

Chapter 5 **PAYMENT OF LIVING WAGE**

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2-5.01 Findings and purpose.

In enacting this chapter the City Council makes the following findings and articulates the following purposes for this living wage ordinance.

- (a) The health and welfare of all Watsonville residents is benefited and advances when Watsonville workers are paid a living wage;
- (b) The City awards many contracts to private sector employers to provide services to the City in accordance with those contracts;
- (c) Many workers in Watsonville and their families live at or below the poverty line. The payment of inadequate wages to those workers tends to negatively affect the quality of services provided to the City and its residents by fostering high turnover and instability in the workplace;
- (d) The payment of a living wage will increase the ability of low wage workers to attain sustenance, decrease the amount of poverty and reduce the amount of taxpayer funded services provided in the City;
- (e) Some employers who provide services to the City do not provide health insurance benefits to their employees. This negatively affects worker performance and the quality of services delivered to the City and its residents, results in unwarranted employee absenteeism and negatively impacts local and State health programs. These problems can be favorably impacted if employers provide reasonable health insurance benefits to their employees; and
- (f) Living wage jobs will decrease poverty, increase consumer income and invigorate neighborhood businesses.

(§ 1, Ord. 1136.02, eff. October 24, 2002)

2-5.02 Definitions.

Unless the context requires otherwise, the definitions set forth in this chapter shall be used in the interpretation and construction of this chapter:

(a) "Benefits" shall mean all of the following at a minimum, provided by employer: ten (10) days compensated sick and vacation leave (combined) annually for fulltime employees, prorated for employees working less than full time; payment of at least One and 5/100ths (\$1.05) Dollar per hour toward health insurance for such employees. No covered employer will fund wage increases required by this chapter, or otherwise respond to the provisions of this ordinance, by reducing the health insurance, pension, vacation, or other non-wage benefits of any of its employees.

(b) "Contract for private sector services" shall mean any contract for profit between the City and a private sector contractor for the following services:

- (1) Automotive repair and maintenance;
- (2) Equipment maintenance service;
- (3) Facility and building maintenance;
- (4) Furniture moving and installation/maintenance;
- (5) Janitorial and custodial;
- (6) Landscaping;
- (7) Laundry;
- (8) Office and clerical services;
- (9) Pest control;
- (10) Recreation;
- (11) Recycling services;
- (12) Security;
- (13) Transportation and shuttle;
- (14) Towing;
- (15) Tree trimming and removal;
- (16) Any other service determined by the City as meeting the intent of this chapter.

Contract for private sector services does not include: contracts for commodities, goods, or supplies; contracts for public works; contracts for public projects subject to prevailing wage requirements; contracts for professional services including but not limited to the services of architects, engineers, landscape architects, land surveyors, construction managers, scientists, physicians, attorneys, property managers, financial advisers, or consultants; nor leases.

(c) "Contractor for private sector services" shall mean any private sector contractor/employer who enters into a contract for private sector services with the City, with the cumulative compensation amount in one City fiscal year greater than Ten Thousand and no/100ths (\$10,000.00) Dollars.

(d) "Covered employee" shall mean any employee of a contractor for private sector services, or any employee of a subcontractor while employed in providing service to the City pursuant to a contract for private sector services or related subcontract. In the foregoing context, covered employees are persons hired by contractors or subcontractors to work on a full-time, part-time, temporary, seasonal or regular basis for wages or salary and only while they are actually performing work on contracts for private sector services with the City of Watsonville.

Covered employee shall not include persons who are: in positions that are designated for trainees that are part of an employer's bona fide time-limited training program; in positions of employment that require student status as prerequisite to being employed in

that position; volunteers; recipients of income support such as but not limited to Supplemental Security Income who would become ineligible for such benefits by virtue of receiving a living wage as described herein, who waive in writing their entitlement to a living wage; or workers in licensed, sheltered workshops or supported employment; recipients of public funds who have been placed in a work experience, on the job training position, summer employment position, or wage-based community service position.

Covered employee shall also not include those employees represented by a bargaining unit or labor union pursuant to rights conferred by state or federal law and for whom a collective bargaining labor agreement is in effect which provides that its provisions supersede the ordinance governing their terms and conditions of employment.

(e) "Subcontractor" shall mean any person who enters into a subcontract with a contractor for private sector services.

(§ 1, Ord. 1136-02, eff. October 24, 2002, as amended by § 1, Ord. 1183-05 C-M, eff. February 10, 2005)

2-5.03 Living wage requirement.

(a) Covered Employees shall be paid a living wage.

(b) The living wage paid to covered employees with benefits and without benefits pursuant to the requirements of this chapter shall be set from time to time by resolution of the Council after consideration of the annual cost of living increase as measured by the San Francisco-Oakland-San Jose area Consumer Price Index. Any adjustments made to the living wage shall become effective the following July 1st.

(c) Amendments to this chapter concerning the definition of living wage shall apply to contracts entered into or extended following the effective date of such amendments. (§ 1, Ord. 1136-02, eff. October 24, 2002, as amended by § 1, Ord. 1202-06 C-M, eff. November 9, 2006)

2-5.04 Exemptions.

(a) The following categories are exempt from the requirements of this chapter.

(1) Contractors with five (5) or fewer employees.

(2) Where prevailing wage applies and is more than the living wage.

(3) Where a collective bargaining agreement exists with a union, which provides that its provisions supersede the ordinance.

(4) Students below the age of eighteen (18) or students who are involved in a training program.

(b) Council may by resolution grant an exemption on other grounds upon finding either that compliance with the living wage will cause great economic hardship, is otherwise necessary for the public welfare or is due to unusual circumstances (e.g., following a declared natural disaster) or where the City is required to award a contract for services to a sole source contractor for services.

(c) All exemption applicants must provide a written statement that includes complete details in support of the request for exemption and describe alternative solutions pursued. Exemptions will apply only to the contract for which they are granted. (§ 1, Ord. 1136-02, eff. October 24, 2002)

2-5.05 Nonprofit and other agencies.

(§ 1, Ord. 1136-02, eff. October 24, 2002; repealed by Ord. 1202-06 C-M, eff. November 9, 2006)

2-5.06 Assignees-successors in interest.

This Chapter shall be binding upon the assignees and successors in interest of any contractor or subcontractor to which this Chapter applies.

(§ 1, Ord. 1136-02, eff. October 24, 2002)

2-5.07 Contract provision.

Contracts for private sector services and related requests for proposals or bid documents shall contain the following language in substantially the following form:

“This contract is subject to the provisions of Chapter 5 of Title 2 of the Watsonville Municipal Code requiring payment of a living wage to covered employees. Noncompliance during the term of the contract will be considered a material breach and may result in termination of the contract or pursuit of other available legal or administrative remedies.”

(§ 1, Ord. 1136-02, eff. October 24, 2002)

2-5.08 Certification by contractor.

Before execution of a contract for private sector services by City, a contractor for private sector services shall certify in writing to the satisfaction of the City that its employees are paid a living wage as required by this Chapter. Contractors for private sector services and sub-contractors must include a statement disclosing any violations found against the contractor and/or subcontractor over the past five (5) years and how these violations were addressed by the National Employees Relations Board, the Occupational Safety and Health Agency, the California Labor Commission, the Equal Employment Opportunity Commission and/or the Department of Fair Employment and Housing.

(§ 1, Ord. 1136-02, eff. October 24, 2002)

2-5.09 Application of chapter.

This Chapter applies to all contracts for private sector services made, entered into, or extended, on or after the effective date of the ordinance enacting this Chapter.

(§ 1, Ord. 1136-02, eff. October 24, 2002)

2-5.10 Notification of employees.

Contractors for private sector services and subcontractors shall notify all employees subject to the provisions of this Chapter of the requirement to pay a living wage, the current minimum living wage rates, the minimum vacation leave and sick leave that must be provided and the minimum amount paid toward health insurance to qualify for the lower minimum living wage. Contractors for services and subcontractors shall post a copy of this Chapter and the approved complaint procedure, in the workplace, and provide this information to employees upon request.

(§ 1, Ord. 1136-02, eff. October 24, 2002)

2-5.11 Living wage monitoring and compliance.

(a) Monitoring of compliance with the requirements of this Chapter shall occur in the same way, to the extent feasible, as Chapter 15 (Local Hiring—Contractors Providing Public Works and Public Improvements) of Title 7 (Public Works) of this Code. An annual report shall be provided to the City Council or its designee concerning the status of the program.

(b) Any employee claiming a violation of this Chapter may report such acts to the City and may bring an action in the appropriate Court of the State of California or other appropriate administrative agency, against an employer to enforce his or her rights. Nothing in this Chapter shall preclude an employee from seeking any or all forms of relief and damages.

(c) Contractors for private sector services or subcontractors shall not discharge, reduce the compensation of, discriminate or otherwise retaliate against or intimidate any person for making a complaint to the City concerning noncompliance with obligations under this Chapter. Contractors for private sector services, and subcontractors shall also comply with federal, state and all other applicable law proscribing retaliation for union organizing.

(§ 1, Ord. 1136-02, eff. October 24, 2002, as amended by § 1, Ord. 1167-04, eff. January 13, 2004, § 1, Ord. 1202-06 C-M, eff. November 9, 2006)

2-5.12 Responsible contractor provision.

Prior to final approval of contracts for private sector services procured under this Chapter, the City shall consider the history of the contractor for private sector services as an employer and the working conditions of the employer's employees as deemed appropriate by the City Council. The City shall be authorized to access and review the employer's employee turnover, wages paid, benefits and employee grievances or complaints related to wages, hours and terms and conditions of employment and consider references from entities engaged in prior contracts with the contractor for private sector services. Any proprietary information, or personnel and employee information, shall be kept confidential. This information would be considered as part of consideration of the contract and may be used by the City as the basis for contract denial.

(§ 1, Ord. 1136-02, eff. October 24, 2002)

2-5.13 Labor relation peace and neutrality.

(a) Contractors for private sector services shall not hinder or further collective bargaining organization or other collective bargaining activities by or on behalf of an employer's employees. However, this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure made pursuant to obligations incurred under a bona fide collective bargaining agreement.

(b) Contractors for private sector services will also not discharge, reduce the compensation of, discriminate or otherwise retaliate against or intimidate any employee for making a complaint to the City, or for participating in any legal or administrative proceeding or using any civil remedies to enforce his or her rights conferred by this Chapter or for otherwise asserting his or her rights. Under this provision, contractors would also comply with federal, state and all other applicable law proscribing retaliation for union organizing.

(§ 1, Ord. 1136-02, eff. October 24, 2002)

2-5.14 Employee retention.

If any contract for private sector services in an amount greater than Fifty Thousand and no/100ths (\$50,000.00) Dollars is terminated by the City prior to its expiration, any new contract with a subsequent contractor for private sector services shall contain the following language in substantially the following form:

“Contractor shall make best efforts to offer employment to qualified employees of the prior contractor for the performance of this contract. Such efforts shall not be required in regard to employees who are (1) exempt under the Fair Labor Standards Act; (2) family members of prior contractor; (3) employed by prior contractor for less than six months; or (4) convicted of a job-related or workplace crime. Upon request by the City, the Contractor shall demonstrate to the City that good faith efforts have been made to comply with this provision.”

(§ 1, Ord. 1136-02, eff. October 24, 2002)

2-5.14 Severability.

If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portion of the Ordinance. The Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subdivision, subsection, paragraph, sentence, clause or phrase of this Ordinance.

(§ 1, Ord. 1136-02, eff. October 24, 2002)