



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** COUNTY EXECUTIVE

**File #:** 22-368

Board Meeting Date: 5/17/2022

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**Special Notice / Hearing:** County Ordinance  
Code Sec. 2.88.080

**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Michael P. Callagy, County Executive

**Subject:** Ordinance Amending and Restating Chapter 2.88 of Title 2 of the San Mateo County Ordinance Code to Enact a Permanent Living Wage Ordinance

**RECOMMENDATION:**

Adopt an ordinance amending and restating Chapter 2.88 of Title 2 of the San Mateo County Ordinance Code to enact a permanent Living Wage Ordinance, and waive the reading of the ordinance in its entirety.

**BACKGROUND:**

**A. Adoption of the Pilot LWO**

Living Wage Ordinances (“LWOs”) are designed to help ensure that employers contracting or entering into certain types of business arrangements with local government entities pay their employees, who perform significant work on such government agency contracts, a wage that allows those employees to support themselves while remaining above the poverty level. LWOs were introduced because the federal and state minimum wage rates are often insufficient to sustain contractors’ employees performing such significant work for government agencies.

In December 2015, the Board conducted a study session on LWOs and appointed Supervisors Carole Groom and Dave Pine to a LWO Subcommittee. To research living wage impacts and options, the LWO Subcommittee convened a work group that included 12 non-profit County contractors, one for-profit contractor, and a representative of the San Mateo Labor Council. The work group met six times, and additional meetings were held with the Labor Council and three-non-profit organizations. Based on input from these meetings, the LWO Subcommittee recommended adoption of a five-year living wage pilot program.

On November 1, 2016, the Board adopted the pilot LWO, which took effect January 1, 2017.

Following the initial adoption of the pilot LWO, the County Executive's Office and the County Attorney identified certain changes that would facilitate implementation and administration of the pilot LWO. On February 28, 2017, the Board adopted an amendment to the pilot LWO to implement those changes.

On November 9, 2021, the Board adopted an amendment to the pilot LWO extending its term, substantially as written, through June 30, 2022. The extension maintained the \$17.79 living wage hourly rate through the end of the 2021-2022 fiscal year. During that extension period, staff, Supervisor Pine, and staff from Supervisor Groom's office met with key representatives from non-profit County contractors to review operation of the pilot LWO over the course of the five-year pilot and gather input regarding potentially extending, amending, or permanently enacting the LWO.

## **B. Summary of the Pilot LWO**

The existing pilot LWO includes the following key terms and provisions:

### **Term:**

- The pilot LWO took effect January 1, 2017 and sunsets June 30, 2022.
- The Board may further extend the term beyond June 30, 2022 or permanently enact the LWO after conducting a public hearing.
- The Board may suspend the LWO if the Board determines suspension is in the best interest of the County.

### **Living Wage Rate:**

- Initial hourly rate of \$14.00 increased by one dollar each year until reaching \$17.00 on July 1, 2019, at which point it increased annually by the urban consumer price index (CPI-U) for San Francisco-Oakland-San Jose. The annual CPI-U adjustments shall not be negative and shall not exceed 3.5%.
- The current rate, which took effect July 1, 2021, is \$17.79. That rate remains in effect until June 30, 2022, when the pilot LWO sunsets.

### **Contractors Subject to the Pilot LWO:**

- All contractors and subcontractors providing services under a County contract
- With the exception of government entities, which are exempt.

### **Contractor Employees Covered by the Pilot LWO:**

- Full-time, part-time, temporary, and permanent employees
- With the exception of election day workers, volunteers, and students working for academic credit, all of whom are exempt.

### **Contracts Covered by the Pilot LWO:**

- Compliance with the LWO was voluntary for new contracts entered into between January 1, 2017 and March 31, 2017.
- Compliance became mandatory for new contracts entered into on or after April 1, 2017.
- Non-profit contractors that amended existing contracts to voluntarily comply with the LWO on or after January 1, 2017 would receive an "enhancement" payment to mitigate the cost of compliance.

### **Exemptions from Contracts Covered by the Pilot LWO:**

- Non-profit contracts funded by less than 50% in County funds are exempt.
- Non-profit contracts where the County is one of several braided funding sources for a single program, and County funds comprise less than 50% of the total program funding, are also exempt.
- Contracts for "public works" as defined under California Labor Code Sections 1720 and 1720.2 and subject to the payment of prevailing wages under the California Labor Code are exempt.
- Any agreement in which the County serves only as a fiscal agent and the contract is a 100% pass-through of state, federal, or other non-County funds is exempt.
- A waiver may be granted for other qualifying contracts where it is in the best interest of the County to grant the waiver.

### **Implementation and Enforcement of the Pilot LWO:**

- Enforcement of the pilot LWO is accomplished through oversight by the County, which retains the right to conduct random audits; through employee grievance rights; and through an employee's private right of action, if necessary.
- Contractor employee complaints about compliance with the LWO go to the Purchasing Division and are referred to the contracting department for review and potential investigation by an outside auditor.
- CEO staff report annually on pilot LWO implementation, cost, and compliance.

### **C. Issues Encountered During the Pilot LWO**

During the five-year pilot LWO period, there has been only one request for a waiver, which was granted by the Purchasing Division to a laundry firm that took materials out of San Mateo County for cleaning.

Further, only one complaint has been reported to the County. That complaint was turned over to the employees' union, which chose not to pursue the complaint because the employees were no longer employed by the contractor, and the total amount of the alleged wages owed in the claim was less than \$200.

After adoption of the LWO, staff assessed ways to determine the cost to the County. However, short of surveying hundreds of contractors annually, there was no easy way to determine annual cost of the LWO.

No other concerns about the LWO have been raised during the five-year pilot period.

### **DISCUSSION:**

As set forth above, the current living wage rate of \$17.79 will remain in effect until June 30, 2022, when the pilot LWO sunsets, unless the Board extends the term of the LWO or makes the LWO permanent. If the pilot LWO is extended or made permanent under its current terms, the living wage would increase to \$18.61 on July 1, 2022.

Representatives from non-profit County contractors have expressed support for making the LWO permanent in substantially the same form, with one addition: that the Board evaluate the LWO at regular, periodic intervals. Staff agrees with the recommendation.

Thus, the proposed permanent LWO would include an additional requirement that the County

Executive, or designee(s), report to the Board every two years on the implementation and operation of the ordinance, after consulting with non-profit agencies and other appropriate stakeholders impacted by the LWO. Additionally, the proposed permanent LWO would eliminate certain outdated provisions-such as the “enhancement” payment for non-profit contractors with County contracts predating March 31, 2017 that voluntarily amended those contracts to comply with the LWO and the table of historical living wage rates-and make other non-substantive clean-up revisions.

The ordinance amending and restating Chapter 2.88 of Title 2 of the San Mateo County Ordinance Code to enact a permanent LWO was introduced by the Board on May 3, 2022. Subsequently, a clerical error was identified in the version of the ordinance introduced. Specifically, the ordinance referred to “San Francisco-Oakland-San Jose” as the title for the relevant metropolitan statistical area for the consumer price index in both Sections 2.88.020(f) and 2.88.040(b). The Bureau of Labor Statistics, however, refers to this statistical area as “San Francisco-Oakland-**Hayward, CA.**” That clerical error has been corrected in the ordinance submitted for adoption, which the County Attorney has reviewed and approved as to form.

**FISCAL IMPACT:**

Since the LWO pilot was enacted, staff have not received any comments from non-profit contractors about additional costs caused by the LWO. So, at this time, there is no known fiscal impact to the County associated with adopting the ordinance amending and restating Chapter 2.88 of Title 2 of the San Mateo County Ordinance Code to enact a permanent Living Wage Ordinance. However, should there be additional costs to the County, those costs will be assessed at a regular review of LWO implementation and reported back to the Board of Supervisors.