



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: 21-903

Board Meeting Date: 11/16/2021

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Michael P. Callagy, County Manager

Subject: Adoption of an Ordinance Amending Sections 2.88.040 and 2.88.080 of Chapter 2.88 of Title 2 of the San Mateo County Ordinance Code to Extend the Expiration Date of the Living Wage Ordinance Pilot Program by Six Months Until June 30, 2022

RECOMMENDATION:

Adopt an ordinance amending sections 2.88.040 and 2.88.080 of Chapter 2.88 of Title 2 of the San Mateo County Ordinance Code to extend the expiration date of the Living Wage Ordinance Pilot Program by six months until June 30, 2022, previously introduced on November 9, 2021, and waive the reading of the ordinance in its entirety.

BACKGROUND:

Living Wage Ordinances ("LWOs") are designed to 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 of Supervisors ("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 the adoption of a five-year living wage pilot program.

On November 1, 2016, the Board adopted the LWO, and it went in effect on January 1, 2017. Between January 1, 2017, and March 31, 2017, the LWO applied only to amendments to existing service contracts with the County. Beginning on April 1, 2017, new service contracts executed were subject to the LWO.

Following the initial adoption of the LWO, the County Manager's Office ("CMO") and County Counsel identified the certain changes that would facilitate implementation and administration of the LWO. Accordingly, on February 28, 2017, the CMO brought these changes for the Board's consideration, and the Board adopted an amendment to the WLO to implement those changes.

The LWO now includes the following key terms and provisions:

Term of pilot LWO:

- 5-year pilot from January 1, 2017 through December 31, 2021
- Board action required to extend the LWO beyond December 31, 2021

Living Wage Rate:

- \$17.00 per hour phased in over 2 ½ years, and indexed for inflation, thereafter
 - January 1, 2017: \$14.00 per hour
 - July 1, 2017: \$15.00 per hour
 - July 1, 2018: \$16.00 per hour
 - July 1, 2019: \$17.00 per hour
- Starting July 1, 2020, the living wage rate 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%. (Beginning in July the living wage rate increased to \$17.19 per hour, and then on July 1, 2021, it further increased to \$17.79 per hour.)
- The Board may suspend scheduled living wage rate increases in one-year increments if the Board finds suspension in the best interest of the County.

Contractors subject to the LWO:

- All contractors and subcontractors providing services under a County contract.
- Government entities are exempt.

Contractor employees covered by the LWO:

- Full-time, part-time, temporary, and permanent employees are covered. Election day workers, volunteers and students working for academic credit are exempted.

Contracts covered by the LWO:

- Compliance with the LWO was voluntary for new contracts entered into between January 1, 2017 and March 31, 2017.
- Contracts entered into on or after April 1, 2017, must comply with the LWO.
- 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.
- 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 are exempt.
- Contracts may be exempted from LWO compliance by the Board.

Implementation and enforcement of the LWO:

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

DISCUSSION:

As set forth above, the LWO sunsets on December 31, 2021. The LWO increased the living wage for County contractors a dollar per year since its adoption - up from \$14 per hour effective on January 1, 2017 to \$17 per hour effective on July 1, 2019. After reaching \$17 per hour, annual increases of the living wage are tied to the CPI-U for the Oakland/SF/San Jose region. The CPI-U adjustment effective on July 1, 2020 set the living wage at \$17.19 per hour, which was a 1% increase. The most recent CPI-U adjustment - effective on July 1, 2021 - was 3.4%, which set the living wage at \$17.79. The \$17.79 living wage hourly rate will remain in effect until December 31, 2021 when the LWO sunsets, unless the Board acts to extend the term of the LWO pursuant to section 2.88.080(b) of the LWO.

During the pilot period, there has been one request for a waiver which was granted by the Purchasing Division to a laundry firm that takes materials out of county for cleaning. Over the past five years, one employee complaint has been submitted. That complaint was turned over to the union, which choose not to pursue it because the three employees were no longer employed by the contractor and the total amount of the wages owed in the claim was less than \$200. These are the only LWO issues that were reported to the County over the past five years.

After the LWO was adopted, 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. However, over the past five years, during multiple discussions with community-based organizations, concerns about the LWO have never been raised.

Because of the focus on the response to the COVID-19 public health emergency and recovery-initiatives related to the pandemic, staff has not had the opportunity to fully assess the impacts of the LWO. For this reason, staff is proposing the extension of the LWO, as written (except for an updated living wage schedule table in Section 2.88.040), through June 30, 2022. Approval of such an extension would maintain the \$17.79 living wage hourly rate through the end of the fiscal year. During the extension period, staff would work with the previously established LWO Subcommittee to develop an assessment plan. That plan would include meeting with Community Based Organization partners and/or reconvening the original work group to review the key provisions of the current LWO.

County Counsel has reviewed and approved the ordinance as to form.

FISCAL IMPACT:

There is no cost associated with extending the LWO for six months at the current LWO wage rate of \$17.79 per hour, which became effective on July 1, 2021.