

Article 10: City of San Diego Traffic Control Worker Minimum Wage

(“*City of San Diego Traffic Control Worker Prevailing Wage*”

added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)

(Retitled to “*City of San Diego Traffic Control Worker Minimum Wage*”

on 10-7-2024 by O-21876 N.S.; effective 11-6-2024.)

Division 1: City of San Diego Traffic Control Worker Minimum Wage Ordinance

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added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)

(Retitled to “*City of San Diego Traffic Control Worker Minimum Wage Ordinance*”

on 10-7-2024 by O-21876 N.S.; effective 11-6-2024.)

§310.0101 Citation

This Division shall be cited as the City of San Diego Traffic Control Worker Minimum Wage Ordinance.

(“*Citation*” added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)

(“*Citation*” renumbered from Section 310.0102 to Section 310.0101 and amended 10-7-2024 by O-21876 N.S.; effective 11-6-2024. Former Section 310.0101 “*Purpose and Intent*” renumbered to Section 310.0102.)

§310.0102 Purpose and Intent

- (a) The purpose and intent of this Division is to establish a *City*-required minimum wage, referred to as the *prevailing wage rate*, for specified *employees* engaged in traffic control work on *City* streets and public rights-of-way, including sidewalk areas. The *City* requires payment of the *prevailing wage rate* to traffic control workers as a condition of a *Traffic Control Permit* issued under San Diego Municipal Code section 129.0742, as may be amended.
- (b) The City Council makes the following findings in support of the City of San Diego Traffic Control Worker Minimum Wage Ordinance:
 - (1) Traffic control work includes stopping, slowing, guiding, directing, controlling, and monitoring traffic on *City* streets and public rights-of-way. Traffic control workers are responsible for maintaining the safety of drivers and pedestrians on the *City*’s streets and in the public rights-of-way adjacent to or near construction areas.
 - (2) Unexpected and difficult driving conditions in these construction areas can present a significant risk of harm to drivers, other users of the *City*’s public rights-of-way, and the traffic control workers themselves.

- (3) Low wages can lead to less qualified workers and more difficult working conditions, which can increase the risk of harm to workers and users of the *City's* public rights-of-way.
- (4) Traffic control workers employed by contractors on the *City's* public works projects, involving the construction, reconstruction, or repair of public buildings, streets, utilities, and other public works, are paid a minimum wage, in accordance with San Diego Municipal Code section 22.3019, as may be amended, related to compliance with State of California prevailing wage laws. The prevailing wage is an hourly rate paid on public works projects to specified workers engaged in a particular craft, classification, or type of work within the locality and in the nearest labor market area.
- (5) By adopting this Division, the City Council establishes a minimum wage standard to apply to all traffic control workers on *City* streets and public rights-of-way, with limited exceptions as set forth in this Division, as a means to ensure that traffic control work in the *City* is being done by the most qualified and consistently and sufficiently paid workers.

(*"Purpose and Intent"* added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)
(*"Purpose and Intent"* renumbered from Section 310.0101 to Section 310.0102 and amended 10-7-2024 by O-21876 N.S.; effective 11-6-2024. Former Section 310.0102 "Citation" renumbered to Section 310.0101.)

§310.0103 Authority

This Division is adopted in accordance with the powers vested in the *City* by the Constitution and laws of the State of California, including the police powers vested in the *City* by Article XI, section 7, of the California Constitution and California Labor Code section 1205. This Division is not intended to create any power, duty, or obligation in conflict with federal or state laws.

(*"Authority"* added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)
(Amended 10-7-2024 by O-21876 N.S.; effective 11-6-2024.)

§310.0104 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply to the terms in this Division:

City means the City of San Diego.

Employee means any person engaged in traffic control work, including setting up traffic control, guiding and monitoring vehicles, and restoring the roadway, as described in the traffic control plan required by the *City* under a *City*-issued *Traffic Control Permit*, in accordance with San Diego Municipal Code section 129.0742, as may be amended.

Employer means any person or entity, including an association, organization, partnership, business trust, limited liability company, or corporation, who exercises control over the wages, hours, or working conditions of any *employee* and is subject to a *City*-issued *Traffic Control Permit*, excluding any person or entity engaged in activities as described in San Diego Municipal Code section 82.27, and local, state, and federal public agencies, including the *City*.

Enforcement Office means the *City*'s Compliance Department, Office of Labor Standards and Enforcement, or other *City* office or department under the authority of the City Manager to enforce this Division.

Enforcement Officer means any person authorized by the City Manager to enforce violations of this Division.

Pervailing wage rate means the prevailing rate of per diem wages, including any predetermined increases, as determined by the California Director of Industrial Relations in accordance with California Labor Code sections 1770 and 1773, and related laws, as may be amended, for the classification of "Laborer: Building Construction, Group 1" (or as this classification may be amended) working on a public works project in San Diego County and performing traffic control work by any method. The *prevailing wage rate*, including any predetermined increases, is determined as of the date the *City* issues the *Traffic Control Permit*, following *City* approval of the traffic control plan, and it remains in effect for the duration of the *Traffic Control Permit*. The *prevailing wage rate* includes (1) the prevailing basic straight-time hourly rate of pay, (2) the prevailing rate for holiday and overtime work, and (3) the prevailing rate of *employer* payments for all programs or benefits for *employees*, consistent with the requirements of California Code of Regulations, Title 8, sections 16000 through 16301, and related regulations, as may be amended. The *prevailing wage rate* does not include the requirement to pay travel or subsistence payments. The *employer* may make training contribution payments directly to an *employee* or to an approved apprenticeship program, at the discretion of the *employer*.

Retaliation means any threat, discipline, discharge, demotion, suspension, reduction in *employee* hours, or any other adverse employment action against any *employee* for exercising or attempting to exercise any right under this Division.

Traffic Control Permit means a permit required and issued by the *City* under San Diego Municipal Code section 129.0742, as may be amended, or any related administrative regulation promulgated by the City Manager, for the temporary use of a *City* street, sidewalk, or parking lane when a permittee is working on a construction project, improvement project, or other work encroaching into the public right-of-way, including sidewalks, parking spaces, medians, alleys, and streets. *Traffic Control Permit* does not include a permit issued by the City Manager, Police Chief, or designees for the limited purpose of controlling traffic for a special event under San Diego Municipal Code section 82.27.

(“*Definitions*” added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)

(Amended 10-7-2024 by O-21876 N.S.; effective 11-6-2024.)

§310.0105 Minimum Wage Requirement Under City-Issued Traffic Control Permit

- (a) A *City*-issued *Traffic Control Permit* must include the requirement that all *employers* responsible for performing work under the *Traffic Control Permit* pay their *employees* no less than the *prevailing wage rate*, in effect at the time the *City* issues the *Traffic Control Permit*, unless one of the following exceptions applies:
- (1) the *employer* is responsible for traffic control work related to the construction, renovation, or repair of a single-family home or duplex;
 - (2) the *employer* is responsible for traffic control work on a project costing \$1,000 or less, as specified in California Labor Code section 1771 or any subsequent cost threshold applicable to the payment of prevailing wages established by California law;
 - (3) the *employer* is a gas or electric utility company, and their *employee* is performing traffic control work for one hour or less per workday or one hour or less per shift;
 - (4) the *employer* is responsible for traffic control work related to a public works project for any public agency, including the *City*, and another, higher minimum wage rate applies to the work; or
 - (5) the *employer* is prohibited from paying the *prevailing wage rate* by law or by a state or federal funding source requirement applicable to the work authorized by the *Traffic Control Permit*.

- (b) Employers subject to this Division must pay their *employees* the *prevailing wage rate*, including any predetermined increases, as determined by the *City* at the time the *City* issues the *Traffic Control Permit*, for the duration of the work performed under the *Traffic Control Permit*

(“*Payment of Prevailing Wage*” added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)

(Retitled from “*Payment of Prevailing Wage*” to “*Minimum Wage Requirement Under City-Issued Traffic Control Permit*” and amended 10-7-2024 by O-21876 N.S.; effective 11-6-2024.)

§310.0106 Notice Requirements

Every *employer* must post a notice at the job site where any *employee* works or otherwise provide written notice to *employees* informing *employees* of their rights under this Division and the *prevailing wage rate* in effect under this Division, including the effective dates and any predetermined increases related to the *City*’s issuance of an applicable *Traffic Control Permit*.

(“*Notice Requirements*” added 10-7-2024 by O-21876 N.S.; effective 11-6-2024. Former Section 310.0106 “*Enforcement*” amended and renumbered to Section 310.0108.)

§310.0107 Violations

- (a) Any *employer* who violates any requirement of this Division, except the notice requirements set forth in San Diego Municipal Code section 310.0106, is subject to a civil penalty, assessed and payable to the *City*, of no less than \$500, but no more than \$1,000 per violation. Each day that an *employer* fails to pay an *employee* the *prevailing wage rate* constitutes a separate and distinct violation of this Division.
- (b) Any *employer* who fails to comply with the notice requirements set forth in San Diego Municipal Code section 310.0106 is subject to a civil penalty, assessed and payable to the *City*, of \$100 for each *employee* who was not given the required notice, up to a maximum of \$2,000 for each applicable *Traffic Control Permit*.
- (c) An *employer*’s failure to pay their *employees* wages equivalent to the *prevailing wage rate* may be enforced through revocation of the applicable *Traffic Control Permit* by the City Manager or designee, in accordance with the San Diego Municipal Code.

- (d) To enforce this Division, any aggrieved *employee*, the *Enforcement Officer*, or both, may seek payment of wages unlawfully withheld by *employers*, penalties for violations as described in this Division, court costs, and attorneys' fees.
- (e) If an *employer* ceases their business operations, or sells, exchanges, transfers, or otherwise disposes of the *employer's* business, then any person or entity that becomes a successor to the business is liable for any unpaid amounts owed under this Division if, at the time of the conveyance of the business, the successor has actual or constructive knowledge of the amounts owed as determined by the *City*.
- (f) This Division is not intended to limit any *employee*'s right to obtain relief to which the *employee* may be entitled under applicable laws. Exhaustion of remedies under this Division is not a prerequisite to the assertion of any right.

(“*Pervailing Wage Requirement in Public Right-of-Way Permits*” added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)

(Retitled from “*Pervailing Wage Requirement in Public Right-of-Way Permits*” to “*Violations*” and amended 10-7-2024 by O-21876 N.S.; effective 11-6-2024.)

§310.0108 Duties and Authority of the Enforcement Office and Enforcement Officer

- (a) The *Enforcement Office* has full authority to implement and enforce this Division, consistent with the authority, powers, and procedures of the *Enforcement Office*, set forth in Chapter 1, Article 2, of the San Diego Municipal Code, as may be amended, and other applicable *City* ordinances and regulations. This authority includes the power to investigate any possible violations of this Division by an *employer*, to demand payroll and business records from all *employers* issued a *Traffic Control Permit*, to access an *employer*'s workplace during workplace hours to examine and audit records, and to conduct *employee* and other worker interviews at a workplace or job site.
- (b) Any person may file a written complaint with the *Enforcement Office* regarding a violation of this Division. The written complaint must describe the alleged violation, including a statement of relevant facts, dates, places, and persons or entities responsible for the alleged violation. Complaints alleging a violation of this Division must be filed with the *Enforcement Office* within two years of the occurrence of the alleged violation.

- (c) To encourage reporting and cooperation with investigations, the *Enforcement Office* must maintain the confidentiality of any person reporting alleged violations and persons assisting in any investigation, including the name, address, and other identifying information of the person, to the extent permitted by law.
- (d) The *Enforcement Office* must also protect proprietary business information, to the extent permitted by law.
- (e) The *Enforcement Office* may disclose information as necessary to enforce this Division, as required by law, or for other lawful purposes.
- (f) The *Enforcement Officer* may issue subpoenas in accordance with California law and the San Diego Municipal Code.
- (g) The *Enforcement Officer* may conduct an informal settlement conference with the *employer* to provide an opportunity for the *employer* to remedy any alleged violations without further administrative enforcement action. The *Enforcement Officer* has discretion to impose civil penalties in accordance with San Diego Municipal Code section 12.0805, as may be amended, as a condition of settlement of an alleged violation.
- (h) The City Manager or *Enforcement Officer* may promulgate policies, rules, and administrative regulations necessary to implement the purpose, intent, and provisions of this Division, including procedures for handling complaints by *employees*.
- (i) The *Enforcement Office* must provide a summary report of its activities each year to the City Council by October 1, detailing the enforcement of this Division.
- (j) The *Enforcement Office* may collaborate with, including entering into a contract or contracts with, workers' rights advocates and community-based organizations to assist in outreach efforts and other governmental agencies to assist in enforcement. Any contract under this subsection is subject to the City's procurement requirements as set forth in the San Diego Municipal Code.
- (k) The City's failure to investigate an alleged violation or otherwise enforce any of the provisions of this Division does not create any right of action by any person, including an aggrieved *employee*, to recover damages or other remedies from the City.

- (l) Consistent with the provisions of this Division, the City Manager or *Enforcement Officer* may establish and enforce any additional administrative rules, regulations, and standards they determine to be necessary to carry out the purpose and intent of this Division.

(*"Enforcement"* added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)
(Renumbered from former Section 310.0106 to Section 310.0108, retitled from "Enforcement" to "Duties and Authority of the Enforcement Office and Enforcement Officer" and amended 10-7-2024 by O-21876 N.S.; effective 11-6-2024. Former Section 310.0108 "No Effect on Higher Wages" renumbered to Section 310.0110.)

§310.0109 Employee Rights

- (a) *Employers* are prohibited from engaging in *retaliation* against any *employee*.
- (b) The rights of *employees* protected by this Division include the right to request and receive payment of the *prevailing wage rate*; file a complaint for alleged violations of this Division with the *Enforcement Office*, another appropriate enforcement agency, or the court; bring legal action for any violation of law concerning wages, hours, or other standards or rights; communicate with any person about a violation or alleged violation of this Division; participate in any administrative or judicial process regarding an alleged violation of this Division; and inform any person of their potential rights under this Division. The rights of this Division apply to any *employee* who reasonably, even if mistakenly, and in good faith reports a violation of this Division to their *employer* or a governmental agency responsible for enforcing any wage and hour laws applicable to the *employer*.
- (c) Exhaustion of remedies under this Division is not a prerequisite to the assertion of any right.
- (d) An *employer*'s adverse action against an *employee* within 90 calendar days of the *employee*'s exercise of any protected right under this Division creates a rebuttable presumption that the *employer* acted in *retaliation* against the *employee* for the *employee*'s exercise of the protected right.

(*"Employee Rights"* added 10-7-2024 by O-21876 N.S.; effective 11-6-2024.)

§310.0110 No Effect on Higher Wages

This Division establishes a local minimum wage standard. It is not intended to conflict with applicable federal or state laws or to discourage or prohibit *employers* from paying higher wages to their *employees*. Further, this Division must not be interpreted to modify any obligation of *employers* to comply with any contract, collective bargaining agreement, employment benefit plan, other agreement, or applicable federal or state laws, including requirements to pay higher wages and other benefits.

(“*No Effect on Higher Wages*” added 9-18-2023 by O-21723 N.S.; effective 10-18-2023.)

(“*No Effect on Higher Wages*” renumbered from Section 310.0108 to Section 310.0110 and amended 10-7-2024 by O-21876 N.S.; effective 11-6-2024.)