

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2007-018

(3120)

**AN ORDINANCE ADDING
TITLE 1, ARTICLE 6 OF CHAPTER 6 OF THE
SAN LEANDRO MUNICIPAL CODE
RELATING TO LIVING WAGE**

The City Council of the City of San Leandro does ORDAIN as follows:

Section 1. Purpose.

The City Council of the City of San Leandro hereby finds as follows:

The City of San Leandro awards contracts to private firms and other businesses to provide services to the public and to City government; and

The City of San Leandro has a limited amount of taxpayer resources to expend; and

The use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-funded social programs in other areas; and

When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general quality of life within the community and maximizes the productive effect of the City's limited resources; and

The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the country, state and federal governments; and

That employees are far likelier to be healthy if their employer provides reasonable health insurance to them and their dependents; and

The payment of a minimum level of compensation as required by this chapter benefits these interests.

Section 2. Title 1, Chapter 6 of the San Leandro Municipal Code is hereby added as follows:

Chapter 1-6-600	Living Wage Ordinance
Section 1-6-605	Title and Purpose
Section 1-6-610	Findings

Section 1-6-615	Definitions
Section 1-6-620	Persons and Entities Subject to the Requirements of this chapter
Section 1-6-625	Living Wage Rate
Section 1-6-630	Waivers
Section 1-6-635	Required Contract Provisions
Section 1 6-640	Exemptions
Section 1-6-645	Retaliation and Discrimination Prohibited
Section 1-6-650	Employee Complaints to the City
Section 1-6-655	Enforcement
Section 1-6-660	Effective Date

Section 3. Title and Purpose – Section 1-6-605 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

The purpose of this chapter is to assure that City employees, employees of City service contractors, subcontractors, and employees and contractors of City financial assistance earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers and businesses for the purpose of promoting economic development and job growth. Such public expenditures should also be spent to set a community economic standard that permits workers to live out of poverty. The City Council finds that the use of City funds to provide living wage jobs will decrease poverty, increase consumer income, invigorate neighborhood businesses and reduce the need for taxpayer funded social service programs.

This chapter shall be known and may be cited as the “Living Wage Ordinance”. The purpose of this chapter is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

Section 4. Findings – Section 1-6-610 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

(a) The City of San Leandro awards contracts to private firms and other businesses to provide services to the public and to City government; and

(b) The City of San Leandro has a limited amount of taxpayer resources to expend; and

(c) The use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-funded social programs in other areas; and

(d) When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general

quality of life within the community and maximizes the productive effect of the City's limited resources; and

(e) The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the county, state and federal governments; and

(f) That employees are far likelier to be healthy if their employer provides reasonable health insurance to them and their dependents; and

(g) The payment of a minimum level of compensation as required by this chapter benefits these interests.

Section 5. Definitions – Section 1-6-615 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

(a) "City" means the City of San Leandro and all City agencies.

(b) "City financial aid recipients" means all persons or entities that receive from the City, direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in the amount of more than \$100,000 within the City's fiscal year (July 1st through June 30th). This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations or ordinances.

(c) "Contractor" means any person or entity that enters into a service contract as hereafter defined with the City in an amount equal to or greater than \$25,000 within the City's fiscal year. (Contractor includes subcontractors whose employees are engaged in City funded services.)

(d) "Employee" means any individual employed by an employer who performs at least 25 percent of the work arising from City financial aid, or a City lease, or who performs work arising from a service contract. No work may be reassigned in order to evade coverage under this chapter.

(e) "Health Benefits" means an employer's monetary contribution toward the cost of health and medical care insurance for covered employees and their dependents. Health benefits may include the following types of insurance: medical health, including mental health, dental and vision care. The hourly cost of providing health benefits shall be credited as compensation along with wages under this chapter. Retirement benefits, accidental death and dismemberment insurance, life insurance, disability insurance and other benefits that do not provide medical or health-related coverage shall not be credited as compensation.

(f) “Nonprofit” shall mean a nonprofit organization described in Section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c) of that code, or any nonprofit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

(g) “Person” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(h) “Service contract” means a contract given a contractor by the City for \$25,000 or more for the furnishing of services to or for the City, except those contracts where services are incidental to delivery of products, equipment or commodities. Service contracts include, but are not limited to, security guard services, janitorial services, waste management, landscaping, parking attendant services, and towing. “Service contract” does not include: (1) a contract between the City and another governmental entity or public utility; and (2) a contract subject to federal or state laws or regulations that would preclude application of the living wage requirement otherwise applicable pursuant to this chapter.

Section 6. Persons and Entities Subject to the Requirements of this Chapter – Section 1-6-620 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

The persons and entities described below shall comply with the minimum compensation standards established by this chapter if they employ more than six employees:

(a) The City of San Leandro, including all its agencies, departments and offices, for all regular and permanent part-time employees.

(b) For-profit service contractors which employ six or more employees and receive contract(s) from the City for \$25,000 or more within the City’s fiscal year. Compliance shall be required during the term of the contract for all employees who perform, and while engaged in work arising from the service contract.

(c) Nonprofit service contractors which employ six or more employees and receive contracts from the City of \$100,000 or more within the City’s fiscal year. Compliance shall be required during the term of the contract for all employees who perform at least 25 percent of the work arising from the service contract.

(d) Lessees of public property, licensees, concessionaires and franchises which employ six or more employees and have \$350,000 or more in annual gross receipts. Compliance shall be required during the lease term for any employees who spend 25 percent or more of their compensated time on the leased property or engage in work directly related to the license, concession or franchise.

(e) City financial aid recipients which employ six or more employees and receive more than \$100,000 in grants, loans or other cash and/or non-cash assistance within the City’s fiscal year. Compliance shall be required for a duration of one year for each

\$100,000 of assistance, up to a maximum duration of five years, following receipt of the aid for all employees who spend 25 percent or more of their compensated time engaged in work directly related to the purposes for which the City provided the aid.

(f) Subcontractors and sub lessees of any of the entities or persons described in subparagraphs (a) through (e) above.

Section 7. Living Wage Rate – Section 1-6-625 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

All persons and entities subject to this chapter shall pay covered employees a wage of no less than the living wage set forth in this chapter:

(a) Living Wage means no less than \$12.40 per hour including wages and health benefits. For health benefits to be counted as a part of the living wage, the benefit must be at least \$1.50 per hour. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

(b) Time-off: Employees shall be entitled to at least twenty-two (22) days off per year for sick leave, vacation, or personal necessity. At least twelve (12) of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten (10) of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six (6) months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

(c) Additional Compensation Permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages to its employees.

(d) The initial rates set forth in subsection (a) of this section shall increase annually on July 1st, beginning July 1, 2008, to reflect the 12 month average in the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Areas for the preceding year from May through April.

(e) If the prevailing wage for services occupations are posted by the State Department of Industrial Relations (or any successor agency) and exceeds the compensation required by the living wage, then the contractor is required to pay its employees the posted prevailing wage.

(f) The City Council may periodically adjust the living wage rate up or down to reflect average living wage rates in effect in other Alameda County cities.

Section 8. Waivers – Section 1-6-630 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

Following a review and recommendation by the City Manager, the City Council may approve waivers with or without conditions to any of the requirements and regulations set forth in this ordinance, or in any implementing policies, upon a finding that such action is in the best interest of the City.

Section 9. Required Contract Provisions – Section 1-6-635 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

Every City contract, lease, license agreement, concession agreement, franchise agreement or agreement for financial aid with an employer or amendment thereto affecting financial aid or extending the term shall require compliance with the requirements of this chapter. Such contract provisions shall address the employer's duty to promptly provide to the City, documents and information verifying compliance with the requirements of this chapter, and sanctions for noncompliance. Such contract provisions shall also require the employer to give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Chapter. The notification shall be in the form provided by the City in English and Spanish, and translated by the employer to other languages spoken by a significant number of the employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

Section 10. Exemptions – Section 1-6-640 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

The requirements of this chapter shall not be applicable to the following employees:

- (a) Employees of another government agency, including without limitation, cities, counties, state agencies, joint power authorities, and public utilities.
- (b) An employee participating in a temporary job training program approved by the City in which a significant component of the employee's training consists of acquiring specialized knowledge, abilities, skills or job readiness (e.g., the importance of proper work attire, punctuality and workplace demeanor).
- (c) Any disabled employee who; (1) is covered by a current sub-minimum wage certificate issued to the employee by the U.S. Department of Labor; or (2) would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage.
- (d) An employee who is in an internship or other job training program for which the employee is also receiving academic credit.
- (e) An employee who is under 18 years of age.

(f) A temporary employee of the City of San Leandro who is employed for a limited term to a regular or non-regular position including casual, seasonal and emergency appointments with no guarantee of continued employment beyond the initial hire season.

(g) Volunteers.

(h) Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.

(i) Employees of contractors and subcontractors subject to the requirements of Division 2, Part 7, of the California Labor Code, for payment of prevailing wage when prevailing wage requires compensation greater than that required by this chapter.

(j) An employee for whom application of the requirements of this chapter is prohibited by state or federal law.

(k) An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

Section 11. Retaliation and Discrimination Prohibited; Worker Retention – Section 1-6-645 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

(a) It shall be unlawful to retaliate or discriminate against any person on account of having inquired into or having claimed a violation of this chapter.

(b) Each entity which is to replace a prior entity, subject to the requirements of this chapter, and described in Section 6, shall offer employment to the Employees of the prior entity. Such Employees may not be terminated by the new entity during the first 90 days except for just cause. The new entity may operate at lower staffing levels than its predecessor but in such event, shall place its predecessor's Employees on a preferential reinstatement list based on seniority. For purposes of this Section, an entity "replaces" another if it (1) assumes all or part of the lease, contract, subcontract or City aid of a prior employer, and (2) offers employment which Employees of the prior entity can perform. Nothing herein shall be construed to require that supervisory, managerial or confidential Employees retained by the new contractor be kept in a supervisory, managerial or confidential position.

Section 12. Employee Complaints to the City – Section 1-6-650 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

(a) An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

(b) Any complaints received shall be treated as confidential matters to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code Sections 6254 and 6255.

Section 13. Enforcement – Section 1-6-655 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

(a) A person claiming violation of this chapter may bring an action in the Superior Court of the State of California against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement and compensatory damages.
3. For a willful violation of this chapter, a court may award as a penalty up to treble the amount of monies to be paid as damages.
4. Reasonable attorney's fees and costs.

(b) Notwithstanding any provision of this chapter or any ordinances to the contrary, no criminal penalties shall attach for any violation of this chapter.

(c) No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law.

(d) No liability of City. Claims or lawsuits against the City arising under this chapter are not authorized, nor shall the remedies provided in subsection (a) be awarded against the City. The City shall not be liable to any person or entity because of the City's failure to notify an employer of the applicability of this chapter, the City's failure to investigate or enforce violations of this chapter, or based upon another employer's failure to comply with this chapter.

(e) The City may terminate a service contract, financial assistance, or lease or facility agreement and pursue any other legal remedies available to the City, including debarment, for Non-compliance with this chapter.

Section 14. Effective Date – Section 1-6-660 of Title 1 of the San Leandro Municipal Code is hereby added as follows:

This chapter shall apply to every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer entered into or amended on or after September 1, 2007.

Section 15. Administrative Guidelines, Regulations and Procedures

The City Manager, or his/her designee, shall have the authority to implement this ordinance and may promulgate administrative guidelines, regulations and procedures consistent with the purpose and intent of this ordinance.

Section 16. CEQA Determination

The City Council finds pursuant to Title 14 of the California Administrative Code §15601(b)(3) and §15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment. This action is further exempt from the definition of project in §15378(b)(3) in that it concerns general policy and procedure making.

Section 17. Severability

Every section, paragraph, clause and phrase of this Ordinance is hereby declared to be severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

Section 18. Effective Date and Publication.

This ordinance shall take effect on September 1, 2007. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

Introduced by Councilmember Prola on this 16th day of July, 2007, and passed to print by the following called vote:

Members of the Council:

AYES: Councilmembers Grant, Gregory, Prola, Souza, Starosciak, Stephens;
Mayor Santos (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: _____
Marian Handa, City Clerk

Passed and adopted this 30th day of July, 2007, after publication on July 23, 2007, by the following called vote:

Members of the Council:

AYES:

NOES:

ABSENT:

ATTEST: _____
Marian Handa, City Clerk