

**EFFECTIVE DATE
OF ORDINANCE**

December 20, 2006

ORDINANCE NO. 2256 N.C.S.

1 Introduced by

Seconded by

2
3 Mike O'Brien

4
5 Mike Harris

6
7 **AN ORDINANCE OF THE CITY OF PETALUMA**
8 **ADDING CHAPTER 2.70 TO THE MUNICIPAL CODE OF THE CITY OF PETALUMA,**
9 **ESTABLISHING A LIVING WAGE REQUIREMENT FOR SPECIFIED CITY FUNDED**
10 **CONTRACTS AND CITY EMPLOYEES**
11
12
13

14 The City Council of the City of Petaluma ordains as follows:

15
16 **Section 1. Amendment of Title 2.**

17 Title 2 of the Municipal Code of the City of Petaluma is hereby amended by adding
18 Chapter 2.70 that reads as follows:

19
20 **Living Wage Sections:**

- 21 2.70.010 Title and Purpose
22 2.70.020 Findings
23 2.70.030 Definitions
24 2.70.040 Employers Subject to the Requirement of this Chapter
25 2.70.050 Waivers
26 2.70.060 Compensation Required to be Paid to Specific Employees
27 2.70.070 Required Contract Provisions
28 2.70.080 Exemptions
29 2.70.090 Retaliation and Discrimination Prohibited
30 2.70.100 Employee Complaints to City
31 2.70.110 Private Right of Action
32 2.70.120 Responsible Bidding and Uses of City Funds and Facilities
33 2.70.130 Labor Relations Neutrality

34
35
36 **2.70.010 Title and Purpose.**

37 The purpose of the ordinance is to improve the quality of services to beneficiaries of City-
38 contracted services and to assure that City employees, employees of City service contractors,
39 subcontractors, and employees of recipients of City financial assistance earn an hourly wage
40 that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts
41 with many businesses and organizations to provide services to the public, and provides financial
42 assistance to developers for the purpose of promoting economic development and job growth.
43 Such public expenditures should also be spent to set a community economic standard that

1 permits workers to live above the poverty level. The City Council finds that the use of City funds
2 to provide living wage jobs will decrease poverty, increase consumer income, invigorate
3 neighborhood businesses and reduce the need for taxpayer-funded social service programs.
4

5 This chapter shall be known and may be cited as the "City of Petaluma Living Wage
6 Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It
7 does this by requiring that public funds be expended in such a manner as to facilitate individual
8 self-reliance by employees of City contractors, lessees, recipients of City financial aid and their
9 respective subcontractors.
10

11 **2.70.020 Findings.**

12
13 As a charter city, the City has the power to set compensation and terms of employment
14 for its employees as an exercise of its municipal powers; and,
15

16 The City awards contracts to private firms and other businesses to provide services to the
17 public and to City government; and,
18

19 The City has a limited amount of taxpayer and other resources to manage; and,
20

21 The use of City funds to promote sustenance and creation of living wage jobs will
22 increase consumer income, decrease levels of poverty and reduce the need for taxpayer-
23 funded social programs; and,
24

25 When City funds are used to contract for services, such contracts should demonstrate an
26 effort to promote an employment environment that enhances the general quality of life within
27 the community and maximizes the productive effect of the City's limited resources; and,
28

29 The City's use of contractors that do not provide health insurance to their employees can
30 result in imposing the costs of their medical care on the county, state and federal governments;
31 and,
32

33 Employees are more likely to be healthy if their employer provides reasonable health
34 insurance to them and their dependents; and,
35

36 The payment of a minimum level of compensation as required by the chapter enacted
37 by this Ordinance benefits these interests.
38

39 **2.70.030 Definitions.**

40 The following words and phrases whenever used in this chapter shall be construed as
41 defined in this section:
42

43 a. "Business" means any individual, proprietorship, partnership, joint venture,
44 corporation, limited liability company, trust, association, or other entity that may employ
45 individuals or enter into service contracts, leases, concessions or franchises, but does not
46 include non-profit organizations.
47

48 b. "Capital Lease" means a lease of City property which requires capital
49 expenditures in excess of one million dollars (\$1,000,000.00) to meet the terms of the
50 lease.
51

1 c. "City" means the City of Petaluma and all City agencies.
2

3 d. "City financial aid recipients" means all businesses as defined in Section 2.70.040,
4 which receive from the City direct assistance in the form of grants, loans, or loan
5 guarantees, in-kind services, waivers of City fees, interests in real property or other
6 valuable consideration in the amount of more than \$100,000 in any twelve (12)-month
7 period. This term shall not include those who enjoy an economic benefit as an incidental
8 effect of City policies, regulations, ordinances, or charter provisions, nor any loan or grant
9 for facade renovation. Assistance from the Petaluma Community Development
10 Commission (PCDC) shall be included under this Chapter if the PCDC governing body
11 has adopted a resolution approving such inclusion.
12

13 e. "Employee" means any individual employed by an Employer who spends 20
14 percent or more of his or her work time on work arising from a Service Contract, City
15 financial aid, or City lease, including subcontracts therefrom. No work may be reassigned
16 in order to evade coverage under this Ordinance. For the purposes of determining
17 whether an Employer employs more than six employees for the purpose of this
18 Ordinance, such number shall be determined by the most recent payroll period unless
19 the employer had less than seven employees during the preceding 8 payroll periods and
20 will have less than seven during the next 8 payroll periods.
21

22 f. "Employer" means those persons identified in 2.70.040, except that no business
23 other than the City shall be deemed an Employer until they receive a new Service
24 Contract, lease, concession, franchise, or financial aid from or through the City. For these
25 purposes the term "new" includes any extension or renewal of a preexisting agreement
26 or arrangement which involves newly negotiated or modified terms other than
27 adjustment of terms pursuant to a formula or pre-set schedule, such as a Consumer Price
28 Index, or the City allowing continued occupancy by tenants with periodic tenancies
29 (such as month-to-month tenants). A subcontractor shall be deemed to have received
30 a new Service Contract through the City when the person to whom it is subcontracting
31 receives a new City Service Contract, lease, franchise, or financial aid. Exercise of a
32 lease option does not constitute a new lease for these purposes. A Capital Lease as
33 defined in this Chapter is exempt from the provisions of this Chapter during the original
34 term of the Capital Lease and the term of any options to extend the term of the Capital
35 Lease. An amendment to a Capital Lease which does not extend its original term and/or
36 option term does not constitute a new lease for purposes of this chapter.
37

38 g. "Non-profit" shall mean a non-profit organization described in Section 501c of the
39 Internal Revenue Code of 1954 that is exempt from taxation under Section 501(c) of that
40 code, or any nonprofit educational organization qualified under Section 23701(d) of the
41 Revenue and Taxation Code.
42

43 h. "Service Contract" means a contract given to a contracting business by the City
44 for the furnishing of services to or for the City, except contracts where services are
45 incidental to the delivery of products, equipment or commodities. Service contracts
46 include but are not limited to security guard services, janitorial services, waste
47 management, landscaping, transportation and shuttle services, parking attendant
48 services, towing, health and human services.
49

50 i. "Service Contractor" means any business that enters into a Service Contract as
51 hereafter defined in an amount equal to or greater than ten thousand dollars (\$10,
52 000.00).

1
2
3 **2.70.040 Employers Subject to the Requirements of this Chapter.**

4 The businesses described below shall comply with the minimum compensation standards
5 established by this Chapter if they employ more than six (6) employees.

6
7 a. The City of Petaluma, including all its agencies, departments and offices.

8
9 b. For-profit Service Contractors which receive contract(s) for \$10,000 or more from
10 the City in a twelve-month period..

11
12 c. Businesses receiving City leases, concessions, or franchises which employ twenty-
13 five (25) or more employees and have \$350,000 or more in annual gross receipts.

14
15 d. Business which receive more than \$100,000 in City financial aid, including loans or
16 other cash and/or non-cash assistance in any twelve-month period. Compliance shall be
17 required for a period of five (5) years following receipt of this aid.

18
19 e. Subcontractors or sublessees of any of the businesses described in subparagraphs
20 'b' through 'd' and which have \$50,000 or more in annual gross receipts.

21
22 f. Any tenant which itself receives a financial benefit of more than \$100,000
23 annually as a result of City financial aid to the person or entity from which the tenant rents or
24 leases premises. For purposes of this paragraph, city contributions to or construction of public
25 improvements shall not be considered city financial aid.

26
27 **2.70.050 Waivers.**

28 a. Any employer which contends that it is unable to pay all or part of the living
29 wage must provide a detailed explanation in writing to the City Manager (or the City Manager's
30 designee) who may recommend a waiver to the City Council.

31
32 b. The explanation must set forth the reasons for its inability to comply with the
33 provisions of this chapter, including a complete cost accounting for the proposed work to be
34 performed with the financial assistance sought, including wages and benefits to be paid all
35 employees, as well as an itemization of the wage and benefits paid to the five highest paid
36 individuals employed by the employer.

37
38 c. The employer must also demonstrate that the waiver will further the interests of
39 the City of Petaluma in creating training positions which will enable employees to advance into
40 permanent living wage jobs or better and will not be used to replace or displace existing
41 positions or employees or to lower the wages of current employees.

42
43 d. The City Council may grant a waiver only upon a finding and determination that
44 the employer has demonstrated economic hardship and that waiver will further the interests of
45 the City of Petaluma in providing training positions which will enable employees to advance into
46 permanent living wage jobs or better.

47
48 e. However, no waiver will be granted if the effect of the waiver is to replace or
49 displace existing positions or employees or to lower the wages of current employees.
50

1 f. Waivers under the foregoing subsections are disfavored and will be granted only
2 where the balance of competing interests weighs clearly in favor of granting the waiver, in the
3 sole discretion of the City Council.

4
5 g. If waivers are to be granted, partial waivers are favored over blanket waivers.
6 Moreover, any waiver shall be granted for no more than one year. At the end of the year, the
7 employer may reapply for a new waiver that may be granted subject to the same criteria for
8 granting the initial waiver.

9
10 h. The City further reserves the right to waive the requirements of this chapter upon
11 a finding and determination of the City Council that a waiver is in the best interests of the City.
12 The City Council may also waive the requirements of this Chapter if a majority of its members
13 determines that an emergency exists which requires a waiver.

14
15 i. An attempted waiver of the provisions of this chapter by employees is void and
16 unenforceable, unless such waiver is clearly and unambiguously set forth in the terms of a
17 collective bargaining agreement.

18
19 **2.70.060 Compensation Required to be Paid to Employees.**

20 Except as otherwise provided in this Ordinance, an employer subject to this Chapter shall
21 provide its covered employees the following minimum compensation:

22
23 a. Living Wages: If the employer pays at least \$1.50 per hour per employee toward
24 an employee medical benefits plan which allows employees to receive employer-compensated
25 care from a licensed physician, the employer shall pay employees an hourly rate of not less than
26 \$11.70 per hour. If the employer does not provide the employees with such medical benefits, the
27 employer shall pay employees an hourly wage of not less than \$13.20. This provision does not
28 require that the employer pay more than \$1.50 per hour or the entire cost per employee for such
29 medical benefits plan or compensate the employee for the full cost of medical care.

30
31 b. Time-off: Employees shall be entitled to at least 22 days off per year for sick leave,
32 vacation, or personal necessity. At least twelve (12) of the required days off shall be
33 compensated at the same rate as regular compensation for a normal working day. Ten (10) of
34 the required 22 days may be uncompensated days off. Employees who work part-time shall be
35 entitled to accrue compensated days off in increments proportional to that accrued by full-time
36 employees. Employees shall be eligible to use accrued days off after the first six (6) months of
37 satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays,
38 consistent with established employer policy, may be counted toward provision of the required
39 12 compensated days off. Compensation for paid leave for part-time on-call employees, pro-
40 rated as described herein above, shall be provided as a lump sum payment twice a year to
41 employees who worked a minimum of 520 hours in the previous six months.

42
43 c. Additional compensation permissible. Nothing in this Chapter shall be construed
44 to limit an employer's discretion to provide greater wages or time-off to its employees.

45
46 d. The initial rates set forth in (a) above shall increase annually on July 1, in
47 accordance with any increase due to a cost of living adjustment for City employees, equal to
48 the average cost of living adjustment (excluding equity pay increases) for all City non-safety,
49 non-management employees as of the date of the most recent adjustment of the pay of non-
50 safety, non-management employees, but no more than the most recent December to
51 December Consumer Price Index for San Francisco-Oakland-San Jose (CPI-U), published by the
52 Bureau of Labor Statistics. The City Council may review the impact of the COLA on an annual

1 basis to assess any potential adverse impact and may modify or suspend adoption of a COLA
2 otherwise allowed by this subsection.
3

4 **2.70.070 Required Contract Provisions.**

5 Every City Service Contract, lease, license, concession agreement, franchise agreement
6 or agreement for financial aid with an employer described in Section 2.70.040 or amendment
7 thereto shall contain provisions requiring the employer to comply with the requirements of this
8 chapter as they exist on the date when the employer entered its agreement with the City or
9 when such agreement is amended. Such contract provisions shall address the employer's duty
10 to promptly provide to the City documents and information verifying its compliance with the
11 requirements of this Ordinance, and sanctions for non-compliance. Such contract provisions
12 shall also require the employer to notify each of its affected employees as to the amount of
13 wages and time off that are required to be provided pursuant to this ordinance.
14

15 **2.70.080 Exemptions.**

16 The requirements of this Chapter shall not be applicable to non-profit agencies or to the
17 following employees:
18

19 a. An employee participating in a temporary job-training program approved by the
20 City in which a significant component of the employee's training consists of acquiring
21 specialized knowledge, abilities, skills or job readiness (e.g., the importance of proper work attire,
22 punctuality and workplace demeanor.)
23

24 b. An employee employed on a temporary project which will not exceed six months
25 in duration.
26

27 c. Volunteers.
28

29 d. Employees of contractors on City public works projects subject to the
30 requirements of Division 2, Part 7, of the California Labor Code, when said code requires
31 compensation greater than that required by this Chapter.
32

33 e. Employees who are standing by or on-call according to the criteria established
34 by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the
35 time when the employee is actually standing by or on-call.
36

37 f. Any disabled employee who (1) is covered by a current sub-minimum wage
38 certificate issued to the employer by the U. S. Department of Labor; or (2) would be covered by
39 such a certificate but for the fact that the employer is paying a wage equal to or higher than
40 the minimum wage.
41

42 g. An employee for whom application of the requirements of this ordinance is
43 prohibited by state or federal law.
44

45 h. An employee subject to a bona fide collective bargaining agreement where the
46 waiver of the provisions of this Ordinance are set forth in clear and unambiguous terms in such
47 an agreement.
48

49 i. City employees during their first six months of employment which is considered a
50 training or probationary period.
51

1 **2.70.090 Retaliation and Discrimination Prohibited.**

2 It shall be unlawful to retaliate or discriminate against any person on account of his
3 having claimed a violation of this Chapter.

4
5 **2.70.100 Employee Complaints to the City.**

6 a. A person who alleges violation of any provision of this Chapter may report such
7 acts to the City. The City Manager may establish a procedure for receiving and investigating
8 such complaints and take appropriate enforcement action.

9
10 b. Any complaints received shall be treated as confidential matters, to the extent
11 permitted by law. Any complaints received and all investigation documents related thereto
12 shall be deemed exempt from disclosure pursuant to California Government Codes Sections
13 6254 and 6255, to the extent permitted by law.

14
15 c. Nothing contained in this Chapter shall be construed as a promise or enforceable
16 obligation on the part of the City to actively monitor employer compliance.

17
18 **2.70.110 Private Right of Action.**

19 a. A person claiming violation of this Ordinance may bring an action in the Superior
20 Court of the State of California against an employer and obtain the following remedies:

21
22 1. Reinstatement of an employee and/or back pay for each day during
23 which the employer failed to pay the compensation required by this Chapter, payable to the
24 employee or his/her successor in interest.

25
26 2. Compensatory damages and punitive damages.

27
28 3. Reasonable attorney's fees, expert witness fees and costs.

29 b. Notwithstanding any provision of this Ordinance or any other ordinances to the
30 contrary, no criminal penalties shall attach for any violation of this article.

31
32 c. No remedy set forth in this Ordinance is intended to be exclusive or a prerequisite
33 for asserting a claim for relief to enforce any rights hereunder in a court of law. This Ordinance
34 shall not be construed to limit an employee's right to bring a common law cause of action for
35 wrongful termination.

36
37 d. Nothing in this Ordinance shall be interpreted to authorize a claim for damages
38 against the City based upon another employer's failure to comply with this ordinance or the
39 City's failure to enforce its provisions.

40
41 **2.70.120 Responsible Bidding and Use of City Funds and Facilities.**

42
43 Prior to commencement of the contract's term or execution by the City, each
44 Contractor, Subcontractor, lessee of City property or other City-funded Employer will certify to
45 the satisfaction of the City that its employees are paid a living wage as provided by the
46 Chapter. As part of any bid, application or proposal for any contract or other funding
47 arrangement with the City covered by section 2.72.040, the submitter shall (1) include an
48 acknowledgement in a form acceptable to the City of the terms of this chapter and intent to
49 comply therewith, and (2) complete a form to be created by the City Manager indicating
50 whether it has received any wage, hour, collective bargaining, workplace safety, environmental

1 or consumer protection charges, complaints, citations or findings of violation of law or regulation
2 by any regulatory agency or court within the last ten (10) years, including but not limited to
3 California DFEH, OSHA, Department of Industrial Relations (Labor Commissioner), EPA, and NLRB.
4

5 By seeking such contract or arrangement from the City the submitter shall be deemed to
6 have authorized the City to obtain additional information upon request about the submitter's
7 history as an employer, including but not limited to information about employee turnover and
8 complaints lodged by employees (unless disclosure is prohibited by their legal right of privacy or
9 other applicable law), so that the City may ascertain the submitter's ability to provide the
10 promised services without disruption and without adverse effect on the City's proprietary
11 interests. To the extent permitted by law, the Council shall consider such matters in deciding
12 whether to award the contract, financial assistance, or other arrangement being sought from
13 the City.
14

15 **2.70.130 Labor Relations**

16 a. No employer covered by Section 2.70.040 shall use any City funds or property to
17 assist, promote or deter union organizing. This restriction shall be subject to the definitions and
18 exclusions found in Government Code sections 16645, 16646, and 16647. This subsection shall be
19 of no force and effect until and unless courts of competent jurisdiction finally determine that the
20 provisions of California Government Code sections 16645, 16656 and 16647, or successor
21 statutes, are valid and constitutional.
22

23 b. To the extent otherwise permitted by law, the employer shall provide reasonable
24 access to employee-assistance organizations for the sole purpose of communicating with
25 employees about their rights under this ordinance, including rights of enforcement. Such access
26 shall be limited to non-work time and to areas where employees enter or exit the workplace or
27 take breaks. Access shall not be exercised in any manner which disrupts work.
28

29 **Section 2. Severability.**

30 If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this
31 Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect
32 the validity of the remaining portions of this Ordinance. The City Council hereby declares that it
33 would have passed each section, subsection, subdivision, paragraph, sentence, clause or
34 phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section,
35 subsection, subdivision, paragraph, sentence, clause or phrase.
36

37 **Section 3. Effective Date.**

38 This Ordinance shall become effective thirty (30) days from and after the date of its
39 passage.
40

41 **Section 4. Publication.**

42 The City Clerk shall cause this Ordinance or a summary of it to be published or posted as
43 required by law.
44
45

46 **INTRODUCED** and ordered posted/~~published~~ this 6th day of November, 2006.
47

48 **ADOPTED** this 20th day of November, 2006 by the following vote:

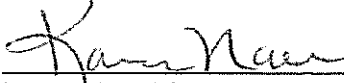
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AYES: Harris, Healy, Vice Mayor Nau, O'Brien, Torliatt

NOES:

ABSENT: Mayor Glass

ABSTAIN:



Karen Nau, Vice Mayor

ATTEST:

APPROVED AS TO FORM:



Deborah Padovan, Deputy City Clerk



Leslie Thomsen, City Attorney