

ORDINANCE NO. 2006 - 010

**AN ORDINANCE ADDING PROVISIONS
OF CHAPTER 2.525 TO THE SAN
BUENAVENTURA MUNICIPAL CODE
ESTABLISHING LIVING WAGE AND
BENEFIT REQUIREMENTS APPLICABLE
TO CERTAIN CITY SERVICES AND
CONTRACTS.**

THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA does ordain as follows:

SECTION 1: That Division 2 of the San Buenaventura Municipal Code, entitled "Administration", be and is hereby amended by adding a new chapter 2.525 to the division to be entitled "Living Wages and Benefits for City Services" and to read as follows:

Chapter 2.525

Living Wages and Benefits for City Services

ARTICLE 1. GENERAL PROVISIONS

Sec. 2.525.100. Authority and purpose.

This chapter is adopted pursuant to the municipal affairs provision of the City charter for the purpose of establishing minimum levels of compensation and benefits to be received by certain employees of the City of San Buenaventura, employees of contractors, subcontractors, and City Financial Aid Recipients (CFAR) who work on contracts, projects, and programs funded by the City of San Buenaventura.

Sec. 2.525.110. Findings.

The City Council finds as follows:

1. That minimum wage laws promote the general welfare by ensuring that workers can support and care for their families through their own efforts and without governmental assistance. However, workers who do not receive adequate wages must rely upon federal, state and local *social services funded by local taxpayers.*
2. The State of California has exercised its power to set a minimum wage higher than the minimum set by federal law in part because the cost of living in California is higher than in most states. The

California State Legislature has recognized that localities may need to set more stringent labor standards for contracts relating to local expenditures than those set by state law and has therefore specifically authorized the adoption of such standards in Labor Code Section 1205. A number of California cities have exercised their power to establish laws requiring the payment of minimum wages for certain City services and contracts.

3. The City Council recognizes that the California minimum wage is inadequate to meet the needs of workers in the City of San Buenaventura where the cost of living is higher than in many parts of the state. Through the provisions of this Chapter, the City Council intends to ameliorate the economic conditions of its workers and to improve on health benefits available for them and their families.

Sec. 2.525.120. Definitions.

The definitions hereinafter set forth in this section shall govern the meaning and construction of the words and phrases used in this chapter except where the context of such words and phrases clearly indicates a different meaning or construction.

1. *City Contractor means* a person or entity that enters into a service contract as defined under this chapter, with the City.
2. *City Financial Assistance Recipient (CFAR) means* any person, who receives financial assistance from the City, or a tenant or leaseholder of the City with rent below market rates as determined by the City.
3. *City Representative means* the City Manager or his/her designee.
4. *Covered Employee means* an individual, other than a managerial, supervisory or confidential employee, who is permanently or temporarily employed (i) by the City; or (ii) by a contractor or subcontractor who has one or more service contracts with the City as defined by this chapter; or (iii) by a CFAR.

“Covered Employee” does not include the following:

- a. An individual employed by the City that is under the age of 18.
- b. An individual employed subject to a union collective bargaining agreement.
- c. An individual providing volunteer services.

- d. Trainees as defined under this chapter.
 - e. Individuals earning academic credits in exchange for services they provide the City.
5. Covered *Employer* means the City, the San Buenaventura Redevelopment Agency, a CFAR, a service contractor, or subcontractor, and their assignees and successors in interest.
6. Financial Assistance, for the purposes of this chapter, includes rent subsidies; rental or lease agreements below market rates; bond financing; tax increment financing by the San Buenaventura Redevelopment Agency; land write-downs; forgiveness of loans; and loans provided at below market rates.

“Financial Assistance” does not include any of the following:

- a. Any grant award to any person or entity pursuant to any grant program run by the City including but not limited to the Cultural Funding Program and the Community Partnership Grant Program.
 - b. City staff assistance.
7. *Medical Benefits* means the health and/or dental benefits offered by covered employers to covered employees that the covered employer pays at least two dollars and seventy-five cents (\$2.75) per hour worked by the covered employees. For the purposes of this chapter, medical benefit providers and insurers shall be licensed and/or registered by the State of California.
8. Service Contract means a contract including any amendment thereto, between a person or entity and the City for the provision of services to the City or its citizens.

“Service Contract “ does not include the following:

- a. A contract awarded to an individual or entity under any grant program administered by the City including but not limited to, the Cultural Funding Program and the Community Partnership Grant Program.
- b. A contract for the purchase or lease of goods, products or equipment, including delivery and installation which is incidental to the purchase or lease of such goods, products or equipment.

- c. A contract subject to federal or state laws or regulations that would preclude application of the minimum wages listed in this chapter.
 - d. A contract between the City and another governmental entity.
 - e. A contract between the City and another financial or banking institution for financial or banking services.
 - f. A City franchise agreement that authorizes the use of the public right of way and other public easements for public utilities that benefit the City and its citizens and for other commercial purposes.
- 9 *Service Subcontractor* means a person or entity, other than a covered employee, that enters into a contract with a contractor to assist the contractor in the performance of a service contract for the City.
- 10 *Trainee* means a person enrolled in a bona fide job-training program consistent with Federal and State laws and designed to enable the employee to advance into a permanent position. For the purposes of this chapter a person cannot be considered a trainee for more than a total of one year.
- 11 *Union* means a bona fide labor organization whose primary purpose is the enhancement of employees' working conditions, including wages, hours, and other terms and conditions of employment.

Sec. 2.525.130. Applicability.

This chapter shall apply to:

- 1. All service contracts entered into or financial assistance provided after the effective date of this chapter whose combined total exceeds \$25,000 during any fiscal year beginning July 1, 2006; or
- 2. Financial assistance provided after the effective date of this chapter which assistance meets the \$25,000 threshold requirements above; or
- 3. Assignees and successors in interest of any contractor for services or related subcontractor or CFAR to which this chapter applies; or

4. City employees working greater than one thousand (1000) hours in a calendar year after the effective date of this chapter.

Sec. 2.525.140. Exemptions.

The City Council may grant whole or partial exemptions from the requirements of this chapter to a contractor, subcontractor or CFAR, at the time of approval of the agreement, if it determines that imposition of the requirements of this chapter would violate state or federal laws, would pose a significant risk to human health or the environment, or would result in undue economic hardship to the contractor, subcontractor, CFAR, or the City. A contractor, subcontractor or CFAR that desires a determination by the City Council that it will be exempted from the requirements of this chapter must provide the City, along with the bid, proposed contract, application or proposed agreement, the following in writing:

1. A request that it desires to be exempted from the requirements of this chapter;
2. The specific state or federal laws, if applicable, that would be violated if the City imposed the requirements of this chapter;
3. A detailed explanation, of the reasons why, and supporting documents therefore, of the significant risk to human health or the environment, or the undue economic hardship the contractor, subcontractor or CFAR would suffer if subjected to the requirements of this chapter.

Sec. 2.525.150. Minimum compensation.

Covered employers shall pay covered employees a living wage of no less than the hourly rates set out in this chapter.

1. *Minimum Hourly Rate Without Medical Benefits.* If a covered employer does not pay its covered employees medical benefits as defined in this chapter, the initial rate of pay for a covered employee is twelve dollars and fifty cents (\$12.50) per hour.
2. *Minimum Hourly Rate With Medical Benefits.* The initial rate pay of a covered employee shall be nine dollars and seventy-five cents (\$9.75) per hour provided the covered employer pays its covered employees a minimum of two dollars and seventy-five cents (\$2.75) per hour worked, toward qualifying medical benefits for covered employees and their dependents.

Sec. 2.525.160. Annual adjustments.

The contract and financial assistance applicability limits set in section 2.525.130 and the living wages provided for in section 2.525.150 shall be adjusted by the City Representative each July 1st beginning in 2007, by an amount corresponding to the previous year change (January to January) in the Consumer Price Index for Urban Wage Earners and Clerical Workers 1967=100 for Los Angeles-Riverside-Orange County, California.

Sec. 2.525.170. Responsibilities of covered employers.

- A. Notice to Covered Employees:
1. Covered employers shall post, in a conspicuous place for their covered employees, the provisions of this chapter. The City Representative shall determine the content, size and location of the posting for all covered employers.
 2. Covered employers shall notify each affected covered employee in writing of the provisions of this chapter and the effect on the covered employees' wages and benefits.
 3. Documentation of notification shall be maintained in the covered employer's records as described in D, immediately below.
- B. *Medical Benefits:* Proof that medical benefits are being paid toward covered employee medical benefits is required and must be submitted to the City at the time of execution of the contract or agreement subject to this chapter. Failure to comply with any part of this provision will subject the covered employer to the higher rate of pay in section 2.525.150.1.
- C. *Earned Income Credit:* Covered employers shall inform their covered employees that they may be entitled to the federal Earned Income Credit (EIC) under the Internal Revenue Code of 1954, 26 U.S.C. § 32 and shall make available to covered employees forms or other appropriate documents to assist in securing the advance EIC payment.
- D. *Records:* Covered employers shall maintain all documents pertaining to contracts that must comply with this chapter for a minimum of two years following completion or termination of the subject contract. City Representative shall be permitted to review and make copies of such documentation at all reasonable times during performance or following completion or termination of contracts.

Sec. 2.525.180. Retaliation.

Neither the City, the San Buenaventura Redevelopment Agency, covered employer, nor CFARs shall discharge, reduce the compensation of or otherwise discriminate against any covered employee for (i) making a complaint to the City, participating in any of its proceedings, using civil remedies to enforce their rights, or otherwise asserting their rights under this chapter or (ii) testifying as a witness or otherwise submitting evidence in support of another covered employee's complaint.

ARTICLE 2. ADMINISTRATION

Sec. 2.525.200. Administrative actions.

Prior to approval or renewal of a service contract, the City Representative shall ensure that the covered employer is in compliance with the provisions of this chapter. The City Representative shall have the authority to perform the following acts for the purposes of accomplishing the intent of this chapter:

1. Establish the content, size and posting locations of the "Notice to Employees" required from covered employers as described in Section 2.525.170.
2. Promulgate rules and regulations for purposes of ensuring that:
 - a. All contracts subject to this chapter including bid specifications, bid requests and lease agreements contain language advising contractors, subcontractors and CFARs of the requirements of this chapter.
 - b. All contracts and lease agreements subject to this chapter include a provision that a violation of this chapter shall constitute a material breach of the agreement, entitling the City to terminate the agreement and otherwise pursue legal remedies that may be available.
3. a) Enforce the provisions of a service contract, or agreement with a CFAR on behalf of the City and, b) investigate and maintain records of complaints of possible violations of this chapter.

Sec. 2.525.210. Annual reports.

Annually for the first two years after the enactment of this chapter, and every other year thereafter, the City Representative shall conduct

evaluations of the implementation of this chapter and its effects, and shall report the findings at a public meeting of the City Council. This report shall address all areas necessary to allow the City Council to evaluate whether and to what extent the chapter is accomplishing its intended purposes including but not limited to the following areas: (i) covered employer compliance, (ii) the effect of the chapter requirements on productivity and service quality of covered employees, contractors, subcontractors, and CFARs, and (iii) any costs or savings to City resulting from the implementation of this chapter.

Sec. 2.525.220. Complaints.

- A. Any covered employee alleging a violation of the provisions of this chapter shall submit an oral and/or written complaint with the City Representative containing the following information: a statement of the covered employee's and covered employer's name, the substance of the complaint and the address to which notices may be served on the covered employee and covered employer.
- 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, Section 6254 and 6255.

Sec. 2.525.230. Investigation and findings.

- A. City Representative shall make a determination whether a violation of this chapter has occurred within sixty (60) days from receipt of the initial complaint and notify the parties in writing of his/her findings within this same time period.
- B. *Notice of Violation:* If the City Representative finds sufficient evidence that a violation has occurred, he/she shall issue a Notice of Violation which shall state a) the nature of the violation, b) the corrective measures and remedies necessary to correct the violation and, c) require compliance and proof thereof within thirty (30) days from date of the Notice of Violation.
- C. *Proof of Compliance:* Proof of compliance must be submitted to City Representative. Failure to timely comply or submit proof of compliance may be deemed a violation of this chapter. City may proceed to take enforcement action deemed necessary as set forth in Article 4, below.

Sec. 2.525.240. Notices.

All notices required by this chapter shall be served on the parties via personal service or first-class mail, postage prepaid, to parties' last known address. Service shall be deemed effective when personally served or when deposited into the United States Mail.

ARTICLE 3. ADMINISTRATIVE REVIEW AND HEARING

Sec. 2.525.300. Request for administrative hearing.

A covered employee or covered employer dissatisfied with the conclusions of the City Representative may contest that decision by requesting an administrative hearing. The covered employee or covered employer must request an administrative hearing within fifteen (15) days after the date the City served the covered employee and covered employer, hereafter referred as appellant, with notice of the City Representative's decision. Requests must be submitted in writing to the city clerk's office by five o'clock p.m. on the date due.

Sec. 25.525.310. Hearing date.

After receiving a timely hearing request, the city clerk will set an administrative hearing on a date not less than fifteen (15), nor more than sixty (60) days, from the date the hearing is requested, before an independent hearing officer designated by the city clerk. Written notice of the date, time, and location of the administrative hearing will be provided to the parties at least fifteen (15) days prior to the hearing date.

Sec. 25.525.320. Conduct of hearings.

- A. *Evidentiary rules:* Both the appellant and the City shall have the opportunity to testify and present evidence concerning the case. Evidence may include, without limitation, witness testimony, documents, or other similar evidence. Evidence sought to be introduced shall not be limited to any legal rules of evidence save and except for the rule that it be relevant and material to the issues of whether the alleged violation occurred and whether the person(s) noticed was responsible for the violation.
- B. *Waiver of personal appearance at hearing:* In lieu of personally appearing at an administrative hearing, the appellant may request that the hearing officer decide the matter based on the documentary evidence submitted by the appellant or the City prior to the hearing date.

Failure to appear at hearing: Failure of an appellant to appear at the hearing shall be deemed a waiver of the right to be personally present at the hearing. The hearing officer shall then decide the matter based upon the documentary evidence previously submitted, and any additional evidence that may be presented at the hearing by the City.

Attendance of City Representative: The City Representative who conducted the investigation may, but is not required to, attend the administrative hearing. If the City Representative does not attend, the City Representative may, prior to the hearing date, submit reports, or other documentation regarding the violation to the hearing officer for consideration at the hearing.

Continuation of hearing: The hearing officer may continue any hearing and request additional information from the City or the appellant prior to issuing a written decision.

Sec. 25.525.330. Hearing officer's decision.

- A. The hearing officer must issue a written decision to uphold or set aside the City Representative's initial findings and Notice of Violation, and must present the reasons for the decision.
- B. The city clerk will send a copy of the hearing officer's decision to the appellant with notice of the appellant's entitlement to appeal the decision in superior court.
- C. The hearing officer's decision is the City's final action on the matter. The decision will be final as of the date of the decision.

Sec. 25.250.340. Right to judicial review.

- A. An appellant may appeal the hearing officer's decision by filing an appeal with the superior court in accordance with California Civil Procedure Code section 1094.6 and California Government Code section 53069.4, or any successor statutes, within twenty (20) days from service of the hearing officer's decision.
- B. Should the appellant file a timely appeal with the superior court, remedies provided for in the Notice of Violation, or the hearing officer's decision will be suspended pending a final judgment on appeal.

ARTICLE 4. ENFORCEMENT

Sec. 2.525.400. Enforcement Actions

- A. In addition to all remedies available to the City as permitted by law to ensure compliance, the City may take enforcement actions on a showing of good cause that a covered employer has violated a provision or provisions of this chapter. Enforcement by issuing contract sanctions shall be the preferred method and may be taken singularly or in combination. Enforcement remedies include, but are not limited to the following:
1. Suspension or termination of City contracts, subcontracts or financial assistance agreements and return of monies paid by the City to covered employer for services not yet rendered; or
 2. A civil penalty imposed in the manner provided by Chapter 1.050 in the sum of five hundred dollars (\$500) per week for each covered employee not paid the wages required by this chapter.

SECTION 2: If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 3: This Ordinance will take effect on the 31st day following its final passage and adoption.

PASSED AND ADOPTED this 5th day of June, 2006.



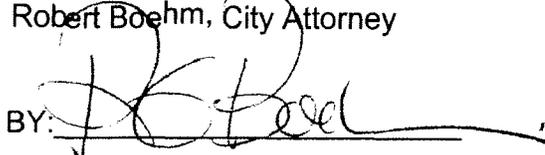
Mayor

ATTEST:



City Clerk

APPROVED as to Form
Robert Boehm, City Attorney

BY: 

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss
CITY OF SAN BUENAVENTURA)

I, ELAINE M. PRESTON, Deputy City Clerk of the City of San Buenaventura, California, certify that the foregoing Ordinance was passed and adopted by the Council of the City of San Buenaventura, at a regular meeting on June 5, 2006, by the following vote:

AYES: Councilmembers Brennan, Summers, Fulton, Andrews
 Monahan, Weir, and Morehouse.

NOES: None.

ABSENT: None.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the City of San Buenaventura on June 6, 2006.



Deputy City Clerk

