

Attachment A Draft Ordinance
ENHANCED PROTECTIONS FOR OUTDOOR CEMETERY WORKERS

Purpose and Intent

Economic precarity and disempowerment discourages whistleblowing by outdoor workers at private cemeteries for illegal or unethical cemetery practices and increases the risk of labor abuses. In addition, inadequate pay and poor working conditions undermines outdoor cemetery workers' ability to meet basic needs and contributes to regionwide problems that place demands on the County's safety net programs, such as housing instability and hunger. The County of San Diego seeks to safeguard families' peace of mind and protect outdoor cemetery workers by establishing a compensation floor and enforcement mechanisms, ensuring whistleblower protections for reporting or serving as a witness to violations of labor and cemetery laws, and providing notification of workers' rights.

Citation

This ordinance shall be cited as the County of San Diego Enhanced Protections for Outdoor Cemetery Workers Ordinance ("Ordinance").

Authority

This ordinance is adopted pursuant to the powers vested in the County under the Constitution and the laws of the State of California, including the police powers vested in the County by Article XI, section 7 of the California Constitution and California Labor Code section 1205(b).

Definitions

For purposes of this Ordinance, the following definitions apply to the terms in this Ordinance:

- *Cemetery* means a privately-owned facility, premises, or property designated or used for burial, interment, or memorialization of the deceased. This includes but is not limited to burial services or plots, cremation interment options or services, and funeral home facilities or services.
- *Cemetery employer* means any *person* who owns, controls, or operates any premises — including but not limited to any contracted, leased, or sublet premises — that is a *cemetery* or is connected to or operated in conjunction with the purpose of a *cemetery*. *Cemetery employer* does not include any *person* who does not conduct ten or more burials, internments, or memorializations annually or any public agency.
- *County* means the County of San Diego.
- *Employee* means any *person*, whether directly employed or subcontracted, who:
 1. in one or more calendar weeks of the year performs at least 2 hours of work within the geographic boundaries of the County for a *cemetery employer*; and
 2. who performs any of the following type(s) of work for a *cemetery employer*:
interment in burial plots or mausoleums, ground maintenance, landscaping,

equipment operation, heavy equipment operation, backfilling, maintenance or repair of machinery or other equipment, or horticulture.

3. An *employee* does not include a person who is employed as an independent contractor as defined by the California Labor code.
4. An *employee* does not include any office or sales employees of a *cemetery employer*.
- *Enforcement official* means the Director of the San Diego County Office of Labor Standards Enforcement (OLSE), or any person designated by the Director of OLSE.
- *Minimum wage* means the compensation paid to *employees* calculated as the regular hourly rate of pay plus fringe benefits.
- *Person* means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties.

Minimum Wage

- a) *Cemetery employers* must pay *employees* no less than the minimum wage identified below for each hour worked within the unincorporated areas of the County.
- b) The minimum wage is an hourly rate defined as follows:
 1. Starting thirty days after the effective date of this Ordinance, the minimum wage is \$30.55.
 2. Starting January 1, 2027, and each year thereafter, each time the California minimum wage is increased, the Minimum Wage rate set forth herein shall be increased by an equal percentage, meaning the County shall increase the Minimum Wage rate using the same percentage increase utilized for the California Minimum Wage increase. The adjusted Minimum Wage will become effective on the same date as the increase for the California minimum wage takes effect. The adjusted Minimum Wage will be noticed and posted as set forth in this Division

Notice and Posting

- a) The County shall publish a bulletin and notice and make them available to *Cemetery employers* in English, Spanish, and any other language for which the San Diego County Registrar of Voters provides translated ballot materials under section 203 of the Federal Voting Rights Act or California Elections Code section 14201. The County will make the materials available to *Cemetery employers* within 30 days after the ordinance goes into effect, with 2026 information and by October 1 of each year thereafter with information for the following year. The materials will include:
 1. a bulletin announcing the adjusted minimum wage for the upcoming year and its effective date; and

2. a notice for *Cemetery employers* to post in the workplace informing *employees* of the current minimum wage and of their rights under the Ordinance, including the right to be free from retaliation and the right to file a complaint with the *enforcement official*.
- b) Every *Cemetery employer* must post in a conspicuous place at any workplace or job site where any *employee* works the notice published each year by the County informing *employees* of the current minimum wage and of their rights to the minimum wage under this Ordinance. Every *Cemetery employer* must post this notice in the workplace or on the job site in English and any other language that is spoken by at least five percent of the *employees* at the *employee's* job site.

Employer Records

Cemetery employers must create contemporaneous written or electronic records documenting their *employees'* wages paid, provide these records to *employees* on a regular basis in a manner that comports with California Labor Code section 226(a), and retain these records for a period of at least three years. *Cemetery employers* must allow the *enforcement official* reasonable access to these records in furtherance of any investigation conducted pursuant to this Ordinance. A *Cemetery employer's* failure to create and retain contemporaneous written or electronic records documenting its *employees'* wages paid, or a *Cemetery employer's* failure to allow the *enforcement official* reasonable access to records creates a rebuttable presumption that the *Cemetery employer* has violated this Ordinance, and the *enforcement official* may rely on an *employee's* reasonable estimate regarding hours worked and wages they should have been paid.

Retaliation Prohibited

- a) *Cemetery employers* are prohibited from engaging in retaliation against an *employee* for exercising any right provided by this Ordinance or by state or federal whistleblower laws. The protections of this Ordinance apply to any *employee* who reasonably and in good faith reports a violation, or acts as a witness to a violation on behalf of another employee, of this Ordinance or any state laws or regulations governing private cemeteries to their *Cemetery employer* or a governmental agency tasked with overseeing the enforcement of any wage and hour law or cemetery laws and regulations applicable to the *Cemetery employer*.
- b) Under this ordinance, *employees* have the right to request payment of the minimum wage, file a complaint for alleged violations of this Ordinance with the *enforcement official*, communicate with any *person* about any violation or alleged violation of this Ordinance, participate in any administrative action regarding an alleged violation of this Ordinance, inform any *person* of their potential rights under this Ordinance, and take any other lawful action to enforce this Ordinance and their rights under other applicable federal and state employment laws. Protections of this Ordinance apply to any *employee* who mistakenly, but in good faith, alleges noncompliance with this Ordinance.

- c) A Cemetery employer's adverse action against an *employee* within 90 calendar days of the *employee's* exercise of rights provided by this Ordinance creates a rebuttable presumption that the Cemetery employer acted in retaliation against the *employee* for the *employee's* exercise of protected rights.

Remedies

- a) Any *employee* claiming harm from a violation of this Ordinance can seek to enforce the provisions of this Ordinance by filing a complaint with the *enforcement official*.
- b) Any *employee* claiming harm from violation of this Ordinance is entitled to all legal and equitable relief to remedy any violation of this Ordinance, including, but not limited to, the payment to an *employee* of back wages withheld in violation of this Ordinance; reinstatement of employment or other injunctive relief; and payment of liquidated damages to an *employee* equal to double back wages withheld, except as otherwise provided in this subsection. When a Cemetery employer engages in retaliation against an *employee*, the Cemetery employer is subject to liquidated damages that are the greater of double back wages or \$1,000 for each violation not resulting in termination of employment, and the greater of double back wages or \$3,000 when an *employee* is terminated from employment for exercising any right provided by this Ordinance. Violations of this Ordinance are declared to irreparably harm the public and covered *employees* generally.
- c) Any Cemetery employer who violates any requirement of this Ordinance is also subject to a civil penalty, assessed and payable to the County, of no less than \$500, but no more than \$1,000 per violation, except as otherwise provided in this subsection. Each and every day that a Cemetery employer fails to pay an *employee minimum wage* constitutes a separate and distinct violation. Any Cemetery employer who fails to comply with the notice and posting requirements of this Ordinance is subject to a civil penalty of \$500 for each *employee* who was not given appropriate notice pursuant to that section, up to a maximum of \$2,000. Any Cemetery employer who engages in retaliation against an *employee* for exercising any right provided by this Ordinance is subject to a civil penalty of no less than \$1,000, but no more than \$3,000 per violation. The cumulative civil penalties that may be assessed against a Cemetery employer, who has not previously violated any provision of this Ordinance, are limited to \$10,000.
- d) This Ordinance does not create any right of action or cause of action for damages against the County in its enforcement of this Ordinance.
- e) If a cemetery employer ceases its business operations, sells out, exchanges, or otherwise disposes of the Cemetery employer's business, then any person who becomes a successor to the business will be liable for the unpaid wage amount as defined in the Notice of Satisfaction (Notice) and Administrative Enforcement Order (Order) issued by the enforcement official, with a finding of a violation if, at the time of the conveyance of the business, the successor has actual or constructive knowledge of the fact and amount of the Notice and Order.

Enforcement Official

- a) Any *employee* claiming harm from violation of this Ordinance may file a complaint with the *enforcement official*.
- b) The *enforcement official* has full authority to implement and enforce this Ordinance.
- c) The *enforcement official* is authorized to develop administrative regulations that standardize compliance requirements, investigative procedures, and enforcement processes specific to this ordinance, and will report back to the Board of Supervisors on the development of those regulations

Exemption for Collective Bargaining Agreements

Cemetery employers and *employees* may jointly waive the minimum wage requirements described in this Ordinance by clear and unambiguous terms in a bona fide collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for paid sick days or a paid leave or paid time off policy that permits the use of sick days for those *employees*, final and binding arbitration of disputes concerning the application of its paid sick days provisions, premium wage rates for all overtime hours worked, and regular hourly rate of pay and fringe benefits totaling the equivalent of the *minimum wage* identified in this Ordinance. For *cemetery employers* and *employees* covered by a bona fide collective bargaining agreement, the provisions of this Ordinance relating to the *enforcement official* and liquidated damages as a remedy shall only apply to any alleged whistleblowing by an *employee*.

Compliance with Other Laws

- a) This Ordinance must not be construed to discourage or prohibit a *Cemetery employer* from providing higher wages to its *employees* than specified in this Ordinance.
- b) This Ordinance is not intended to, and must not be interpreted to, modify any obligation of a *Cemetery employer* to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing higher wages to an *employee* than specified in this Ordinance.
- c) This Ordinance is not intended to, and must not be interpreted to, require or coerce a *Cemetery employer* to enter into a collective bargaining agreement establishing the substantive terms and conditions of employment, including wages.
- d) This Ordinance is not intended to, and must not be interpreted to, enact or express any generally applicable policy regarding labor-management relations or to regulate those relations in any way.
- e) All provisions in this Ordinance are intended to be consistent with all applicable federal and state laws.
- f) To the extent a *Cemetery employer* is also subject to a minimum wage or minimum fringe benefits set forth in another County ordinance or federal or state law, the *Cemetery*

employer shall comply with the higher of the minimum wage or fringe benefits requirements.