



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 03/23/99
AGENDA ITEM 3
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: City Manager
SUBJECT: Living Wage Ordinance

Recommendation:

It is recommended that the City Council introduce the Living Wage Ordinance as drafted by staff.

Background/Discussion:

At its November 17, 1998 meeting, the City Council discussed the concept of a living wage ordinance. Following public input and discussion, the Council voted, according to the minutes, "to ask staff to investigate, analyze and make a valid recommendation on the request for consideration of a livable wage ordinance and for the Economic Development Committee to review it prior to Council consideration."

In response to the Council's direction, staff gathered background information and presented it to the Committee for its consideration. In part, this background information consisted of copies of existing living wage ordinances, along with whatever cost information had been developed by the affected jurisdiction. Exhibit 1 to this agenda report summarizes the information shared with the Committee.

Based on its review of the information, the Committee provided direction to staff with regard to the preparation of a draft ordinance. As shared with the Committee, the draft prepared by staff did not constitute original work. Rather, it borrows and incorporates features from the ordinances adopted by five other cities in California. It is this draft ordinance that staff is recommending to you for consideration.

As drafted, the ordinance applies to contracts or purchase orders with a value of \$25,000 or more involving specified services. It requires that covered employees receive a wage of at least \$8.00 per hour with medical benefits and \$9.25 without such benefits. A provision of the ordinance calls for dissemination of information and forms concerning the Earned Income Tax Credit.

To assure compliance, the ordinance establishes certain penalties and fines, including the potential for the City to terminate the contract. Under the ordinance, staff will periodically verify that covered employees are receiving the applicable compensation.

The effective date of the ordinance is essentially July 1, 1999, which coincides with the start of the new fiscal year. To measure the effect of the ordinance, and to determine if any revisions are in order, a report is to be submitted to the Council by October 1, 2000, regarding our experience with the ordinance.

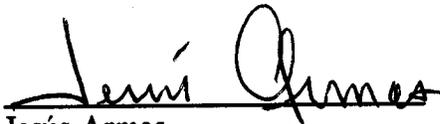
As drafted, it will be possible to administer the requirements of the ordinance without adding staff or incurring administrative costs beyond available funding.

There is, however, a potential for additional costs to be experienced by the City. I would underscore the word potential, as it is difficult to know for certain in the absence of a solicitation for bids and testing the market place. By using information gleaned from the contracts awarded in 1997-98 as baseline data and comparing the hourly rates found in the ordinance with those currently paid by the contractors, staff calculated an approximate amount of increased cost to the City. With the caution that performing such an analysis in a static environment may not yield a true account of actual results, it is estimated that the City could potentially experience new costs of between \$75,000 and \$160,000. At the same time, and with the same caution in mind, it is possible that between 30 and 75 individuals could experience higher wages.

At its March 1 meeting, the Committee considered two versions of a potential living wage ordinance. One developed by staff and one developed by labor organizations for your consideration. This second ordinance appears to be modeled largely after the one adopted by Oakland.

Following public testimony and discussion, the Committee concluded that because the differences in the two ordinances are of a policy nature, it is more appropriate for the Council - rather than the Committee - to resolve them. Hence, the Committee voted to refer both versions to you for consideration. In this regard, attachment 1 is the version drafted by staff, while attachment 2 is labor's alternative.

Although some of the differences between the two ordinances are of a significant nature, this is not the case in all instances. In this regard, exhibit 2 to this agenda report is a listing of possible amendments to the staff version to address a number of the issues raised by the labor organizations.


Jesús Armas

- Attachments: Exhibit 1 - Summary of California Living Wage Ordinances
Exhibit 2 - List of Possible Amendments
Attachment 1 - Ordinance drafted by Staff
Attachment 2 - Ordinance provided by Labor Organizations

Exhibit 1

Summary of California Living Wage Ordinances

	Los Angeles	Oakland	Pasadena	San Jose	West Hollywood
Effective Date	May 1997	July 1998	September 1998	November 1998	October 1997
Application	\$ 25,000 - Service contract \$100,000 - CFAR	\$ 25,000 - Service contract \$100,000 - CFAR	\$25,000 - Service contract	\$20,000 - Service contract \$100,000 - CFAR	\$25,000 - Service contract
Wage Rate	\$ 7.25 w/benefits \$ 8.50 w/out benefits	\$ 8.00 w/benefits \$ 9.25 w/out benefits	\$7.25 w/benefits \$8.50 w/out benefits	\$9.50 w/benefits \$10.75 w/out benefits	\$7.25 w/benefits \$8.50 w/out benefits
Annual Adjustments	City Retirement system	Bay Area CPI	None mentioned	Federal poverty level, City living standard, Bay Area CPI	City Retirement system
Annual Days Off	12 compensated 10 uncompensated	12 compensated 10 uncompensated	Not mentioned	None enumerated. However, bidding firms must specify their practices.	12 compensated 10 uncompensated
Exceptions	Collective bargaining agreements	-Collective bargaining agreements -Business with less than 5 employees	- Collective bargaining agreements - Government contracts	- Collective bargaining agreements - 501 (c) (3) organizations - Joint Power Agencies	501 (c) (3) organizations
Evaluation	Annual report to Council. Formal evaluation at 1 st , 3 rd and 7 th year.	Annual report to Council.	Annual report to Council. Formal evaluation at 1 st , 3 rd and 7 th year.	Annual report to Council.	Annual report to Council. Formal evaluation at 1 st , 3 rd and 7 th year.

Notes

1. Generally speaking, these ordinances define a service contract as a contract awarded, via a competitive process, to a contractor for the furnishing of services to or for a City. This is contrasted with the purchase of goods, material, equipment or other property or the leasing of property.
2. CFAR means City Financial Assistance Recipient. Generally speaking, a CFAR is an entity that receives direct financial assistance from the City. Examples of this assistance are grants, rent subsidies, land writedowns, and lower interest rates. Los Angeles and Oakland have a more expansive definition, while San Jose crafted a more narrow definition.
3. The San Jose program differs from most other programs in some important respect. For instance, San Jose identifies 14 categories of services covered by the contract. These include janitorial and landscape maintenance, food services, parking lot management, auto towing and security functions to cite a few examples. Another important distinction in the San Jose program involves a stated commitment to effecting labor peace and to assuring that employees do not lose their jobs simply because the City changes contractors.

Cost Estimates

In a June 1998 report to the Oakland City Council, City staff estimated it would cost approximately \$175,000 per year to administer the LWO. The same report projected that Oakland would experience additional contract costs of \$243,000 in fiscal year 1998-99. Contracts for security services and parking functions accounted for 81% of the increased costs.

The Oakland ordinance also applies to some entities which receive financial assistance from the City. Known as City Financial Assistance Recipients (CFAR), they are obligated to conform to the provisions of the LWO with respect to hourly wage paid to their employees. According to the noted staff report, additional personnel costs of between \$6.8 million and \$22.1 million, covering some 1,800 to 3,500 employees, would be incurred. The staff report makes the point that most of these jobs are in City-assisted retail and entertainment venues and pertain to particular projects proposed or underway in Oakland's redevelopment area and enhanced enterprise zone.

With regard to the City of Pasadena, an August 1998 staff report estimated that Pasadena would incur additional contract costs of \$320,000 annually, when the living wage ordinance is fully in effect. At the same time, Pasadena staff indicated that any costs associated with the administration of the ordinance would be absorbed by current operations. No estimates were offered concerning this cost, however.

In the case of San Jose, increased costs were also projected, although the amounts noted in that City are greatly impacted by the fact that San Jose established higher hourly rates.

In a November 1998 report to the City Council, City staff estimated it would cost approximately \$254,000 per fiscal year to implement the LWO in San Jose. The same report estimated that San Jose would pay about \$500,000 per year in added contract costs. To put this figure in perspective, the San Jose report noted that the LWO would apply to about 260 contracts, having a monetary value of \$36 million, and apply to an estimated 500 to 600 employees of the affected contractors.

The City of West Hollywood did not provide cost estimates related to the implementation of a living wage ordinance in that community.

Exhibit 2

POSSIBLE AMENDMENTS TO LIVING WAGE ORDINANCE

1. **ANNUAL CONSUMER PRICE INDEX ADJUSTMENTS TO HOURLY RATES**

If the Council desires to add an automatic annual adjustment to the hourly rate contained in the Living Wage Ordinance the addition of the following language is suggested:

Add to section 2-13.020(c): “The hourly rates contained in this section shall be upwardly adjusted each July 1 to reflect the change in the Bay Area Consumer Price Index for the twelve-month period preceding April 1. Prior to July 15th of each year, the individual assigned to administer this ordinance shall calculate, circulate to all “Service Contractors” and post the hourly rate in effect for the next fiscal year.”

2. **EXTENSION OF COVERAGE TO SUBCONTRACTORS**

If the Council wishes to assure that subcontractors hired by a “Service Contractor” are covered by the provisions of this Ordinance, it is recommended that the following language be added:

Modify section 2-13.010(g) to read as follows: “(g) “Service Contractor” shall mean any contractor who seeks or has been awarded a Service Contract subject to this Ordinance. For the purposes of this Ordinance, the term “Service Contractor” shall include all subcontractors retained by a contractor to perform any or all of the functions covered by a Service Contract subject to the herein contained regulations.”

Add section 2-13.021 to the Ordinance to provide as follows:

“2-13.021 SUBCONTRACTED WORK. Service Contractors shall assure that all subcontracts entered into for the performance of work covered by this Ordinance shall contain a provision requiring the subcontractor to comply with provisions of this Ordinance.”

3. **COMPENSATED DAYS OFF**

If the Council desires to include compensated days off in the Living Wage Ordinance, it is advised that subsection (d) be added to section 2-13.020 to read:

“(d) Compensated Days Off. Service Contractors subject to the provisions of this Ordinance shall provide a minimum of twelve (12) compensated days off per year for sick leave, vacation or personal necessity at the employee’s request. Full time employees shall accrue compensated days off at the rate of one day per month. Part time employees shall accrue such days at a rate proportional to full time employees.”

4. **PROTECTION AGAINST RETALIATION**

If the Council desires to provide an employee who exercises his/her rights under this Ordinance with protection against retaliation by an employer, it is suggested that the Council add the following language to SECTION 2-13.040(a)(iii):

“For retaliation for exercise of any rights provided for under this Ordinance, reinstatement, back pay, and/or any other relief that a court may deem appropriate.”

Renumber current subsection (iii) to read (iv)....

5. **EXTENDING COVERAGE TO NON-PROFIT ORGANIZATIONS**

If the Council wishes to extend coverage of the Living Wage Ordinance to non-profit organizations add the following:

Add subsection (ix) to SECTION 2-13.010(f) to read: “(ix) Social Service Agencies.”

Add subsection (h) to SECTION 2-13.010 to read: “(h) “Social Service Agency” shall mean any non-profit organization receiving funds from the City as a result of a process involving the Human Services Commission.”

Attachment 1

ORDINANCE NO. _____

AN ORDINANCE ADOPTING THE HAYWARD LIVING
WAGE ORDINANCE AS ARTICLE 13 OF CHAPTER 2 OF
THE HAYWARD MUNICIPAL CODE

BE IT ORDAINED by the City Council of the City of Hayward as follows:

SECTION 1. FINDINGS. The City Council finds and determines as follows:

- a. The City awards many contracts to private firms which provide services and labor to City government and to the public.
- b. Experience indicates that many City contractors who provide services and labor pay their employees of wages at or slightly above the minimum required by federal and state minimum wage laws.
- c. Payment of inadequate compensation does not provide affected employees with resources sufficient to afford a decent standard of living in Hayward.
- d. The City intends to require contractors to provide a minimum level of compensation that will improve the level of services rendered to and for the City.
- e. Based upon public comment, testimony and studies, the City Council finds that the wage levels set by this ordinance are minimum compensation levels required to afford a decent standard of living in Hayward.

SECTION 2. ADOPTION OF HAYWARD LIVING WAGE ORDINANCE. The Hayward Municipal Code is amended by adding a new Article 13 to Chapter 2 entitled the "Hayward Living Wage Ordinance" to read as follows:

ARTICLE 13
HAYWARD LIVING WAGE ORDINANCE

- | | |
|------------------|--|
| Section 2-13.010 | Title and Definitions. |
| Section 2-13.020 | Applicability of Hayward Living Wage Ordinance Requirements. |
| Section 2-13.030 | Notifying employees of their potential right to the federal Earned Income Credit. |
| Section 2-13.040 | Enforcement. |
| Section 2-13.050 | Administration. |
| Section 2-13.060 | Coexistence with other available relief for specific deprivations of protected rights. |
| Section 2-13.070 | Supersession by collective bargaining agreement. |

Section 2-13.080 Severability.

SECTION 2-13.010 TITLE AND DEFINITIONS. The regulations in this Article may be referred to as the Hayward Living Wage Ordinance (hereafter "Ordinance"). The terms used herein are subject to the following definitions

(a) "City" means the City of Hayward and its employees and officials, including those City employees authorized to award a service contract on the City's behalf.

(b) "City Manager" means the City Manager and his/her delegates and representatives.

(c) "Employee" means any individual employed by a service contractor on or under the authority of any contract for services with the City or proposal for such contract.

(d) "Health Benefits" means the payment of no less than one dollar and twenty-five cents (\$1.25) per hour toward the cost of health and medical care insurance for employees and their dependents.

(e) "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.

(f) "Service Contract" means any contract with the City, including a purchase order, for an expenditure in excess of Twenty-Five Thousand Dollars (\$25,000), for any of the following services:

- (i) Automotive repair and maintenance,
- (ii) Facility and building maintenance,
- (iii) Janitorial and custodial,
- (iv) Landscaping,
- (v) Laundry services,
- (vi) Temporary personnel,
- (vii) Pest control, or
- (viii) Security services.

(g) "Service Contractor" means any contractor who seeks or has been awarded a Service Contract subject to this Ordinance.

SECTION 2-13.020 APPLICABILITY OF HAYWARD LIVING WAGE ORDINANCE REQUIREMENTS.

(a) Scope. These regulations shall apply to any Service Contract with the City

which is executed or extended on or after July 1, 1999, and to any previously executed Service Contract, where the services are first provided to the City after June 30, 1999.

(b) Exemptions. To the maximum extent permitted by law, this Ordinance shall apply to the expenditure of funds entirely within the City's control and to the expenditure of other funds consonant with the laws authorizing such expenditures. The following Service Contracts are exempt from this Ordinance's requirements:

- (1) Contracts subject to federal or state law or regulations which preclude the applicability of this Ordinance's requirements.
- (2) Multi-agency contracts involving programs where the City shares management authority with other jurisdictions, unless all of the signatory jurisdictions have a Living Wage Policy.
- (3) Contracts for provision of service by any other governmental agency.

(c) Living Wage Requirements. Service contractors subject to this Ordinance shall pay their employees a wage of no less than eight dollars (\$8.00) per hour, if health benefits are paid to the employees, or nine dollars and twenty-five cents (\$9.25) per hour if no such health benefits are paid.

SECTION 2-13.030 NOTIFYING EMPLOYEES OF THEIR POTENTIAL RIGHT TO THE FEDERAL EARNED INCOME CREDIT.

Any contractor who executes a Service Contract with the City shall inform employees making less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Credit ("EIC") under § 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and shall make available to employees information about the EIC and forms required to secure advance EIC payments.

SECTION 2-13.040 ENFORCEMENT

(a) Private Right of Action. An employee claiming violation of this Ordinance shall have the right to file an action against an employer in the appropriate court, within one year after discovery of the alleged violation. The court may award any employee who files suit pursuant to this provision, as to the relevant period of time, the following:

- (i) For failure to pay the minimum wage required by this Ordinance, the difference between the minimum wage required herein and the amount actually paid to the employee.
- (ii) For failure to pay medical benefits, the difference between the minimum wage

required by this Ordinance with benefits and the amount actually paid to the employee.

(iii) The court shall award reasonable attorney's fees and costs to an employee who prevails in any such private action.

(b) Service Contract Requirements. Each Service Contract to which these regulations apply, shall provide that violation of this Ordinance shall enable any aggrieved employee to file an action against the Service Contractor for damage. In addition, such Service Contract shall also indicate that the City has the discretion to terminate the Service Contract and pursue any other legal remedies available to the City if the Service Contractor fails to comply with this Ordinance.

(d) Retaliation Prohibited. Service Contracts shall expressly prohibit a service contractor from any retaliation against an employee who alleges non-compliance with this Ordinance. Any such employee may report such alleged retaliation to the Purchasing Manager or to the Finance Director, who shall investigate such claim and report the results to the City Manager.

(e) City Enforcement. The City may, in its sole discretion, investigate and address any alleged violation of this Ordinance's requirements. However, the City's failure to investigate an alleged violation or otherwise enforce any of the provisions of this Ordinance shall not create any right of action or right to recover damages from the City by any person, including but not limited to an aggrieved employee.

(f) Violation Chargeable as an Infraction. In addition to the payment of damages, any person violating the requirement of this Ordinance shall be guilty of an infraction and shall be subject to the payment of a fine, not to exceed the limits set forth in Government Code section 36900. However, violation of this Ordinance shall not be prosecuted as a misdemeanor, notwithstanding any other provision of the Hayward Municipal Code.

SECTION 2-13.050 ADMINISTRATION

(a) Compliance. The City Manager is authorized to develop and implement administrative policies which carry out the intent of this Ordinance. The City Manager shall also have the discretion to monitor compliance, which may include, but is not limited to, the periodic review of appropriate records maintained by service contractors to verify compliance, and investigation of claimed violations.

(b) Report to City Council. Following the first year after this Ordinance takes effect, the City Manager shall submit a report to the City Council specifically addressing the following matters:

(i) The extent to which the benefits required by this Ordinance are accruing to

Hayward residents,

- (ii) The extent to which service contractors are complying with this Ordinance,
- (iii) The manner in which this Ordinance is affecting the workforce composition of service contractors,
- (iv) The manner in which this Ordinance is affecting productivity and service quality of service contractors, and
- (v) The manner in which the additional labor costs required by this Ordinance have been distributed among employers, employees and the City.

The aforementioned report shall be submitted to the City Council by October 1, 2000, and subsequent reports shall be submitted as frequently as the City Council deems appropriate.

SECTION 2-13.060 COEXISTENCE WITH OTHER AVAILABLE RELIEF FOR SPECIFIC DEPRIVATIONS OF PROTECTED RIGHTS.

This Ordinance shall not be construed to limit an employee's right to bring legal action for violation of other minimum compensation laws.

SECTION 2-13.070 SUPERSESSON BY COLLECTIVE BARGAINING AGREEMENT. The terms of a collective bargaining agreement to which any person subject to this chapter is or may become subject to shall supersede any requirements of this Ordinance which are inconsistent with the terms of such collective bargaining agreement.

SECTION 2-13.080 SEVERABILITY. If any provision of this Article is declared legally invalid by a final judgment rendered a court of competent jurisdiction, the provision declared invalid shall be deemed to be severable to the extent that the remaining provisions of this Ordinance can be enforced in a manner which substantially carries out the objectives of this Ordinance.

SECTION 3. EFFECTIVE DATE In accordance with section 720 of the Hayward City Charter, this ordinance shall take effect thirty days after its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 1999, by Council Member_____ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ____ day of _____, 1999, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Mayor of the City of Hayward

DATE:_____

ATTEST:_____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Attachment 2

Hayward Living Wage Ordinance

Whereas, the City of Hayward awards contracts to private firms to provide services to the Public and to City Government; and

Whereas, the City of Hayward provides financial assistance and funding to others for the purpose of economic development or job growth; and

Whereas, the City of Hayward has a limited amount of taxpayer resources to expend; and

Whereas, even in promising economic times, far too many working Hayward residents and their families live below or near the poverty line; and

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

Whereas, the City of Hayward's payment of prevailing wage rates for public works projects has been tremendously beneficial for working people in Hayward and their families, Hayward neighborhoods, and the area economy;

Whereas, the experience in the City of Hayward indicates that the procurement by contract of services has all too often resulted in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws. Such minimal compensation tends to inhibit the quantity and quality of services rendered by such employees, to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism, and lackluster performance. Conversely, adequate compensation promotes amelioration of these undesirable conditions; and

Whereas, the inadequate compensation typically paid today also fails to provide service employees with resources sufficient to afford life in the City of Hayward. It is unacceptable that contracting decisions involving the expenditure of City funds should foster conditions placing a burden on limited social services. The City, as a principal provider of social support services, has an interest in promoting an employment environment that protects such limited resources; and

Whereas, financial assistance recipients of the City are engaged in business that is an integral part of the City of Hayward economy and such entities often pay wages at or slightly above the minimum required by federal and state minimum wage laws. The City as a provider of subsidies to these entities has the same interest

in requiring the payment of a higher minimum level of compensation to employecs of financial assistance recipients as it does of service contractors;

Whereas, when the City uses contractors or subsidizes businesses which do not provide health insurance to their employees, this often imposes the costs of their medical care on the County, State and Federal governments. The City has an interest in avoiding such impacts, which the City finds can only be done if the employer provides health insurance in a reasonable form. The City finds that the benefits avoiding such impacts cost at least \$1.25 per hour on average in contributions. The City also has an interest in ensuring that persons delivering City services are healthy, as lack of health care can effect performance and absenteeism. The City finds that employees are far likelier to be healthy if their employer provides than reasonable health insurance to them and their dependents. In addition, one of the City's reasons for providing financial assistance is to promote the public health, an interest served by having employers receiving such assistance spend a reasonable portion of this money for health purposes.

Whereas, in requiring the payment of a higher minimum level of compensation, this chapter benefits these interests;

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF HAYWARD:

The Municipal Code of Hayward is hereby amended by inserting a new Chapter __, as follows:

Section 1. Title and Purpose

(a) Hayward Living Wage Ordinance

This Chapter shall be known as the "Hayward Living Wage Ordinance." The purpose of this ordinance is to require that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors of the City and employees of City financial assistance recipients.

Section 2. Definitions

The following definitions shall apply throughout this article:

(a) "Awarding authority" means that subordinate or component entity or person of the City (such as a department) or of the financial assistance recipient that awards or is otherwise responsible for the administration of a service contract or proprietary lease or license, or, where there is no such subordinate or component entity or person, then the City.

(b) "City" means the City Hayward and all City Agencies, departments and offices all awarding authorities thereof.

(c) "City financial assistance recipient" (CFAR) means any person who receives from the City financial assistance as contrasted with generalized financial assistance such as through tax legislation, in the amount of \$100,000 or more in a twelve month period.

Categories of such assistance include, but are not limited to, grants, rent subsidies, bond financing, financial planning, tax increment financing, land writedowns, and tax credits. City staff assistance shall not be regarded as financial assistance for the purposes of this Article. The forgiveness of a loan shall be regarded as financial assistance and a loan provided at below market interest rate shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. §§ 1274(d), 7872(f).

A tenant or leaseholder of a CFAR who occupies the property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who will employ at least twenty employees for each working day in each of twenty or more calendar weeks in the twelve months after occupying or using said property, shall be considered a "City financial assistance recipient" for the purposes of this Ordinance and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.

(d) "Contractor" means any person that enters into (1) a service contract with the City, (2) a service contract with a proprietary lessee or licensee or sublessee or sublicensee, or (3) a contract with a City financial assistance recipient to assist the recipient in performing the work for which the assistance is being given.

(e) "Employee" ^{STORE} means any person—who is not a managerial supervisory, or confidential employee who is employed (1) by a contractor or subcontractor on or under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; retail employees; and clerical employees; (2) by a proprietary lessee or licensee, of a sublessee or sublicensee, or of a service contractor or subcontractor of a proprietary lessee or licensee, or sublessee or sublicensee—who works on the leased or licensed premises; (3) by a city financial assistance recipient who expends at least half of his or her time on the funded project; or (4) by a service contractor or subcontractor of a City financial assistance recipient and who expends at least half of his or her time on the premises of the City financial assistance recipient directly involved with the activities funded by the City.

(f) "Employer" means any person who is a City financial assistance recipient, contractor, subcontractor, proprietary lessee, proprietary sublessee, proprietary licensee, or proprietary sublicensee and who is required to have a business tax registration certificate by Hayward Municipal Code, or successor ordinance or, if expressly exempted by the Code from such tax, would otherwise be subject to the tax but for such exemption.

(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) "Proprietary lease or license" means a lease or license of City property on which services are rendered by employees of the proprietary lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies: (1) the services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis; (2) any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or (3) the City Council has determined that coverage would further the proprietary interests of the City; Proprietary "lessees" and "licensees" shall be deemed to include their sublessees and sublicensees.

(j) "Service contract" means a contract let to a contractor by the City primarily for the furnishing of services to or for the City and that involves an expenditure in excess of twenty-five thousand dollars (\$25,000) in a twelve month period and a contract term of at least three (3) months; but only where any of the following applies: (1) at least some of the services rendered are rendered by employees whose work site is on property owned by the City, (2) the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or (3) the City Council has determined that coverage would further the proprietary interests of the City; a contract for the purchase or lease of goods, products, equipment, supplies or other property is a "service contract" for the purpose of this definition.

(k) "Subcontractor" means any person not an employee that enters into a contract (and that employs employees for such purposes) with (1) a contractor or subcontractor to assist the contractor in performing a service contract or (2) a contractor or subcontractor of a proprietary lessee or licensee or sublessee or sublicensee to perform or assist in performing services on the leased or licensed premises, (c) a CFAR to assist the recipient in performing the work for which the assistance is being given or to perform services on the property which is the subject of financial assistance. Service Contractors of CFARs shall not be regarded as subcontractors except to the extent provided in subsection (c).

(l) "Willful violation" means that the employer knew of his, her, or its obligations under this article and deliberately failed or refused to comply with its provisions.

Section 3. Payment of Minimum Compensation to Employees

(a) Wages

Employers shall pay employees a wage to each employee of no less than the hourly rates set under the authority of this Ordinance. The initial rate shall be eight dollars (\$8.00) per hour with health benefits, as described in this Chapter, or otherwise nine dollars and twenty-five cents (\$9.25) per hour. Such rate shall be adjusted annually, to be effective no later than July 1 in proportion to the increase immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to the \$9.25. The City shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect upon such publication. Said bulletin will be distributed to all awarding authorities and City contractors upon publication. The contractor shall provide written notification of the rate adjustments to each of its employees and its subcontractors, who shall provide written notices to each of their employees, if any, and make the necessary payroll adjustments by July 1.

(b) Compensated days off.

Employers shall provide at least (12) twenty days off per year for sick leave, vacation, or personal necessity at the employee's request. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

Employers shall also permit employees to take at least an additional (10) ten days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year. This Ordinance does not mandate the accrual from year to year of uncompensated days off.

(c) Health Benefits

Health benefits required by this Chapter shall consist of the payment of at least one dollar and twenty five (\$1.25) per hour towards the provision of health

care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the Agency not later than 30 days after execution of the contract to qualify for the wage rate in Section 3 for employees with health benefits.

Section 4. Duration of Requirements

For CFAR's, assistance given in the amount equal to or greater than one hundred thousand dollars (\$100,000) in any twelve month period shall require compliance with this Ordinance for the life of the project or five years in the case of assistance given to purchase real estate, tangible property or construct facilities, including but not limited to materials, equipment, fixtures, merchandise, machinery of the like.

A Service Contractor and subcontractor shall be required to comply with this Ordinance for the term of the contract.

Section 5. Notifying Employees of their Potential Right to the Federal Earned Income Credit

Employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit ("EIC") under §32 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer. These forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within 30 days of employment under the subject agreement and as required by the Internal Revenue Code.

Section 6. Contract Review Process And City Reporting And Record Keeping

(a) The City Manager shall promulgate rules and regulations for the preparation of bid specifications, contracts and preparation for contract negotiations.

(b) The City Manager shall submit periodic reports to the City Council which shall include the following information at minimum:

(1) A listing and the status of all applicable RFP's and RFQ's, service contracts and lease agreements executed and financial assistance awarded, which this Ordinance applies including the term, dollar amount and the service performed or assistance provided;

(2) A description of every instance where an exemption or waiver was granted by action of the City Council;

(c) The City Manager shall develop an administrative procedure and appeal process for determining compliance with this Ordinance.

(1) Regarding the appeal process, it shall be available to every bidder/proposer who has deemed noncompliant with this Ordinance, or who disputes the determination of applicability of this Ordinance to its business operation which will be involved in the proposed contract. A contract shall not be executed until there is resolution of the relevant appeal.

(2) Appeals shall be filed with the City Manager within seven calendar days of the date of the notice of the City's written determination of noncompliance and reasons therefor, or written determination of the applicability of this Ordinance.

(3) The City manager shall maintain records pertaining to all complaints, hearings, determinations and findings and shall submit a regular report on compliance with this Ordinance no less than annually to the City Council. Special Reports and recommendations on significant issues of interest to the Council will be submitted as deemed appropriate.

Section 7. Noncompliance Review and Appeal

Contractors, subcontractors and CAR's who fail to submit documents, declarations or information required to demonstrate compliance with this Ordinance shall be deemed nonresponsive and subject to disqualification.

Section 8. Waivers

(a) A CFAR who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Awarding Authority who may recommend a waiver to the City Council. The explanation must set forth the reasons for its inability to comply with the provisions of this ordinance, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the CFAR. The CFAR must also demonstrate that the waiver will further the interests of the City in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

(b) The City Council will grant a waiver only upon a finding and determination that the CFAR has demonstrated economic hardship and that waiver will further the interests of the City in providing training positions which will enable employees to advance into permanent living wage jobs or better. However,

no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

(c) Waivers from the Ordinance are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the CFAR may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(d) The City reserves the right to waive the requirements of this ordinance upon a finding and determination of the City Council that waiver is in the best interests of the City, e.g., when the City has declared an emergency due to natural disasters and needs immediate services.

Section 9. Exemptions

(a) A recipient shall be deemed exempted from application of this article if (1) it employes fewer than five employees for each working day in each of twenty or more calendar weeks in the current or preceeding calendar year, or (2) it obtains a waiver as provided herein.

(b) An employee who is under 21 years of age, employed by a non profit organization for after school or summer employment or as a trainee for a period not longer than 90 days, shall be exempt.

Section 10. RFP, Contract and Financial Assistance Agreement Language

All RFP's, City contracts and financial assistance agreements subject to this Ordinance shall contain the following two paragraphs or substantially equivalent language:

(a) This contract is subject to the Living Wage Ordinance, of the Hayward Municipal Code. The Ordinance requires that, unless specific exemptions apply or a waiver is granted, all employers (as defined) under service contracts and recipients of City financial assistance (as defined), shall provide payment of a minimum initial wage rate to employes (as defined) of \$8.00 per hour with health benefits of at least \$1.25 per hour or otherwise \$9.25 per hour. Such rate shall be adjusted annually pursuant to the terms of the Hayward Living Wage Ordinance, of the Hayward Municipal Code.

(b) Under the provisions of Living Wage Ordinance, the City shall have the authority, under appropriate circumstances, to terminate this contract and seek other remedies as set forth therein for violations of this Ordinance.

Section 11. Obligations Of Contractors And Financial Assistance Recipients

(a) All proposed contractors and CFARs subject to the provisions of this Chapter shall submit a completed Declaration of Compliance form, signed by an authorized representative, along with each proposal. The completed Declaration of Compliance form shall be made a part of the executed contract.

(b) Contractors and CFARs shall require their subcontractors and tenants/leaseholders to comply with the provisions of this Ordinance. Language indicating the subcontractor's and tenants/leaseholders' agreement to comply shall be included in the contract between the contractor and the subcontractor or any agreement between a CFAR and tenants/leaseholders. A copy of such subcontracts or other agreements shall be submitted to the City

(c) Contractors, subcontractors and CFARs shall maintain a listing of the name, address, date of hire, occupation classification, rate of pay and benefits paid for each of its employees, if any, and submit a copy of the list to the City by March 31, June 30, September 30 and December 31 of each year the contract is in effect. Failure to provide the list within five days of the due date will result in a penalty of \$500.00 per day. Contractors, subcontractors and CFARs shall maintain payrolls for all Employees and basic records relating thereto and shall preserve them for a period of three years after termination of their contracts.

(d) Contractors, subcontractors and CFARs shall give written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of this Ordinance. The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification shall be forwarded to the City which must include the following:

(1) Minimum compensation - The initial rates of \$8.00 with health benefits or \$9.25 without health benefits will be adjusted annually to correspond to adjustments, if any. The Living Wage shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to \$9.25, whichever is greater.

(2) Health benefits - Proof of the provision of such benefits shall be submitted to the City not later than 30 days after execution of the contract to qualify for the wage rate in Section 3. Health benefits shall be provided to part-time employees as well as full-time employees.

(3) Twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per

year for sick leave which shall be made available to all covered employees as provided in this chapter. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year. This Ordinance does not mandate the accrual from year to year of uncompensated days off.

(4) Federal Earned Income Credit (EIC) - Forms to inform employees earning less than \$12 per hour of their possible right to EIC and forms to secure advance EIC payments from the employer shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within 30 days of employment under the subject agreement.

(5) Notice that the employers are required to file a Declaration of Compliance form as part of the contract with the City and that the City will make said declarations available for public inspection and copying during its regular business hours.

(c) Contractors, CFARs and subcontractors shall permit access to work sites and relevant payroll records for authorized City representatives for the purpose of monitoring compliance with this Ordinance, investigating employee complaints of non-compliance and evaluating the operation and effects of this Ordinance, including the production for inspection and copying of its payroll records for any or all of its employees for the term of the contract or for five years whichever period of compliance is applicable.

Section 12. Retaliation And Discrimination Barred

Contractors, subcontractors and CFARs shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint to the City, otherwise asserting his or her rights under this Chapter, participating in any of its proceedings or using any civil remedies to enforce his or her rights under the Chapter. Contractors and CFARs shall also be in compliance with federal law proscribing retaliation for union organizing.

Section 13. Monitoring And Investigation And Compliance

The provisions of this Chapter will augment the City's normal and customary procedure for administering its contracts. Contract Compliance shall administer the requirements of this Chapter as follows:

(a) The City manager shall develop rules and regulations to review contract documents to insure that relevant language and information are included in City RFP's agreements and other relevant documents,

(b) The City Manager shall develop rules and regulations for the monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including their review, investigation and resolution of specific concerns or complaints about the employment practices of a contractor, subcontractor or CFAR relative to this Ordinance. In such cases, the City will attempt to resolve the problem within 30 days.

(c) Where a violation of any provision of this Chapter has been determined, the contractor will be given a written notice by the City per the rules and regulations promulgated by the City Manager. Should the violation continue and/or no resolution is imminent, the City shall pursue available legal remedies including but not limited to any or all of the following penalties and relief:

(1) Suspension and/or termination of the contract, subcontract or financial assistance agreement for cause;

(2) Payback of any or all of the contract or financial assistance awarded by the City of Hayward.

(3) Deem the contractor or CFAR ineligible for future City contracts and/or financial assistance until all penalties and restitution have been paid in full;

(4) A fine payable to the City of Hayward in the sum of \$500 for each week for each employee found not to have been paid in accordance with this Ordinance.

(5) Wage restitution for each affected employee.

(e) The City Attorney shall promulgate procedures for legal enforcement of the requirements of this Ordinance.

Section 14. Employee Complaint Process

An employee who alleges violation of any provision of this Ordinance may report such acts to the City and, at the employee's discretion, exhaust available employer internal remedies. The complaint to the Contract Compliance shall be handled as follows:

(1) The employee shall submit to the City a completed complaint form and copies of all documents supporting the allegation. Contract Compliance shall provide the complaint forms in English and Spanish.

(2) The City shall notify the agency and the employer of the complaint and seek resolution within five days from receipt of the complaint form. If resolution is not accomplished, the City shall initiate an investigation, and seek legal remedies if appropriate.

(3) An employee claiming retaliation (such as, termination, reduction in wages or benefits or adverse changes in working conditions) for alleging non-compliance with this Ordinance, may report the alleged retaliation in the same manner as the initial complaint.

(4) The complainant's or witness' identity will not be divulged to the employer without the individual employee's written consent.

Section 15. Private Right Of Action

(a) An employee claiming violation of this article may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and may be awarded:

(1) For failure to pay minimum wages, back pay for each day during which the violation continued.

(2) For any violation of this Ordinance, including retaliation for exercising rights provided hereunder, the Court may award any appropriate remedy at law or equity, including but not limited to reinstatement, compensatory damages and punitive damages.

(b) The Court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action.

(c) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

(d) No remedy set forth in this Ordinance is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the rights hereunder in a court of law. This Ordinance shall not be construed to limit an employee's right to bring common law cause of action for wrongful termination.

Section 16. Collective Bargaining Agreement Supersession

All of the provisions of this Ordinance, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a

collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this Ordinance.

Section 17. Expenditures Covered By This Article

This Chapter shall apply to the expenditure whether through aid to City financial assistance recipients, service contracts let by the its financial assistance recipients of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this Chapter is consonant with the laws authorizing the City to expend such other funds.

Section 18. Ordinance Applicable To New Contracts And City Financial Assistance

The provisions of this Ordinance shall apply to (a) a contract consummated and financial assistance provided after the effective date of this Ordinance; (b) a contract amendment consummated after the effective date of this Ordinance which itself meets the financial requirement of this Ordinance; and (c) supplemental financial assistance provided for after the effective date of this Ordinance which itself meets the requirements of Ordinance.

Section 19. Implementing Regulations

All implementing rules, regulations and procedures promulgated by the City Manager or his designee shall be presented to the City Council for approval within sixty (60) days of adoption of this Ordinance.

Section 20. Liberal Interpretation of Coverage, Rebuttable Presumption of Coverage

The definitions of "City financial assistance recipient", of "proprietary or license", and of "service contract" set forth in Section 3 shall be liberally interpreted so as to further the policy objectives of this article. All recipients of City financial assistance meeting the monetary thresholds of section 3 c, all City leases and licenses (including subleases and sublicenses) where the City is the lessor or licensor, and all City contracts providing for services that are more than incidental shall be presumed to meet the corresponding definition just mentioned, subject, however, to a determination by the DAA of non-coverage or exemption on any basis allowed by this article, including, but not limited to, non-coverage for failure to satisfy such definition. The DAA shall by regulation establish procedures for informing persons engaging in such transactions with the City of their opportunity to apply for a determination of non-coverage or exemption and procedures for making determinations on such applications.

Section 21. Severability

In the event any provision of this ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

Section 22. Effective Date

The law shall be effective from the date of_____.

**CITY OF HAYWARD
DECLARATION OF COMPLIANCE
Living Wage Ordinance**

The Hayward Municipal Code provides that all employers (except where specifically exempted) under contracts primarily for the furnishing of services to or for the City and that involve an expenditure or receipt in excess of \$15,000 and a contract term of at least three months, or certain recipients of City financial assistance, shall comply with all provisions of this Chapter.

The contractor or City financial assistance recipient further agrees:

(a) To pay employees a wage no less than the minimum initial compensation of \$8.00 per hour with health benefits, as described, or otherwise \$9.25 per hour, pursuant to Section 3;

(b) To provide at least 12 compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and at least ten additional days per year of uncompensated time off pursuant to Section 3;

(c) To inform employees making less than \$12 per hour of their possible right to the federal Earned Income Credit (EIC) and make available the forms required to secure advance EIC payments from the employer pursuant to Section 5;

(d) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and,

(e) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

Company Name	Signature of Officer or Authorized Representative	
Company Address and Phone Number	Type or Print Name and Title	
Date	Bid Number	Type of Service

FOR CITY USE ONLY			
Determination:	Bidder is Not Exempt_____	Bidder is Exempt_____	Date_____
Department_____		Representative_____	