



The City of San Diego

Staff Report

DATE ISSUED: January 11, 2023

TO: City Council

FROM: Compliance Department, Office of Labor Standards Enforcement

SUBJECT: Fiscal Years 2021-2022 Living Wage Ordinance Annual Report

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Council District(s): Citywide

OVERVIEW:

This report details the programmatic efforts of the administration of the Living Wage Ordinance (LWO) during Fiscal Years 2021 and 2022 under the Compliance Department as required by San Diego Municipal Code §22.4235(c).

PROPOSED ACTIONS:

This item is for information only.

DISCUSSION OF ITEM:

The Living Wage Ordinance (LWO), adopted by the City of San Diego (City) in 2005, requires covered employers to provide specific wage rates and benefits to workers who perform services on applicable service contracts, financial assistance agreements, or facility agreements with the goal of keeping workers and their families out of poverty.¹ City staff supporting the LWO are responsible for the monitoring and enforcement of the ordinance requirements for applicable contracts and agreements. During Fiscal Years 2021-2022, Office of Labor Standards Enforcement staff who support the Living Wage program, completed ordinance administration, annual wage adjustment review, compliance reviews, complaint investigations, and programmatic updates.

¹ San Diego Municipal Code §22.4220

Fiscal Year 2021-2022 Program Administration

Staff performs administrative and programmatic functions to monitor and enforce the ordinance requirements as follows:

- Ensure covered employees receive required compensation for work performed under applicable service contracts and/or agreements²;
- Review and processes Compliance Certifications during contract award³ and Applications for Exemption;
- Ensure covered employers comply with reporting (weekly payroll submittals and annual compliance reports) and employee notification requirements⁴;
- Respond to and investigate worker complaints;
- Conduct site visits for verification of pay to covered employees; and,
- Routinely educate internal and external customers on the LWO and its applicability.

During Fiscal Year 2021, the Living Wage Program was moved from the Equal Opportunity Contracting Program in the Purchasing & Contracting Department to the Office of Labor Standards Enforcement (OLSE)⁵ within the newly formed Compliance Department. OLSE staff are working to identify areas for future collaboration opportunities between the living, minimum, and prevailing wage teams to identify contracts where multiple wage violations exists.

Staff also identified need for worker information offered in Vietnamese. Living Wage Ordinance information has long been provided to contractor employees in both English and Spanish, and this fiscal year covered employee notices were created in Vietnamese as well. The OLSE will continue to identify needs for additional language services.

Staffing levels continue to impact monitoring capacity. The OLSE Living Wage Unit consists of 1.00 Supervising Management Analyst and 1.00 Senior Management Analyst. Staffing levels remained at 50% during Fiscal Years 2021 and 2022. Compliance Department is working to fill the vacant position for Fiscal Year 2023.

Living Wage Applicability

The tables below summarize new awarded formal contracts and purchase orders referred for LWO monitoring for Fiscal Year 2021 and Fiscal Year 2022. Formal contracts awarded are multi-year contracts. These formal contracts will be monitored through the end date of the agreement through our web-based compliance portal and reviewed accordingly based on payroll discrepancies or complaints.

² Contracts are proactively monitored via a web-based compliance portal. Covered employers submit weekly certified payrolls detailing employment activities under contracts or agreements.

³ Required for all employers and subcontractors (if applicable) under SDMC §22.4225(c).

⁴ Employers are required to notify their employees of living wage requirements at the start of a service contract under SDMC §22.4225(e). For multi-year contracts, employers must provide information to employees alongside their first paycheck on or after July 1st of each year.

⁵ The Office of Labor Standards Enforcement consists of the Minimum, Living, and Prevailing Wage programs.

Table 1: Living Wage Covered Service Purchase Orders Awarded in FY 2021 and 2022 by Service Type

Type	Fiscal Year 21	Fiscal Year 22	Grand Total
Abatement Services	\$ 163,680.16		\$ 163,680.16
Automotive Repair/Maintenance		\$ 16,641.94	\$ 16,641.94
Entertainment		\$ 14,622.00	\$ 14,622.00
Equipment Services		\$ 56,807.88	\$ 56,807.88
Facility/Building Maintenance	\$ 362,129.45	\$ 49,793.38	\$ 411,922.83
Janitorial Services		\$ 134,155.69	\$ 134,155.69
Landscape Maintenance	\$ 887,908.69		\$ 887,908.69
Landscaping Services		\$ 104,124.29	\$ 104,124.29
Pest Control		\$ 12,070.00	\$ 12,070.00
Pest Control Services	\$ 48,000.00		\$ 48,000.00
Security Services	\$ 15,000.00	\$ 100,721.96	\$ 115,721.96
Water/Wastewater Maintenance		\$ 42,357.64	\$ 42,357.64
Grand Total	\$ 1,476,718.30	\$ 531,294.78	\$ 2,008,013.08

Table 2: Living Wage Covered Service Contracts Awarded in FY 2021 and 2022 by Service Type

Type	Fiscal Year 2021	Fiscal Year 2022
Abatement Services	\$ 500,000.00	
Automotive Repair and Maintenance	\$ 5,575,000.00	
Community Services		\$ 415,000.00
Equipment Services		\$ 3,590,278.00
Facility/Building Maintenance	\$ 1,515,221.00	\$ 3,784,838.00
Janitorial Services	\$ 9,600,000.00	\$ 1,009,905.00
Landscaping Services	\$ 4,550,000.00	\$ 7,778,152.77
Parking Services	\$ 13,312,820.00	
Right of Way Maintenance	\$ 389,169.00	
Security Services	\$ 28,969,478.20	
Water/Wastewater Maintenance	\$ 109,246,509.00	\$ 9,397,171.25
Grand Total	\$ 173,658,197.20	\$ 25,975,345.02

Furthermore, our division tracks and monitors exemption request from covered employers on a contract basis. Contractors do not receive a universal exempt status but are granted exemptions on a per contract basis; sufficient documentation must be provided before an exemption request is approved by the Living Wage Program. During fiscal year 2021 we reviewed and approved a total of 35 applications and for fiscal year 2022 a total of 28. The table below summarizes the type of exemptions that have been approved by our program.

Table 3: FY 2021 and 2022 Living Wage Exemption Approvals

Exemption Type	Fiscal Year 21	Fiscal Year 22
Business employees 12 or fewer employees	1	5
Business operating as sole proprietorship with no employees		
Collective Bargaining Agreement		1
Business organized under IRS section 501(c)(3)	32	22
Other (Categorically exempt per SDMC Section 22.421(c)(7))	1	
Other (Categorically exempt per SDMC Section 22.4215 (a)(7) and SDMC Section 22.4215 (a)(4))	1	
Grand Total	35	28

Each calendar year, staff updates the LW rate of pay⁶ using the applicable Consumer Price Index as published by the U.S. Department of Labor, Bureau of Labor Statistics for the geographic region. Staff will calculate, post, and distribute information regarding any increases, should they be required, by April 1st of each calendar year. Effective July 1, 2022, the required wage rate increased by 8.28% to \$17.91 (inclusive of basic hourly wage rate and health benefits.)

Covered employers are required to comply with all applicable State and local laws, including the City of San Diego's Minimum Wage & Earned Sick Leave Ordinance and California Minimum Wage. The living wage rate for Fiscal Year 2023 accounts for minimum wage increases as part of the cash wage. An employee's hourly cash wage after health benefits are deducted must be no less than the applicable City or State minimum wage rate, whichever is higher. The following table details the living wage rate stipulated by the City over the last five fiscal years⁷:

Table 4: City of San Diego Living Wage Rates by Fiscal Year

Fiscal Year	Effective Dates	Percentage Increase	Wage + Health Benefit Hourly Rate	Total Hourly Rate
2023	7/1/22 - 6/30/23	8.28%	\$15.00 + \$2.91	\$17.91
2022	7/1/21 - 6/30/22	1.50%	\$13.77 + \$2.77	\$16.54
2021	7/1/20 - 6/30/21	2.35%	\$13.57 + \$2.73	\$16.30
2020	7/1/19 - 6/30/20	3.35%	\$13.26 + \$2.67	\$15.93
2019	7/1/18 - 6/30/19	3.05%	\$12.83 + \$2.58	\$15.41

Proactive Remedies

⁶ Rate of pay includes cash wage and health fringe benefits.

⁷ Employers are required to pay employees the highest applicable rate for hours worked under a service contract when multiple requirements apply, including minimum wage (local and state), and prevailing wage.

OLSE staff are committed to ensuring workers are aware of their rights under the LWO and assist contractors in understanding and meeting their obligations. Staff routinely conducts site visits, provides in-person and web-based training, and collaborate with other agencies and community advocacy groups. Participation during Fiscal Year 2021-2022 included the following:

- Presenting to various groups, including covered employers and City departments;
- Collaborating with the City’s Economic Development Department to present living wage information to financial assistance recipients;
- Participation in various web-based and in-person training related to applicable labor laws and wage theft; and,
- Continued dialogue with other public agencies who have adopted living wage/minimum compensation ordinances.⁸

Outcomes of ongoing trainings for vendors and collaboration with other departments has increased the visibility and intent of the Living Wage Ordinance. It has developed stronger relationships with our covered employers and when a violation is identified, the covered employer is responsive to rectifying the error and avoiding additional underpayments of the Living Wage rate.

Enforcement

Staff monitors enforcement by conducting reviews to verify LWO compliance by covered employers. Contracts or covered employers may be selected randomly or based on concerns of noncompliance for review. Staff will analyze payroll records and related documentation (includes timecards, schedules, itemized wage statements, and health plan statements) to verify payment of applicable living wage rates to covered employees. Staff will also review and confirm compensated leave time is provided to covered employees and verify compliance with required noticing and reporting. Employee interviews on City contracts are conducted when necessary.

When deficiencies or wage violations occur, staff will work with the covered employer to recover any restitution owed to workers and ensure strict compliance is effectuated moving forward. Other violations identified that do not fall under the LWO are referred to the appropriate enforcement agency for review. During FY 2021- 2022, compliance reviews and remedies assessed were lower in comparison to previous years due to a vacancy. The table below details reviews conducted by staff and findings during the reporting period:

Table 5: Fiscal Years 2021 and 2022 Enforcement Activities

	FY20	FY21	FY22
Filled FTEs	1	1	2⁹
Reviews Initiated or In-Progress	15	8	7
Complaints/tips Received	2	1	1
Number of Covered Employers	14	2	4

⁸ Includes City of Los Angeles, County of Los Angeles, City of Pasadena, City of Santa Barbara, City of Oakland, Port of Oakland, City and County of San Francisco, City of San Jose, and San Jose Airport.

⁹ Senior Management Analyst vacancy filled in late-February 2022.

	FY20	FY21	FY22
Total Remedies Assessed for Employees ¹⁰	\$13,726.66	\$3,623.07	\$240.00
Total Restitution Recovered	\$266.62	\$3,623.07	\$240.00
Number of Cases Under Enforcement Action ¹¹	3	3	3
Total Number of Employees Affected	22	8	194

Enforcement and communication are key factors in the success of the intent of the Living Wage Ordinance. By monitoring contractor certified payroll records and providing information on the Living Wage to both employers and employees, staff can reduce the number of offenders and/or ensure quick compliance when an underpayment does occur. As an example, during the beginning of Fiscal Year 2023 the Living Wage program staff received a complaint from a covered employee identifying that the new living wage rate was not paid to him. Living Wage staff contacted the covered employer who completed an audit of their staff working on City contracts and confirmed that the complaint was substantiated: the new Living Wage rate had not been paid to the complainant. The employer rectified the error immediately and issued retroactive payments to the employee. The responsiveness of the business and their willingness to work with Living Wage staff, demonstrates that our outreach, preventative measures, and enforcement are building strong working relationships between the covered employees, covered employers, and the City of San Diego's Living Wage program.

Conclusion

The Office of Labor Standards Enforcement is committed to enforcement and ongoing improvement of the LWO to ensure wages earned are put into workers' pockets. Since the adoption of the ordinance in 2005 and effective date beginning of July 1, 2006, the Living Wage Program has recovered a total of **\$637,686.94** in restitution on behalf of covered employees. OLSE will continue to ensure that both City staff and the public, understand, and comply with ordinance requirements.

City Strategic Plan Goal(s)/Objective(s):

Goal #2: Foster services that improve quality of life

Goal #3: Diversify and grow the local economy

Fiscal Considerations:

N/A

Charter Section 225 Disclosure of Business Interests:

N/A

Environmental Impact:

¹⁰ Remedies include assessed and under review back wages and/or unpaid compensated leave owed to employees.

¹¹ The City can pursue one or more of the enforcement actions under SDMC §22.4230(f), in (1) declaration of material breach, exercising suspension or termination of the contract, which includes return of monies paid by the City for services not yet rendered; (2) debarment; (3) determination of non-responsibility; or (4) assessment of civil penalties. Civil penalties are assessed in the amount of up to one hundred dollars (\$100) per covered employee for each violation for each day the violation remains uncured.

N/A

Climate Action Plan Implementation:

N/A

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

N/A

Planning Commission Action:

N/A

Key Stakeholders and Community Outreach Efforts:

N/A

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