Chapter 2, Article 2, Division 42 of the San Diego Municipal Code by amending Sections 22.4201, 22.4202, 22.4205, 22.4210, 22.4215, 22.4220, 22.4225, 22.4230, 22.4235, 22.4240, and 22.4245, all pertaining to the City of San Diego Living Wage Ordinance. This ordinance amends the Living Wage Ordinance (LWO) of the San Diego Municipal Code by amending sections 22.4201, 22.4202, 22.4205, 22.4210, 22.4215, 22.4220, 22.4225, 22.4230, 22.4235, 22.4240, and 22.4245 thereof. This ordinance amends the Living Wage Ordinance to: (1) require that a prime service contractor use its own employees for at least fifty percent of the work described in the contract for services; (2) lengthen the statute of limitations from one to three years for a covered employee to file a lawsuit against a covered employer; (3) allow the City Manager to refer violations of this Division to appropriate local, state and/or federal agencies and authorities; (4) require the City Manager to take enforcement action if a determination is made that a covered employer has violated this Division two or more times within a two-year period; (5) add definitions for compensated leave, health benefits,

prime service contractor, unfair immigration-related practice and willful violation; and (6) clarify requirements related to a covered employer's provision of noticing, the payment of prevailing wages, and the availability of penalty damages to covered employees through private lawsuits. This ordinance also amends the Living Wage Ordinance to make non-substantive changes to conform the formatting to current, standard San Diego Municipal Code conventions, to make the subsections more consistent with one another, and to remove out-of-date information such as particular effective dates.

STAFF SUPPORTING INFORMATION:

FISCAL CONSIDERATIONS:

Since inception, the Living Wage Ordinance (LWO) Program has not been optimally staffed. The current LWO Program consists of one Supervising Management Analyst and one Senior Management Analyst. This staff also administers the Equal Benefits Ordinance (which applies to all City agreements) and the LWO's companion ordinances: the Service Worker Retention Ordinance and the Contractor Standards Ordinance.

Efficient administration of the proposed amendments requires expanded monitoring to address additional contracts, thorough documentation to verify compliance, and increasingly complex investigations to justify possible assessments. Adequate staffing for the LWO Program should include the addition of a Program Manager and one more Senior Management Analyst for a full complement of four full-time employees. Increased cost, including fringe benefits, for the two added positions is estimated at \$230,000. Some cost recovery may be achieved through assessment and collection of fines for violations, however, such monies must be deposited in the General Fund and cannot provide direct support for LWO Program staffing. The additional positions will be requested as part of the Fiscal Year 2015 Proposed Budget.

Since the Living Wage Ordinance is already in effect and the proposed amendments do not significantly change applicability to City service contracts or City facility agreements, the fiscal impact to City departments will be minimal.

PREVIOUS COMMITTEE ACTION:

This item was heard at the Economic Development and Intergovernmental Relations Committee meeting on January 15, 2014.

ACTION: Motion by Councilmember Alvarez, second by Councilmember Emerald, to move the proposed amendments to San Diego Municipal Code Chapter 2, Article 2, Division 42, "City of San Diego Living Wage Ordinance" forward to the City Council for consideration.

The Committee directed staff to work with the Office of the City Attorney to address revisions relating to "liquidated damages." As a result, language was formulated to achieve a similar intent within appropriate legal parameters:

Regarding an employee action [currently, San Diego Municipal Code (SDMC) Section 22.4230(a)(1-4)]: A new definition for “willful violation” was included in SDMC Section 22.4205 as meaning, “a covered employer’s intentional failure or refusal to perform an act which is required under this Division. Such failure or refusal need not be based on a deliberate malicious purpose or intent to defraud. A covered employer’s failure or refusal to comply with this Division is prima facie evidence of a willful violation if the contract for services states that this Division applies.” The term “liquidated damages,” was deleted as duplicative of the current SDMC “treble damages” provision and the word “treble” was changed to “three times” for clarity. The revised language, now found in Section 22.4230(b)(4), states: “For a willful violation of this Division, a penalty of up to three times the amount of damages awarded pursuant to Section 22.4230(b)(1) and/or (b)(2).”

Regarding a City action: A fine is presently required “in the amount of up to one hundred dollars (\$100) for each violation for each day the violation remains uncured,” and the term “per covered employee” was included to clarify the extent and application of this fine. [Revision found in SDMC Section 22.4230(f)(4)(B).] Additionally, staff originally proposed an amendment to authorize enforcement action “if a covered employer demonstrates repeated violations”; this proposed amendment, which was revised since Committee, is found at proposed SDMC Section 22.4230(g) and states, “If a covered employer is determined by the City 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.”

Other concerns raised by Councilmember Emerald at the Committee were considered and addressed as follows:

- 1) Discussion at Committee proposed to revise the requirement for definitions to “be liberally interpreted so as to further the policy objectives” and replace “liberally” with “literally.” An analysis determined that changing this language would likely undermine the intent of the LWO and may limit the actions of any reviewing Courts. The revised Ordinance maintains the current language.
- 2) Another Committee proposal was to clarify that enforcement provisions apply to any, as well as, repeated violations. An analysis determined that current language achieves this intent.
- 3) Another Committee proposal was to add a provision to verify employees have been informed of their rights. An analysis determined that currently covered employers must sign under penalty of perjury that they inform their covered employees of their rights under this Division. Also, verification by the City is currently conducted through Compliance Reviews. It was determined that such a compulsory verification process would detract from the already limited resources of City staff. This proposal was not incorporated into the revised Ordinance.

4) Finally, a requirement was proposed to require the City to report LWO violations to appropriate State regulatory agencies. An analysis determined this was appropriate and furthered the intent of the LWO; this requirement was incorporated into the revised Ordinance as SDMC Section 22.4230(f)(5).

Additionally, the Committee requested that the Office of the Independent Budget Analyst provide comparative analysis regarding other cities' enforcement of living wage ordinances.

VOTE: 5-0; Lightner-yea, Faulconer-yea, Kersey-yea, Emerald-yea, Alvarez-yea.

Harbin/Sturak

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