

PORT OF OAKLAND

Rules and Regulations for the Implementation and Enforcement of Port of Oakland Living Wage Requirements

1. REGULATORY AUTHORITY

On October 16, 2001, the Board of Port Commissioners (“Board”) adopted Port Ordinance 3666, requiring certain Port service contractors to pay “living wage” rates to their employees who work at the Port. On March 5, 2002, voters of Oakland adopted Measure I, which enacted Section 728 of the Oakland City Charter to extend the Living Wage Laws to tenants of the Port and setting forth other requirements. On October 22, 2002, the Board adopted Port Ordinance 3719 to amend Ordinance 3666 to incorporate the requirements of the Charter Provisions.

Section 10 of the Port Ordinance authorizes the Executive Director to adopt and promulgate regulations to implement and enforce the Port Ordinance. The Social Responsibility Division (SRD) of the Port administers, monitors and enforces the Living Wage Laws. When necessary to carry out its function, SRD may conduct inquiries and investigations to determine compliance with the Living Wage Laws.

2. DEFINITIONS

The definitions set forth in the Living Wage Laws are incorporated herein. In addition, the following definitions shall apply for purposes of these Rules and Regulations (these “Regulations”):

- 2.1. **“Charter Provisions”** shall mean Section 728 of Article VII of the City of Oakland City Charter.
- 2.2. **“Complaint”** shall mean a report of an alleged violation of the Living Wage Laws.
- 2.3. **“Complainant”** shall mean a Person who files a Complaint under the Living Wage Laws.
- 2.4. **“Contracting Division”** shall mean the Division at the Port entering into or amending an Agreement with a Port Contractor.
- 2.5. **“Covered Employer”** shall mean a Port Assisted Business (“PAB”) or a Service Contractor, which must pay living wage, unless otherwise exempted.
- 2.6. **“Eligible Employee”** shall mean an employee of a Covered Employer and who is not otherwise exempt from coverage by the Living Wage Laws.

- 2.7. **“Health Benefits”** shall mean payment of or contribution towards medical, dental, optical, mental, death or disability insurance premiums or expense account made available to an Eligible Employee by a Covered Employer as part of employment compensation.
- 2.8. **“Hearing”** shall mean hearing held of an appeal filed of a determination of violation or of remedial action pursuant to Section 20 of these Regulations.
- 2.9. **“Living Wage Laws”** shall mean collectively, provisions of Section 728 of the Oakland City Charter and Port Ordinance 3666, as amended by Port Ordinance 3719, as well as all other resolutions of the Board of Port Commissions and rules and regulations of the Port for the implementation of said laws.
- 2.10. **"Person"** shall include any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.
- 2.11. **"Port"** shall mean the Port of Oakland.
- 2.12. **"Port-Assisted Business" or "PAB"** shall mean: (1) any Person involved in a Port Aviation or Port Maritime Business receiving in excess of \$50,000 worth of financial assistance from the Port, and (2) any Port Contractor involved in a Port Aviation or Port Maritime Business if the person employs more than 20 employees per pay period in Port-Related Employment, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not hire more than 20 persons in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an ‘enterprise’ as defined under the Fair Labor Standards Act employing more than 20 persons.
- 2.13. **“Port Aviation or Port Maritime Business”** shall mean any business that principally provides services related to maritime or aviation business related services or whose business is located in the maritime or aviation division areas as defined by the Port.
- 2.14. **"Port Contract"** shall mean: (1) Any Service Contract; (2) Any contract, lease or license from the Port requiring payments to the Port expected to exceed \$50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment; (3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses. A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after April 25, 2002, or amended after April 25, 2002 to benefit in any way the party contracting with the Port. A tenancy agreement that was entered into on or before April 25, 2002 that has become a month-to-month tenancy agreement after November 1,

2002 shall be deemed a Port Contract if it meets the other minimum threshold requirements listed by Living Wage Laws.

- 2.15. **“Port Contractor”** shall mean a Person with a Port Contract.
- 2.16. **“Port-Related Employment”** shall mean employment by a PAB in providing service related to Port Maritime or Aviation Operation or working in Port Maritime or Aviation Areas.
- 2.17. **“Port Ordinance”** shall mean Port Ordinance No. 3666, as amended by Port Ordinance No. 3719.
- 2.18. **“Service Contract”** shall mean a contract with the Port to provide services to the Port under which services are to be performed on Port property and payments the Port is required to pay the contractor exceeds \$50,000. A contract for the purchase or lease of goods, equipment, supplies, commodities or other property, or any services incidental to such property, is not a “service contract” for purpose of these regulations.
- 2.19. **“Service Contractor”** shall mean a Person with a Service Contract or any subcontractor to the Service Contractor to perform services under the Service Contract, who employs more than 20 persons per pay period in Port-Related Employment, unless in the prior 12 pay periods the Employer has not more than 20 such employees and will not hire more than 20 persons in the next 12 pay periods. A Person who is not a PAB subject to the provisions of the Charter Provisions may nonetheless be a Service Contractor subject to the Port Ordinance.

✓ *Example: A janitorial service company contracts with the Port to clean the Port Administration building, which is located on Port property but in neither the Aviation nor the Maritime operations areas. The company is a Service Contractor required to pay living wage under the provisions (and applicable exemptions) of the Port Ordinance even though the company is not a PAB involved in a Maritime or Aviation business.*
- 2.20. **“SRD”** shall mean the Social Responsibility Division of the Port.
- 2.21. **“Tenant”** shall mean an entity that enters into a Lease or other tenancy agreement with the Port of Oakland, for land under the jurisdiction of the Port.
- 2.22. **“Valid Collective Bargaining Agreement”** shall mean a collective bargaining agreement entered into between Port Contractor and a labor organization lawfully serving as the exclusive collective bargaining representative for such Port Contractor's employees.
- 2.23. **“Wages”** shall mean the amount paid to an employee as compensation for labor performed. This term does not include any amount paid to an employee not

directly related to the labor performed, such as allowances for parking, uniforms, and contributions to retirement plans. This term also does not include employer contributions through profit-sharing plans. Aside from an employee's hourly wages, wages may include commissions or tips earned by an employee only if the employer keeps accurate records verifying the amount paid to an employee for each pay period and reports such commission or tips for income tax purposes pursuant to the regulation of the Internal Revenue Service.

3. WHEN ARE THE LIVING WAGE LAWS EFFECTIVE?

The Port Ordinance became effective October 16, 2001, and was later amended to conform to the Charter Provisions on October 22, 2002. The Charter Provisions became effective April 25, 2002.

4. WHO ARE EXAMPLES OF “COVERED EMPLOYERS” THAT MUST COMPLY WITH LIVING WAGE LAWS?

“Covered Employers” are defined under Section 2.5 of these Regulations. Examples of Covered Employers include:

- 4.1. An employer who receives direct assistance in the form of grants or financial subsidies from the Port in an amount exceeding \$50,000 in any given fiscal year;
- 4.2. A Service Contractor as defined in Section 2.18 of these Regulations;
- 4.3. An employer with a Port Contract involved in a Port Aviation or Port Maritime Business who has more than 20 employees per pay period working on Port-Related Employment, including, but not limited to
 - a tenant holding an eligible lease with the Port (see Section 5.2 of these Regulations) and any subtenant under the lease, and
 - a concessionaire holding an eligible concession of the Port (See Section 5.3 of these Regulations) and any subconcessionaire under the concession.

5. WHAT ARE EXAMPLES OF THE TYPES OF CONTRACTS USUALLY COVERED BY THE LIVING WAGE LAWS?

The types of contracts entered into by a PAB or a Service Contractor that are usually covered by the Living Wage Laws are:

- 5.1. A Service Contract and any subcontract under such contract, if the contract or subcontract is
 - for performance of services for the Port and at the Port, and
 - one for which the Port is expected to pay more than \$50,000 over the term of the contract.

- 5.2. A lease (or sublease thereunder), tenancy agreement, use permit, right of entry or license (collectively, "Lease") for rent, occupancy or use of property under the Aviation or Maritime Division Jurisdiction, if the Lease is
- entered into, amended, renewed or extended (including holdover extensions and month-to-month tenancies) for the material benefit of the lessee after April 25, 2002 , and
 - expected to pay more than \$50,000 to the Port either over the life of the term of the Lease or, if the current term is less than one year with options to renew or extend, then during the next five years.
- 5.3. Any other types of contract such as franchise or concession agreements with the Port's Aviation or Maritime divisions, or any subcontract under the contract, if the contract or subcontract is
- entered into, amended, renewed or extended (including holdover extensions and month-to-month renewals) for the material benefit of the contractor after April 25, 2002, and
 - expected to pay more than \$50,000 to the Port either over the life of the term of the contract or, if the current term is less than one year with options to renew or extend, them during the next five.

6. WHAT TYPES OF CONTRACTUAL RELATIONSHIP WITH THE PORT WOULD NORMALLY *NOT* BE COVERED BY THE LIVING WAGE LAWS?

Considering the intent and provision of the Living Wage Laws and the general factual patterns of certain types of contracts, the following categories of agreements and contracts with the Port are generally not within the coverage of the Living Wage Laws. Notwithstanding the above, SRD in consultation with the Port Attorney's office, may determine that a particular contract in one of the following general categories is nonetheless subject to the Living Wage Laws for reasons that SRD in consultation with the Port Attorney's office shall provide in such determination.

6.1. Agreements Less Than \$50,000.

If a Person has entered into an agreement with the Port, the amount of which equals \$50,000 or less payable from or to the Port, this agreement is generally not covered by Living Wage Laws. In determining whether an agreement exceeds the \$50,000 threshold, the SRD shall calculate the total amount of the agreement by adding together the amount provided for in the original agreement and all amendments, modifications, renewals, or extensions. An agreement previously exempt because it did not meet the monetary threshold may become subject to Living Wage Laws because an amendment, modification, renewal, or extension increases the total amount of the agreement. Such an amendment, however, must be for the purpose of conferring a benefit on the party contracting with the Port, and an increase in rent will not trigger coverage unless the amendment also confers a benefit to the party contracting with the Port. If an agreement specifies a maximum amount to be expended, then SRD shall use the maximum amount

stated in the agreement to determine whether the agreement meets the monetary threshold.

6.2. Agreements for Purchase of Goods, Equipment and Supplies

The Living Wage Laws generally do not apply to the purchase of goods, equipment, supplies, commodities or other property or for guarantees, warranties, shipping, delivery, or initial installation of such goods. If a contract is for the purchase of both goods and services, then SRD shall make a determination whether the contract is primarily a goods contract or a service contract. If the former, Living Wage Laws do not apply; if the latter, the Living Wage Laws may apply. In determining what a contract is primarily for, SRD will consider the general nature of the contract, as well as how much of its cost is for goods, and how much for services. If a contract's service and product components are clearly differentiated in the budget for a contract that includes both goods and services, then the Living Wage Laws may apply to the service component only.

6.3. Legal Proceedings

Contracts for the settlement of legal proceedings are exempt from the Living Wage Laws, and those for urgent or specialized litigation advice may be exempt from Living Wage Laws if it is in the best interests of the Port to exempt such contracts. The Port Attorney shall determine whether a contract is for the settlement of legal proceedings or for urgent or specialized litigation advice, and whether it would be in the best interests of the Port not to exempt such contracts from Living Wage Laws.

6.4. Grant or Special Fund Expenditures

Agreements involving the expenditure of grant or special funds received by the Port shall be considered not covered if the application of Living Wage Laws would violate the terms of the grant or any rule of the grantor agency that requires compensation lower than the living wage requirement; and/or, if the Port would be required to use Port's own monies to supplement the grant or special funds in order to maintain the current level of services, such agreement is generally not covered.

6.5. Prevailing Rate of Wage

Agreements under which the payment of prevailing rate of wage is required are generally not covered under Living Wage Laws if each Eligible Employee receives the prevailing rate, and if the prevailing rate is higher than the wage required by Living Wage Laws.

6.6. **Trust Assets**

Agreements for the investment, management, or other use of investment account or bond trust funds is considered not covered by Living Wage Laws.

6.7. **Port Employee Benefits**

Agreements to provide benefits to Port employees are not covered by Living Wage Laws where the Executive Director has determined that application of Living Wage Law to such an agreement would render the Port unable to provide a legally required employee benefit.

6.8. **Investments With Fiduciary Requirements**

Agreements for the investment of Port monies where the Treasurer finds that requiring compliance with Living Wage Laws will violate the Treasurer's fiduciary duties and, for the investment of retirement, health or other funds held in trust pursuant to Charter, statute, ordinance or MOU, where the official or officials responsible for investing or managing such funds finds that requiring compliance with Living Wage Laws will violate their fiduciary duties, shall be considered not covered by Living Wage Laws. To effect this determination, the fiduciary must make its finding in writing and submit it to SRD.

6.9. **Agreements Prior to Effective Date**

Agreements executed prior to April 26, 2002, are not covered under Living Wage Laws. A tenancy agreement that was entered into on or before April 25, 2002 that has become a month-to-month tenancy agreement after November 1, 2002 shall be covered under Living Wage Laws if it meets the requirements outlined in Regulation #5 of these Regulations.

7. HOW DOES A PORT CONTRACTOR OR SERVICE CONTRACTOR DETERMINE HOW MANY EMPLOYEES IT HAS FOR THE PURPOSE OF QUALIFYING AS A COVERED EMPLOYER?

7.1. The number of employees for the purpose of applying the Living Wage Laws is the number of employees in the current pay period.

7.2. An employer may be deemed to not employ more than 20 employees in a pay period if that employer has not employed more than 20 employees over the last 12 pay-periods *and* will not have more than 20 employees in the next 12 pay periods. SRD is to make this determination based on payroll reports gathered from the business and to confirm the determination annually.

7.3. If an employer has more than one Port Contract, but fewer than 21 employees working under any one of these contracts, the number of employees is the

aggregate of the number of employees working for the same employer under all of its contracts that would in all other respects qualify as a Port Contract covered under the Living Wage Laws.

7.4. For the purposes of this Section 7, an “employee” shall include any part-time or temporary employees working for the Port Contractor or Service Contractor (either employed directly or through an employment service).

8. FOR THE PURPOSE OF DETERMINING WHO IS A “PAB”, WHAT DOES “INVOLVED IN A PORT AVIATION OR PORT MARITIME BUSINESS” MEAN?

A Person is involved in a Port Aviation or Port Maritime Business if:

- It is a business that *principally* provides services related to maritime or aviation operations, *or*
- It is located in the maritime or aviation division areas as defined by the Port.

✓ *Example: An advertising company enters into a space use agreement to install advertising boards throughout aviation properties. Installation and maintenance of these boards will require the employment of more than 20 employees who will commute onto Port Property job sites from the Company’s off-airport offices in company cars and trucks. The company will pay the Port more than \$50,000 a year for the rental of the spaces. The advertising company also enters into a space use agreement for an office space at airport division property where it maintains a small administrative staff to coordinate on the maintenance and installation of the boards. The company is “located” on the Port’s Aviation Division area. Living Wage Laws applies.*

9. WHICH EMPLOYEES OF A COVERED EMPLOYER ARE EXEMPTED FROM COVERAGE BY THE LIVING WAGE LAWS OR ARE NOT “ELIGIBLE”?

The Charter Provisions and the Port Ordinance provide respective exemptions from coverage of certain classes of employees. Therefore, even a Covered Employer generally need not pay wages required by the Living Wage Laws to employees exempted as follows:

- 9.1. An employee who spends less than 25 percent of his work time with the employer on Port-Related Employment, provided that a Covered Employer may not split an employee’s working time between Port-Related Employment and non-Port Related Employment or place an employee on temporary employment for the purpose or with the intent of making the employee ineligible for coverage by the Living Wage Laws.
- 9.2. An employee younger than 21 years old employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than 90 days.

- 9.3. An employee participating in a bona fide temporary job training program in which a significant component of the employee's compensation consists of acquiring specialized knowledge, abilities or skills in a recognized trade;
- 9.4. An employee of a Service Contractor on Port public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, or subject to the provisions of a comparable federal, state or local prevailing wage requirement.

10. HOW IS A DETERMINATION MADE WHETHER AN EMPLOYER IS A "COVERED EMPLOYER"?

- 10.1. SRD will assist a prospective Port Contractor in making the initial self-determination whether its Port Contract is subject to Living Wage Laws. The prospective Port Contractor shall notify SRD of its determination. SRD will review the prospective Port Contractor's Employer Self-Evaluation and Certificate of Compliance. If SRD finds the prospective Port Contractor's determination correct, SRD will confirm and process the determination using the Living Wage Laws Determination form.
- 10.2. In the event of a disagreement between SRD and the prospective Port Contractor, the prospective Contractor may request a conference with SRD.
- 10.3. A Port Contract is presumed to be covered by the Living Wage Laws unless otherwise determined.
- 10.4. If SRD and the prospective Port Contractor are unable to come to an agreement after the conference, the Executive Director will make a final determination. A prospective Port Contractor that refuses to agree to comply with Living Wage Laws after the Executive Director has determined that the prospective Port Contract is subject to Living Wage Laws shall be disqualified from entering into the Port Contract.

11. DO THE LIVING WAGE LAWS AND REGULATIONS APPLY TO SUBCONTRACTORS?

A Person who is a subcontractor, sublessee, sublicensor or subconcessionaire to a Covered Employer, or who has a management contract or any other agreement that transfers to it any rights, title or interest received from the Port in order to do work on Port property or to occupy Port Property may also be a Covered Employer even though it has no direct contractual relationship with the Port. Covered Employers are required to inform all of its subcontractors and sublessees of Living Wage Laws obligations and to notify SRD of such subcontracts that are subject to the Living Wage Laws within 30 days of entering into such subcontracts. A Covered Employer shall be responsible for insuring that its subcontractors or sublessees comply with the Living Wage Laws and these Regulations, reporting requirements and reporting to SRD and the cure of any violations.

12. WHAT IS THE REQUIREMENT FOR THE PAYMENT OF LIVING WAGE?

12.1. Hourly Wage

As of July 1, 2011, a Covered Employer must pay Eligible Employees either \$13.05 per hour worked if the Employer does not claim credit for the provision of health benefits or at least \$11.35 per hour worked if the employer does claim credit for the provision of health benefits.

12.2. Annual Adjustments to Living Wage Hourly Rate

The minimum hourly wage is adjusted annually in accordance with the Living Wage Laws. The City of Oakland publishes the adjusted Living Wage rate. The Covered Employer shall provide written notification of the rate adjustments to all of its eligible employees and make the necessary payroll adjustments by July 1st immediately following the publication of the adjusted wage rate. SRD will provide the adjusted Living Wage rates and the form of notice to be provided by the Covered Employers to their Eligible Employees.

12.3. Health Benefits Credit

12.3.1. If the Covered Employer provides Health Benefits to the employee (or the employee's dependent(s)) of at least \$1.70 per hour worked, the Covered Employer may pay at a lower hourly wage set for health benefits credit. If an employee refuses or elects not to accept the Health Benefits provided, the Covered Employer may nonetheless claim the credit.

- ✓ *Example 1: Company A which contracts with the Port to provide security services to the Port hires at least 20 employees every month to patrol. It is a Covered Employer that provides Health Benefits by paying the entire cost of health insurance. For every employee, Company A pays an average of at least \$2.00 per hour worked. Company A is eligible for the health benefits credit and may pay the health benefit credit wage rate to each Eligible Employee.*
- ✓ *Example 2: Same as Example 1, except that Company A does not offer Health Benefits to recently-hired employee for a 3-months probationary period. During the probation period, Company A does not get the Health Benefits credit for the probationary period, and therefore must pay the full living wage rate to the probationary Eligible Employees.*
- ✓ *Example 3: Same as Example 1, except that Company A only pays for partial cost of the health insurance coverage and the employees must contribute the rest. For certain Eligible Employees, Company A's contribution to the Health Benefits average less than \$1.70 per hour worked as of July 1, 2011. As to these employees, Company A must pay the full living wage rate.*

- ✓ *Example 4: Same as Example 1, except that employee B declines the Health Benefits because he receives better health care coverage under his wife's employer health care plan. Company A may claim the Health Benefit credit and pay Employee B the health benefit credit wage rate.*

12.3.2. If a Covered Employer provides Health Benefits to Eligible Employees but does not pay for them on a per-hour basis, then upon the Covered Employer's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the Covered Employer's average hourly cost to provide Health Benefits to its Eligible Employees in Port-related employment. The Covered Employer shall support its request with such documentation upon the reasonable request of the Port.

12.4. **Compensated Days Off**

Employees shall be entitled to at least twelve (12) compensated days off for sick leave, vacation or personal necessity upon reasonable request. Employees who work part time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first 6 months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

13. **WHAT ARE THE "WORKER RETENTION" REQUIREMENTS OF THE CHARTER PROVISIONS?**

The Charter Provisions require a Port-Assisted Business that replaces a prior PAB to offer employment to the "service employees" (not including managerial, supervisory, professional, paraprofessional, and confidential employees) of the replaced PAB. A PAB need only retain the employees of a prior PAB. If a PAB replaces a prior business that is not covered under the Charter Provision, the worker retention provision does not apply.

13.1. **Replacing a prior PAB**

A PAB "replaces" another if it:

- (1) (a) assumes all or part of the lease, contract or subcontract of a prior PAB employer; or, (b) obtains a new lease or sublease within the same structure as the prior PAB's leasehold within 180 days after the prior PAB ceases to operate within the same structure or at the same location being occupied by the new PAB; or, (c) obtains a new contract for the same service provided to the Port by the prior PAB;

AND

(2) Offers employment which employees of the prior PAB can perform.

Many of the Sections include “examples” for guidance in interpreting the language of the Section. The following examples are proposed for inclusion into the Regulations after Section 13.1:

Example 1. “same structure.” A new PAB in a structure unattached to the structure that contained a prior PAB does not “replace” the prior PAB. Structures attached to one another are deemed to be the “same structure.” For example, Terminal One and Terminal Two at the Oakland International Airport are attached and, as such, are deemed to be the “same structure.”

Example 2. “ceases to operate.” A PAB does not qualify as a “prior” PAB unless and until it “ceases to operate.” A PAB “ceases to operate” when it permanently stops providing products or services in exchange for money within the subject structure or location.

Example 3. “within 180 days after the prior PAB ceases to operate.” Where a lease or sublease is finally executed for an otherwise qualifying replacement PAB, that PAB would be deemed to “replace” a prior PAB if such execution occurs 180 days or less after the prior PAB ceases to operate. Under certain circumstances, variances from the final lease execution date as the trigger for “replacement” timing is appropriate. For example, where no lease or sublease is ever executed or where an otherwise qualifying replacement PAB commences to operate before a lease or sublease is executed, that PAB would be deemed to “replace” a prior PAB if such commencement of operations occurs 180 days or less after the prior PAB ceases to operate. (A PAB “commences to operate” when it begins providing products or services in exchange for money within the subject structure or location. An otherwise qualified replacement PAB would not “replace” a prior PAB if it finally executed its lease or sublease (or, where no lease or sublease has been executed, commenced operating) 181 days or more after the prior PAB ceased to operate). Similarly, where the Port or an existing PAB announces that such existing PAB will cease operations (and become a “prior” PAB) in a matter of weeks or months, and an otherwise qualifying replacement PAB commences operations after the prior PAB ceases operations, the fact that the new PAB may have finally executed its lease before the prior PAB ceased operations, in reliance on representations the prior PAB would cease operations, should not preclude the new PAB from being considered as a replacement for the prior PAB.

Example 4. “same location.” As discussed above, an otherwise qualified PAB may “replace” a prior PAB where the prior PAB ceases operations in the “same structure.” The “same location” language is designed to address those instances where the prior PAB may operate at multiple locations in the same structure, cease operations at one or more of those locations, but continue operating at one or more locations in the same structure. For example, Prior PAB A operates 4 kiosks in the same structure. Prior PAB A ceases operations at 1 of its kiosks but continues operating the other 3 kiosks in the same structure. Replacement PAB B assumes operations of the 1 closed kiosk. Assuming Replacement PAB B is an otherwise qualified replacement PAB, Replacement PAB B

would “replace” Prior PAB A at that 1 kiosk because it is operating at the “same location” as Prior PAB A, even though Prior PAB A has not ceased to operate at all locations within the same structure.

Example 5. “contract for the same service.” This language is intended to cover PABs with contracts to provide services to the Port that do not have leases, subleases, or other agreements with the Port associated with the occupation of a specific space at the Port.

13.2. **90 Day Rule**

Only those service employees who have worked for the prior PAB for at least 90 calendar days must be retained. The new PAB may not terminate the retained employees for 90 workdays except for just cause.

13.3. **Preferential Reinstatement List**

The new PAB may operate at lower staffing levels than its predecessor PAB. In such instance, the new PAB shall place the employees of the predecessor PAB who are not retained on a preferential reinstatement list based on seniority and shall notify SRD in writing of the number of employees comprising the lower staffing levels. The new PAB will be responsible for notifying SRD promptly of any change in its anticipated staffing levels and SRD will work with the PAB to determine ongoing compliance with the Charter Provision’s worker retention policy.

In the instance that the new PAB has its own current employees to perform the work for which it is replacing the predecessor PAB, the new PAB must hire from a combined reinstatement list of both its own employees and those of the predecessor PAB in order of seniority. The new PAB must hire the employees with the most seniority first.

14. **WHAT ARE THE REPORTING AND RECORD-KEEPING REQUIREMENTS?**

Each Covered Employer must maintain and keep payroll records for each Eligible Employee, submit quarterly payroll reports to the Port, and provide labor representatives certain access to work sites and information.

14.1. **Covered Employer Maintenance of Payroll Records**

Each Covered Employer shall maintain for each Eligible Employee records and information to demonstrate compliance with the Living Wage Laws. For each Eligible Employee, the Covered Employer shall maintain the following information for at least three years:

- Name
- Address
- Date of hire

- Job classification
- Rate of pay
- Paid and unpaid time off (accrued and taken)
- Hours worked on a Living Wage Laws contract, for each pay period in which an employee works.
- Hourly value of health benefits provided.

14.2. Covered Employer Reporting to Port

Each Covered Employer shall submit a copy of payroll records for Eligible Employees to the Port's Social Responsibility Division on a quarterly basis at least by March 31, June 30, September 30 and December 31st of each year unless the Covered Employer has employed less than 20 persons during the preceding quarter, in which case the Covered Employer need only submit a copy of such records every December 31st or at the end of any quarter in which the number of employees rises above 20. For purposes of Living Wage Laws and these Regulations, the "preceding quarter" means the quarter immediately preceding the relevant payroll report deadline. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars (\$500.00) per day, levied and assessed by the Port, and collected by SRD pursuant to procedures set forth in Section 20 of these Regulations.

14.2.1. SRD may allow a Covered Employer to submit required payroll schedules with numerical codes instead of employee names and addresses to protect the privacy of the Eligible Employees, upon request from the Covered Employer or Eligible Employees. A Covered Employer is required to maintain the key to any such codes used and to provide this list upon reasonable request from an authorized Port representative if the key is necessary in any monitoring or investigation of the Covered Employer's compliance with Living Wage Laws.

14.2.2. Upon the reasonable request of the Port, a Covered Employer shall permit access to work sites and relevant payroll records to authorized Port representatives for the purpose of monitoring compliance with Living Wage Laws and these Regulations or investigating Complaints and evaluating the operation and effects of these Regulations, including the production for inspection and copying of its payroll records for any or all persons employed by the Covered Employer.

14.2.3. For purposes of Living Wage Laws and these Regulations, a "reasonable request" for documents or inspection shall include those requests that give the Covered Employer a reasonable amount of time for a response, and that allow a Covered Employer to protect employee confidentiality without interfering with information necessary to respond to the request.

14.3. PAB permitting labor representatives access to workforce

Upon reasonable request, each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with the Living Wage Laws.

15. NOTICE OF EMPLOYEE RIGHTS ARE REQUIRED

Each PAB shall give written notification to each current employee working at Port-Related Employment, and to each new employee working at Port-Related Employment at time of hire, of his or her rights under the Living Wage Laws and these Regulations. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the employees working at Port-Related Employment, and shall also be posted prominently in areas at the work site where it will be seen by all such employees. The notice shall also inform each employee who makes less than twelve dollars (\$12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32.

16. RETALIATION AND DISCRIMINATION ARE PROHIBITED

A Covered Employer shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a Complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under the Living Wage Laws and these Regulations. Should an authorized Port representative find that a Covered Employer has retaliated or discriminated against an employee for using the remedies as set forth in the Living Wage Laws, the Covered Employer will be found to be in violation of Living Wage Laws and subject to any penalties that may be assessed against a Covered Employer under the Living Wage Laws. The Port may also find the Covered Employer to be in breach of its Port Contract with the Port and subject to any penalties assessed pursuant to the terms of the Port Contract, termination of such agreement or other remedies available in law or equity.

17. MAY AN EMPLOYEE WAIVE HIS OR HER OF RIGHTS UNDER LIVING WAGE LAWS?

Any waiver by an Eligible Employee of any of the provisions of the Living Wage Laws or these Regulations shall be deemed contrary to public policy and shall be void and unenforceable, except that employees shall not be barred from entering into a written Valid Collective Bargaining Agreement waiving a provision of the Living Wage Laws if such waiver is set forth in clear and unambiguous terms. Any request to an Eligible Employee by a Covered Employer to waive his or her rights under this Section shall constitute a violation of Living Wage Laws.

18. HOW MAY A COVERED EMPLOYER APPLY FOR A WAIVER OF THE LIVING WAGE REQUIREMENTS?

The Board of Commissioners, in its discretion, may grant waiver of the living wage requirements upon application by a Covered Employer in accordance with Living Wage Laws and with these Regulations.

18.1. Waiver Procedures

If a Covered Employer contends it is unable to pay all or part of the living wage, it shall submit an application for waiver and all required documents to support its request for waiver. The Executive Director may then recommend to the Board as to whether to grant the waiver.

18.2. Criteria for Grant of Economic Hardship Waiver

The Living Wage Laws sets forth the requirements under which a Covered Employer may qualify for a waiver from the application of Living Wage Laws' provisions. These are:

- 18.2.1. A Covered Employer requesting a waiver must provide a detailed explanation in writing to the Executive Director. The explanation must set forth the reasons for the employer's inability to comply, 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 employer. The employer must also demonstrate that the waiver will further the public interests in creating training positions which will enable covered 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.
- 18.2.2. The Board will grant a waiver only upon a finding and determination that the Covered Employer has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. No waiver will be granted, however, if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.
- 18.2.3. Waivers 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 employer may reapply for a new waiver

which may be granted subject to the same criteria for granting the initial waiver.

18.3. Emergency Waivers

If a Port Contract is one for service in response to a public emergency, the Executive Director of the Board may waive the requirements of Living Wage Laws if and only if there is no contractor willing to comply with Living Wage Laws who is capable of responding to the emergency.

18.4. Bulk Purchasing Waiver

If the services to be purchased under a Port Contract are part of a bulk purchasing arrangement with another governmental entity, the arrangement will substantially reduce the cost to the Port, and such arrangement is in the best interests of the Port or the public, then the Executive Director may waive the requirements of Living Wage Laws.

18.5. Collective Bargaining Waiver

Employees who are parties to a valid Collective Bargaining Agreement may collectively waive their rights under the Living Wage Laws. Such waiver must be evidenced by explicit statement of waiver in the collective bargaining agreement or other written instrument.

18.6. Appeal of a Waiver Decision

Any party who objects to the grant of a waiver by the Board may appeal such decision to the City/Port Liaison Committee, who may deny such waiver. Similarly, any party who objects to the rejection of a waiver may appeal such decision to the City-Port Liaison Committee, who may grant such waiver.

19. WHAT IS THE EFFECT OF AMENDMENTS OR RENEWALS OF AGREEMENTS OR CONTRACTS THAT HAVE NOT BEEN SUBJECT TO LIVING WAGE LAWS?

In some cases, an agreement that is not subject to Living Wage Laws may become subject to the Living Wage Laws when that agreement is amended or renewed. If an Agreement is amended or renewed, the amended or renewed agreement shall be reviewed by SRD in the same manner set forth above for reviewing all other Agreements for determining applicability of the Living Wage Laws; provided however “amendment” for the purposes of the Living Wage Laws shall trigger review for applicability only if the amendment confers some benefit on to the party contracting with the Port that the party would not have received without the amendment.

20. WHAT STEPS WILL SRD TAKE TO MONITOR, INVESTIGATE AND ENFORCE COMPLIANCE?

It is the policy of SRD that Complaints be resolved through informal consultation, conflict resolution and continued monitoring. Contracting divisions, Covered Employers and Eligible Employees shall notify SRD of any Complaints and any proposed resolution of said Complaint. SRD may investigate Complaints whether on referral or on its own initiative.

20.1. Employer Monitoring

SRD will monitor the operations of employers with Port Contracts with the Port to ensure compliance by conducting on-site visits and payroll audits. Employers shall cooperate with SRD when a meeting, a site visit, or documentation is requested by SRD as part of its review by providing (1) full access to the work site for employer and employee interviews; (2) full access to certified payrolls, timesheets, benefit statements, employee policy manuals, and any other document that would assist SRD in determining if an employer is providing or has provided the wages and benefits required by Living Wage Laws.

20.2. Complaint

Any employee of a Covered Employer (or a representative of an union legally representing the employee) may file a Complaint in writing with the Living Wage Compliance Officer in SRD for any alleged violation of the Living Wage Laws by a Covered Employer. The Complaint must be filed within one years after the occurrence of the last alleged violation and shall contain:

- name and contact information of Complainant,
- name of employer allegedly in violation of Living Wage Laws,
- identification of the provision of the Living Wage Laws allegedly violated,
- attestation and signature that the Complaint is true and accurate, and
- specific allegation of facts that constitute violation of the Living Wage Laws.

SRD may determine a Complaint filed after one year after the occurrence of the last violation is timely filed if the Complainant provide in writing good cause for a late submission. Reasons for good cause may include but are not limited to, failure to comply by the Covered Employer with Living Wage Laws notice requirements, or a reasonable fear of retaliation.

20.3. Investigation

SRD will investigate any Complaint SRD deems to be complete and timely pursuant to Section 20.2, or may initiative investigation on its own, in the following manner:

20.3.1. SRD will notify in writing the subject Covered Employer of the Complaint and investigation (including the nature of the investigation and the specific violations being investigated) and will take any reasonable step, including reviewing records and information provided for under Section 14 of these Regulations, interviewing the Covered Employer, Complainant, the Contracting Division, employees of the Covered Employer and other Persons as reasonably necessary. The Investigator shall provide the Covered Employer an opportunity to respond to the Complaint or investigation.

20.3.2. The Covered Employer against whom a Complaint is lodged or an investigation initiated, may respond to the Complaint or the investigation in writing within 30 days from the date that SRD informs it in writing of the Complaint and investigation.

20.4. Determination of Violation

Upon the conclusion of the investigation, SRD will make a report of finding as to whether a violation of Living Wage Laws has occurred and facts supporting such findings. The report shall be in writing and shall include recommendations as to the appropriate remedial action that SRD should take:

20.5. Employer's Failure to Reasonably Cooperate with Investigation

If an employer unreasonably fails to produce requested documentation, fails to allow access to the work site or the employees for employee interviews, or otherwise unreasonably fails to cooperate with SRD in any investigation, then SRD may consider it to be out of compliance with Living Wage Laws. In addition to the remedies provided in Living Wage Laws, SRD may request that the Port withhold any payments due to the employer until the employer cooperates.

20.6. Notice to Employer and Complainant

Within 30 days of SRD's issuance of its report of finding pursuant to Section 20.4 of these Regulations, SRD issues a "Notice of Determination" to the Complainant and the alleged violator of its determination and of each party's right to administrative appeal. If SRD determines that a Covered Employer has violated the Living Wage Laws and these Regulations, the notice shall provide that the Covered Employer has 30 working days to correct the violation, including payment of back wages to any Eligible Employee or restitution of benefits owing to the Eligible Employee under the Port Ordinance and these Regulations. SRD may, at its discretion, allow the Covered Employer additional time beyond the 30 working days to make the corrections if the Covered Employer demonstrates in writing to SRD that it has made a good faith effort to comply. SRD will notify the Contracting Division of the Covered Employer's failure to comply with Living Wage Laws and of the deadline by which corrections must be made.

20.7. **Failure to Correct or Comply**

If the violation or failure to comply continues beyond the 30 working days (with any applicable extensions) and SRD has determined that the Covered Employer in violation has not made a good faith effort to remedy the violation, SRD will issue a “Notice of Remedial Action” to Covered Employer and the Complainant informing each Party of SRD’s intention to take remedial action and each party’s right of appeal. Remedial Actions may include:

As to all Port Contractors:

- Suspension and/or termination of any Port Contract;
- \$500 per day that a Covered Employer fails to submit records required to be submitted to the Port pursuant to §13.2 of these Regulations; or

As to Service Contractors only:

- Withholding from the Service Contractor of all sums due to the Covered Employer from Port under the Service Contract subject to the Port Ordinance;
- Deeming any Service Contractor ineligible for future Port contracts;
- Imposition of a fine of \$500 per week per Employee that any Service Contractor subject to the Port Ordinance is found to be in violation of the Living Wage Laws;
- Payment of wages to affected Eligible Employees of any Service Contractor subject to the Port Ordinance or back wages or restitution of benefits that Eligible Employees of any Service Contractor are entitled to under the Port Ordinance.

SRD shall determine the appropriate remedial action, taking into consideration the length and extent of the violations, the number of Eligible Employees affected, the Covered Employer’s efforts to correct the violations and other relevant factors.

20.8. **Administrative Appeal and Review**

20.8.1. A Covered Employer and/or the Complainant may file an appeal of SRD’s determination of violation within 30 days of the date of the Notice of Determination of Violation or Notice of the Remedial Actions. The appeal must be in writing setting forth the name, address, and phone number of the appellant, the date of the initial Complaint, the date of the Notice of Determination or Notice of Remedial Actions appealed, summary of the specific facts and provisions of the Living Wage Laws that support the appeal, and, if applicable, a proposed restitution and/or remedy.

20.8.2. A determination of violation or remedial action shall be final if no appeal is filed within the appeal period permitted under subsection 20.8.1 above.

20.9. **Appeal Hearing**

20.9.1. Within 30 days of the receipt of a written appeal that SRD deems to be complete, SRD shall make reasonable attempts to schedule an appeal Hearing at a time that is convenient to all parties. SRD shall notify the Complainant, the employer that is the subject of the Complaint and Contracting Division of the time and place of scheduled Hearing. Such notification shall be made in writing no later than 10 days before the date of the Hearing.

20.9.2. SRD shall appoint a Hearing Officer who shall be capable of conducting the hearing and rendering a decision in any impartial manner (who may be an employee of the Port, but not of SRD or the Contracting Division). Attendance by the appellant or a representative of the appellant designated in writing by the appellant shall be mandatory. If the appellant or designated representative fails to attend a Hearing without good cause, the appellant shall be deemed by the Hearing Officer to have withdrawn the request for a Hearing and the appealed determination by SRD shall be upheld. If any other noticed party other than the appellant fails to attend a properly-noticed Hearing without good cause, the hearing may be held in the party's absence and the absent party shall be deemed to have waived its right to attend and testify at the Hearing.

20.9.3. The Hearing Officer shall open the Hearing, stating the date and time, and identifying the parties present. The Hearings shall be conducted informally for the purpose of accurately determining the facts of the dispute. Each noticed party shall have the opportunity to present documentation to the Hearing Officer who will set forth the procedure for the presentation of evidence. The Hearing Officer shall have the discretion to allow evidence that may not be admitted in a court of law, but may disallow testimony or evidence that he or she deems in his or her discretion to be irrelevant, prejudicial, inflammatory or otherwise not probative of the issues relevant to the appeal. The Hearing Officer may in his or her discretion continue the Hearing to another time in order to receive further evidence or testimony he or she deems relevant to the disposition of the appeal.

20.9.4. Within 30 days of the close of the Hearing, the Hearing Officer shall issue to the appellant, the Complainant, the employer that is the subject of the Complaint and Contracting Division a written decision granting or denying the appeal and issuing any appropriate remedy for any violation by a Covered Employer.

20.9.5. The decision of the Hearing Officer shall be final and shall designate a deadline for compliance with the decision, if any compliance is needed. Failure to comply with a determination made by a Hearing Officer within the time period given in the decision may subject the noncompliant party to further fines or penalties. Further actions by parties other than the Port may only be taken at the discretion of the Board of Commissioners or as provided for in Living Wage Laws, through the Superior Court of the State of California.