

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 48, SECTIONS 22.4801, 22.4802, 22.4803, 22.4804, 22.4805, 22.4806, 22.4807, 22.4808, AND 22.4809, RELATING TO EQUAL PAY FOR EQUAL OR SUBSTANTIALLY SIMILAR WORK FOR CITY CONTRACTOR EMPLOYEES.

WHEREAS, to safeguard the public welfare, health, and prosperity of the people in the City of San Diego, it is essential that businesses that contract with the City of San Diego pay employees equal wages for equal or substantially similar work; and

WHEREAS, the California Equal Pay Act and Fair Pay Act, which are codified in California Labor Code section 1197.5, prohibit an employer from paying any of its employees wage rates less than the wage rates paid to employees of another gender, race, or ethnicity for equal or substantially similar work when viewed as a composite of skill, effort, and responsibility; and

WHEREAS, the persistent wage disparity in earnings has a significant impact on the welfare and economic security of millions of women and their families in California and contributes to the higher poverty rate among women, especially women of color and single women living with children; and

WHEREAS, on April 5, 2017, the Rules Committee of the City Council (Council) voted 5-0 to continue to work with the City Attorney, Independent Budget Analyst, Mayor's Office, and all appropriate city departments to bring an Equal Pay Ordinance to the Council for consideration; and

WHEREAS, the City Manager is authorized to administer and enforce the provisions of this Division as provided in Chapter 1, Article 2, and may rely on any contracting remedies as provided in Chapter 2 of the San Diego Municipal Code; and

WHEREAS, the Council now desires to adopt an ordinance to provide equal pay for equal or substantially similar work for City contractor employees; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 2, of the San Diego Municipal Code is amended by adding new Division 48, sections 22.4801, 22.4802, 22.4803, 22.4804, 22.4805, 22.4806, 22.4807, 22.4808, and 22.4809 to read as follows:

Article 2: Administrative Code

Division 48: Equal Pay Ordinance

§ 22.4801 Title and Purpose

This Division shall be known as the “Equal Pay Ordinance.” This Division’s purpose is to complement and ensure compliance with non-discrimination laws and the California Equal Pay Act and Fair Pay Act, as codified in California Labor Code section 1197.5. Through the contracting process, the City will use its purchasing power to require businesses to equalize wages between employees who perform equal or substantially similar work, regardless of gender, race, or ethnicity, to the maximum extent permitted by law.

§ 22.4802 Definitions

For the purposes of this Division, defined terms appear in italics. To the extent that a federal, state, or other law is referenced within this Division, the citation includes and incorporates the law as it may be amended or renumbered in the future. The following definitions apply in this Division:

City means the City of San Diego, it's organizational subdivisions, agencies, offices, commissions, or boards, but does not include independent agencies, such as the Housing Authority and the Retirement Board.

Contract means any agreement between the *City* and another party for the provision of goods, services, consultant services, grants from the *City*, leases of *City* property, or construction of public works.

Contractor means any person, firm, partnership, corporation, joint venture, or any combination of these, that enters into a *contract* with the *City*.

Wages means all payments made to, or on behalf of, an employee as remuneration for employment. The term includes all forms of compensation irrespective of the time of payment, whether paid periodically or deferred until a later date, and whether called *wages*, salary, profit sharing, expense account, monthly minimum, bonus, uniform cleaning allowance, hotel accommodations, use of company car, gasoline allowance, or any other name. *Wages* also include fringe benefits and are deemed to be remuneration for employment.

§ 22.4803 *Applicability of Equal Pay Ordinance*

- (a) For all *contracts* awarded, entered into, or extended on or after January 1, 2018, *contractors* shall demonstrate compliance with the California Equal Pay Act and Fair Pay Act, codified in California Labor Code section 1197.5, and as may be amended, as provided for in this Division. Nothing herein shall limit any requirements to comply with the California Equal Pay Act and Fair Pay Act. This Division shall apply as follows:

- (1) To all work performed by a *contractor* within the *City's* geographic boundaries;
 - (2) To all *contract* related work performed by a *contractor* within the State of California's geographic boundaries; and
 - (3) To all *contract*-related work performed by a *contractor* on any real property located outside of the *City's* geographic boundaries that is owned by the *City* or that the *City* has a right to occupy.
- (b) This Division applies to any subcontractor who performs work on behalf of a *contractor* to the same extent as it would apply to that *contractor*.
- (c) Any *contractor* subject to this Division shall require all of its subcontractors to certify compliance with this Division in its written subcontracts.

§ 22.4804 Exceptions

This Division does not apply to:

- (a) *Cooperative procurement contracts*, as that term is defined in San Diego Municipal Code Chapter 2, Article 2, Division 30.
- (b) *Sole source contracts*, as that term is defined in San Diego Municipal Code Chapter 2, Article 2, Division 30.
- (c) *Contracts* awarded, entered into, or extended with a *contractor* that employs 12 or fewer full-time equivalent employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

- (d) *Public works contracts*, as that term is defined in San Diego Municipal Code Chapter 2, Article 2, Division 30, of \$500,000 or less.
- (e) *Contracts* for intellectual property licensing agreements.
- (f) *Contracts* where the application of this Division would violate or be inconsistent with the laws, rules, or regulations of federal or state law.

§ 22.4805 Notice and Posting

Every *contractor* must post a notice informing its employees of their rights under this Division in a conspicuous location in the workplace or job site. The notice shall be in a form acceptable to the City Manager.

§ 22.4806 Contractor Records

Contractors shall create contemporaneous written records that document *wages* paid to employees, *wage* rates, and job classifications. *Contractors* shall retain these records for a period of at least three years and allow the City reasonable access to the records upon request. A *contractor's* failure to create and retain the required contemporaneous written records, or a *contractor's* failure to allow the *City* reasonable access to the required records, shall create a rebuttable presumption that the *contractor* has violated this section.

§ 22.4807 Certification of Compliance

Contractors shall certify in writing to the *City* that they will comply with the requirements of the California Equal Pay Act and Fair Pay Act, as defined in California Labor Code section 1197.5, and as may be amended, for the duration of the applicable *contract*.

§ 22.4808 Violations

The City Manager may issue a written notice to the *contractor* if it determines that a violation of this Division exists. The notice shall inform the *contractor* that it must cure the violation within 30 calendar days. *Contractor's* failure to cure the violation shall constitute a material breach of the applicable *contract* and the *City* may cancel, terminate, or suspend the *contract* in whole or in part, in addition to any other remedies or actions provided in the *contract* or this Code. This provision does not limit any other enforcement authority under the San Diego Municipal Code.

§ 22.4809 Administration

- (a) The City Manager may develop and implement administrative policies, rules, and regulations to carry out the intent of this Division, including procedures for handling complaints. The City Manager must monitor compliance with this Division. To secure compliance with this Division, the City Manager is authorized to take any appropriate enforcement action pursuant to Chapter 1, Article 2, Division 1 of this Code.
- (b) The *City* office or department responsible for enforcing this Division must provide a summary report of its activities related to this Division each year to the City Council as part of the annual budget process.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
Jill S. Cristich
Deputy City Attorney

JSC:GJH:sc:ccm
07/25/2017
Or.Dept: Council District 3
Doc. No.: 1547263

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor