ORDINANCE NO. 2000-25

AN ORDINANCE OF THE CITY OF SANTA CRUZ
ADDING CHAPTER 5.10 TO THE SANTA CRUZ MUNICIPAL CODE
PERTAINING TO THE PAYMENT OF A LIVING WAGE

BE IT ORDAINED By The City Of Santa Cruz As Follows:

Section 1. Chapter 5.10 is hereby added to the Santa Cruz Municipal Code to read as follows:

"Chapter 5.10

Sections:

5.10.010 Findings and purpose.
5.10.020 Definitions.
5.10.030 Living wage requirement.
5.10.040 Prescription of minimum living wage.
5.10.050 Assignees/successors in interest.
5.10.060 Application of chapter.
5.10.070 Prevailing wage jobs.
5.10.080 Represented employees.
5.10.090 Employee retention.
5.10.100 Labor peace – Retaliation, discrimination and intimidation prohibited.
5.10.110 Labor relation neutrality.
5.10.120 Notification.
5.10.130 Exemptions.
5.10.140 Enforcement and remedies – Employee.
5.10.150 Enforcement and remedies – City.

5.10.010 FINDINGS AND PURPOSE.

In enacting this chapter the city council makes the following findings and articulates the following purposes for the promulgation of the living wage regulations set forth herein:

1. The health and welfare of all Santa Cruz citizens is benefited and advanced when Santa Cruz workers are paid a wage which enables them to live above the poverty line;

2. The city awards many contracts to private sector employers to provide goods and services to the city in accordance with those contracts;

3. Many workers in Santa Cruz and their families live at or below the poverty line. The payment of inadequate wages to those workers tends to negatively affect the quality of services provided to the city and its residents by fostering high turnover and instability in the workplace;

4. The use of city funds to promote the creation of a living wage will increase the ability of low wage workers to attain sustenance, decrease the amount of poverty and reduce the amount of taxpayer funded social services provided in the city of Santa Cruz;

5. Some employers which provide contract services to the city do not provide health insurance benefits to their employees. This factor negatively affects worker performance and the quality of services delivered to the city and its residents, results in unwarranted employee absenteeism and negatively impacts local and State health programs. These problems can be ameliorated if employers provide reasonable health insurance benefits to their employees;

6. City regulations requiring the payment of a living wage are consistent with other city regulations such as the city's prevailing wage regulations designed to address the economic needs of low wage workers in the city;

7. The expenditure of public funds for the procurement and provision of services is conducted most responsibly when the expenditure promotes a community economic standard intended to assure that city workers, including single parents, and their families can subsist above the poverty line; and

8. The use of city funds to encourage living wage jobs will decrease poverty, increase consumer income and invigorate neighborhood businesses.

9. The living wage requirement shall apply to social service agencies receiving $5,000.00 or more in annual support from the city of Santa Cruz. However, this requirement shall not take effect until the city council amends this ordinance and/or passes a policy resolution clarifying how the ordinance will be applied to such agencies.

5.10.020 DEFINITIONS.

The following words and phrases, whenever used in this chapter, shall be given the following definitions:

1. Contract for Services. "Contract for services" shall refer to any contract between the city and a contractor with a value of $10,000.00 or more pursuant to which the contractor agrees to deliver services directly to the city. "Contract for services" shall also refer to any such contract between the city and a contractor with a value of less than $10,000.00 but which, when aggregated with other contracts between the city and the contractor during the same fiscal year, equals or exceeds $10,000.00 in value. "Contracts for services" include, but are not limited to, contracts awarded by the City to private sector employers for the following services:

- Automotive repair and maintenance
- Document shredding services
- Equipment repair and maintenance
- Facility and building maintenance
- Janitorial and custodial services
- Health services
- Human care services

Landscaping services
Laundry services
Mailing services
Moving services
Office and clerical services
Parking lot management
Pest control
Printing services
Recreation services
Recycling services
Resident and day shelter services
Security services
Septic services
Shuttle transportation
Sludge removal services
Street and sidewalk cleaning
Towing
Valet parking services
Any other service determined by the City as meeting the intent of this ordinance.

2. Contractor for Services. "Contractor for services" shall refer to any private sector contractor/employer who enters into a contract for services with the city. However, this term shall not refer to contractors with five or fewer employees who have been in business for less than one year on the date of bid opening.

3. Subcontractor. "Subcontractor" shall refer to any subcontractor who enters into a subcontract with a contractor for services in connection with the contractor's contractual obligation to provide services directly to the city. However, this term shall not refer to subcontractors with five or fewer employees who have been in business less than one year on the date of bid opening.

4. Employee. "Employee" shall refer to any employee of a contractor for services, or to any employee of a subcontractor, while employed in providing services to the city pursuant to a contract for services or a related subcontract. In the foregoing context, "employees" are persons hired by contractors or subcontractors to work on a full-time, part-time, temporary or regular basis for wages or salary. "Employee" shall not refer to persons who are 17 years old or younger or to persons in positions that are designated for "trainees" or are otherwise part of an employer's training program. Nor shall "employee" refer to persons who are in positions of employment that require student status as a prerequisite to being employed in that position.

5.10.030 LIVING WAGE REQUIREMENT.
All employees shall be paid a living wage.

5.10.040 PRESCRIPTION OF MINIMUM LIVING WAGE.

1. The minimum living wage to be paid to employees pursuant to the requirements of this chapter shall be prescribed annually by the city council pursuant to resolution. The city council shall consider a recommendation regarding adjustments to the wage rate and benefits no later than its first regularly scheduled meeting in February of each year, and shall adopt a resolution to be effective on July first of each year.

2. The resolution shall prescribe a minimum living wage to be paid where the employer provides minimum vacation leave, sick leave and health insurance benefits for its employees and an alternate higher minimum living wage to be paid where the employer does not provide each of those minimum benefits for its employees.

3. The minimum vacation leave and sick leave that must be provided and the minimum amount paid toward health insurance to qualify for the lower minimum living wage shall be prescribed in the annual resolution.
4. At a minimum, the prescribed minimum living wages shall be upwardly indexed each year by an amount which corresponds to the cost of living increase as measured by the San Francisco-Oakland-San Jose area Consumer Price Index for urban wage earners and clerical workers. The annual adjustment shall be with reference to the CPI for the twelve-month period ending on October thirty-first.

5. Where an employer intends to pay the minimum living wage applicable to employers who provide the requisite sick leave, vacation leave and health insurance benefits, proof of the requisite benefit package must be submitted to the ity within ten days of the award of the contract for services, related subcontract, grant funding or financial assistance which creates the living wage requirement.

5.10.050 ASSIGNEES/SUCCESSORS IN INTEREST.
The living wage requirement imposed by this chapter shall be binding upon the assignees and successors in interest of any contract for services or related subcontract to which this chapter applies.

5.10.060 APPLICATION OF CHAPTER.
The living wage requirement imposed by this chapter shall apply to all contracts for services and related subcontracts made or entered into on or after the effective date of the ordinance enacting this chapter.

5.10.070 PREVAILING WAGE JOBS.
Where pursuant to a contract for services, a contractor or subcontractor incurs a contractual obligation to pay its employees prevailing wages, the contractor or subcontractor shall pay its employees at the contractually prescribed prevailing wage rate provided that the prevailing wage is higher than the minimum living wage payable pursuant to this chapter. The city's standard contract specification relative to the payment of prevailing wages shall stipulate that in no case shall the prevailing wage paid pursuant to that contract specification be less than the minimum living wage paid pursuant to this chapter.

5.10.080 REPRESENTED EMPLOYEES.

Where employees are represented by a bargaining unit or labor union pursuant to rights conferred by State or Federal law and a collective bargaining labor agreement is in effect governing the terms and conditions of employment for those employees, this chapter shall not apply to those employees, and the collective bargaining labor agreement shall control.

5.10.090 EMPLOYEE RETENTION.

1. In the event that any contract for services for an amount greater than $50,000.00 is terminated by the city prior to its expiration, any new contract with a subsequent contractor for those same services shall provide for the employment of the predecessor employer's retention employees as provided in this section.

2. A "retention employee" is an employee of a predecessor employer:

a. Who is not an exempt employee under the minimum wage and maximum hour exemptions defined in the Federal Fair Labor Standards Act;

b. Who is not a family member of the predecessor employer;

c. Who has been employed by the predecessor employer for at least six months prior to the date of the new successor contract; and

d. Who is or will be terminated from his or her employment as a result of the city entering into the successor contract.

3. Subsequent employers shall offer employment to all retention employees who are qualified for such jobs.

4. A subsequent employer is not required to hire a retention employee who has been convicted of a job-related or workplace crime.

5. A subsequent employer may not terminate a retention employee for the first ninety days of employment under a successor contract, except for cause. Thereafter, a subsequent employer may terminate a retention employee upon the same terms and conditions as the subsequent employer's other employees may be terminated.

5.10.100 LABOR PEACE -- RETALIATION, DISCRIMINATION AND INTIMIDATION PROHIBITED.

Contractors for services or subcontractors shall not discharge, reduce the compensation of, discriminate or otherwise retaliate against or intimidate any employee for making a

complaint to the city, or for participating in any legal or administrative proceedings or using any civil remedies to enforce his or her rights conferred by this chapter or for otherwise asserting his or her rights under this chapter. Contractors for services and subcontractors shall also comply with federal, state and all other applicable law proscribing retaliation for union organizing.

5.10.110 LABOR RELATION NEUTRALITY.
Contractors for services and subcontractors shall not hinder or further collective bargaining organization or other collective bargaining activities by or on behalf of an employer's employees. However, this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure made pursuant to obligations incurred under a bona fide collective bargaining agreement.

5.10.120 NOTIFICATION OF EMPLOYEES.
Contractors for services and subcontractors shall notify all employees subject to the provisions of this chapter of the requirement to pay a living wage, the current minimum living wage rates, and the minimum vacation leave and sick leave that must be provided and the minimum amount paid toward health insurance to qualify for the lower minimum living wage rate.

5.10.130 EXEMPTIONS.
The city council may grant an exemption to the requirements of this chapter upon making a finding and determination either that compliance with the living wage will cause economic hardship, or that the exemption is necessary for the best interests of the city and is due to unusual circumstances (e.g., following a declared natural disaster or where the city is required to award a contract for services to a sole source contractor for services).

5.10.140 ENFORCEMENT AND REMEDIES -- EMPLOYEE.

1. An employee claiming violation of this chapter may report such acts to the city.
    a. The city manager shall establish a procedure for receiving and investigating such complaints and take appropriate enforcement action;
    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 to the extent permissible under California Government Code Sections 6254 and 6255.

2. An employee claiming violation of this chapter may bring an action in the Municipal Court or Superior Court of the State of California, or other administrative agency, as appropriate, against an employer to enforce his or her rights conferred by this chapter. In any such action the employee may seek any or all of the following relief and damages:
    a. For failure to pay the living wage, back pay for each day during which the violation continued;
    b. For any violation of this chapter, including retaliation for exercising rights provided by this chapter, an award or any appropriate remedy at law or equity

including, but not limited to, reinstatement, compensatory damages and punitive damages;

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

4. No employee remedy set forth in this section is intended to be exclusive or a prerequisite to asserting a claim for relief to enforce any rights hereunder in a court of law. Nor shall this section be construed to limit an employee's right to bring a common law cause of action for wrongful termination;

5. This section shall not excuse an employee from complying with any applicable administrative procedure or procedures delineated in the California Tort Claims Act which may be required as a prerequisite to commencing legal action in a court of law.

5.10.150 ENFORCEMENT AND REMEDIES -- CITY.

1. The city department head responsible for administering a contract for services may take any of the following enforcement actions in accordance with instructions issued by the city manager:

a. Assess liquidated damages as provided for in the contract for services;
b. Pursue any other remedies prescribed by law or by the contract for services for breach of the contract;
c. Recommend to the city council that the contract for services be terminated;
d. Recommend to the city council that a contractor for services be barred from an award of future contracts for services in accordance with the provisions of Chapter 3.09 of this code pertaining to non-responsible contractors;

2. In connection with any enforcement action undertaken by the city which establishes a violation of this chapter, the city shall be entitled to recover from the violator all of its enforcement costs including any investigation costs, litigation costs and attorney fees."

Section 2. Severability. If any section, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portion of the ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subdivision, subsection, paragraph, sentence, clause or phrase of this ordinance.