



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: January 14, 2020

TO: Ordinance Committee

FROM: General Services Division, Finance Department

SUBJECT: Proposed Amendments To The Living Wage Ordinance

RECOMMENDATION: That the Ordinance Committee:

- A. Hear a report from staff on the Living Wage Advisory Committee's recommended revisions to the Living Wage Ordinance to (i) eliminate the multi-tier wage system; (ii) remove the non-profit exemption; (iii) add a waiver process for business entities, including non-profits, and; (iv) exempt professional services; and
- B. Provide staff direction on suggested ordinance revisions.

DISCUSSION:

Background

In 2006, the City adopted the City Service Contractor Mandatory Minimum Wage Ordinance, commonly referred as the "Living Wage Ordinance" (Chapter 9.128 of the Municipal Code). The ordinance defines a service contractor as a person or legal entity which enters into one or more contracts with the City of Santa Barbara ("City") to provide services to the City, where the amount paid may exceed or exceeds a specified threshold (currently \$20,074) that is calculated on a fiscal year basis.

The Living Wage Ordinance (LWO) applies to any business that provides services to the City of Santa Barbara where the amount paid to the business by the City in a fiscal year exceeds a specified threshold. It does not impose a minimum wage to all businesses in general. Moreover, the LWO only applied to those company employees that work directly on the City contract that provides a service to the City such as janitorial, painting or landscaping services; it does not apply to other work in which the business may engage.

The LWO currently contains three minimum wage tiers depending on the level of benefits provided by the business to its employees and a contract threshold for triggering the Living Wage requirements. In addition, the minimum Living Wage tiers and the threshold are adjusted annually and indexed to the Consumer Price Index for

Urban Wage Earners and Clerical Workers for Los Angeles-Riverside-Orange County. The current living wages for the three tiers and the threshold are as follows:

- Tier 1: No employee benefits are provided (\$18.74/hour)
- Tier 2: Basic medical insurance and compensated holidays are provided (\$16.06/hour)
- Tier 3: Supplemental benefits in addition to basic medical coverage and compensated holidays are provided (\$14.72/hour)
- Threshold: \$20,074

By way of comparison, on April 4, 2016 the Governor signed SB3 which raises the minimum wage in California incrementally and expands paid sick leave. The minimum wage will reach \$15 per hour in 2022 and will increase annually thereafter by the CPI index for Urban Wage Earners and Clerical Workers. The current minimum wage is \$12 per hour and increases to \$13 on January 1, 2020. Because of the new laws, feedback from service providers, and difficulties with administrating and monitoring compliance, the Living Wage Advisory Committee is recommending changes to the Living Wage Ordinance.

Recommendation Changes to the Living Ordinance

The Living Wage Advisory Committee is recommending four changes to the LWO, to a large degree these changes are aimed at simplifying the administration and enforcement of the ordinance. Each of these is described below.

Item 1: Moving to a Single Living Wage Corresponding to Tier 1

The Living Wage Advisory Committee is recommending that Council establish a single living wage rate and that it be the top wage tier, currently at \$18.74 per hour. This would eliminate the lower two tiers. The recommendation stems in part from the fact that the majority of vendors subject to the Living Wage Ordinance are currently paying at this tier.

Another factor in the recommendation is the challenge Tiers 2 and 3 create for staff in administering the LWO. For example, the basic medical insurance in Tier 2 and 3 must be similar to the insurance offered to City employees in order to qualify. Comparing insurance plans is difficult, subjective, and has discouraged service providers from using the lower tiers because of concerns that their medical insurance may not be comparable to the City insurance plans. Also, the difference in the wage tiers is not large enough to encourage service providers to provide insurance in order to qualify for a lower wage tier. Additionally, the City offers several options to its employees, which further complicates the comparison.

In reviewing similar ordinances from other cities and counties, few had multiple wage tiers and those that did only had two tiers with no qualitative insurance judgment. There

was a rate for when no insurance was provided and another rate for when insurance was provided.

Lastly, the proposed amendment to the LWO stems from the enactment of the Affordable Care Act (ACA) in 2010. The ACA requires employers, with few exceptions, to provide basic medical insurance and California AB 1522, as amended by AB 304, requires paid sick leave..

Due to the combination of the complexities and subjectivity involved in administering the LWO, the enactment of Assembly Bills and the impacts of the ACA on employers, City staff and the Living Wage Advisory Committee recommend moving to a single tier (Tier 1) in which no benefits are provided.

Staff's Response:

Staff agrees with the committee's recommendation.

Item 2: Eliminating the nonprofit entity exemption

The ordinance currently exempts public entities, nonprofits, businesses that provide recreational services to the public, handicapped individuals, apprentices, and student interns from application of the ordinance as well as individuals that are defined as executive or professional in the Fair Labor Standards Act.

The City provides funds to non-profits through grants such as community block grants. The Living Wage Advisory Committee recommends eliminating the nonprofit exemption because nonprofit entities are receiving City funding and should be treated the same as businesses providing services to the City.

Staff's Response:

Staff does not support the Committee's recommendation. In reviewing grant awards with Community Development, the majority of the nonprofit entities (grant recipients) pay the highest Living Wage tier since they receive additional grant consideration to do so. Also, the majority of nonprofits that attended the Living Wage Advisory Committee meeting when this topic was on the agenda were not in favor of this recommendation because it is unclear how it would apply to them and their staff. This may discourage some nonprofits from applying for grants. Also, it does not make sense to recommend exempting professional service providers but not nonprofits (see below). The administration, enforcement and monitoring of nonprofit entities for compliance would be complex and difficult because it will be unclear which employees of the nonprofit entities are subject to the Living Wage requirements.

Item 3: Add a waiver process for businesses and nonprofit entities to request exemptions from the Living Wage requirements

The Living Wage Advisory Committee feels that adding a waiver process could help with maintaining the current nonprofit entities to pay a Living Wage while giving the smaller or small dollar grantees a way to receive an exemption without cutting into the services that they offer. Similarly, the Committee recommended the waiver clause, discussed below, be available to all business entities.

The waiver process would be as follows:

Following a review and recommendation by the Living Wage Advisory Committee, the General Services Manager may approve waivers with or without conditions to any of the requirements and regulations set forth in the ordinance, or in any implementing policies, upon one or more the following findings:

- a. The services to be provided are available from a single source and that source has significant barriers to meeting the requirements of the ordinance.
- b. A waiver is necessary to provide emergency services essential to mitigate or prevent possible threats to public safety or public health for a limited period of time.
- c. All bidders for the service to be provided have significant barriers to meeting the requirements of the ordinance.
- d. Any other circumstances that the City Council finds to be in the public interest.
- e. All of the provisions of this chapter, or any part hereof, may be waived by a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.
- f. Report waivers to the Living Wage Advisory Committee at their next scheduled meeting.

Staff's Response:

Staff does not support the committee's recommendation. The waiver process would complicate the contract award process, delay contract award, may encourage businesses to seek waivers and create additional work. It would be difficult to justify exempting one business from the payment of Living Wages without exempting all businesses in the same trade. Furthermore, there is no history of businesses asking for waivers or for the Living Wage requirements being a significant barrier to businesses bidding on work.

Additionally, as the nonprofit sector, the City generally does not contract with nonprofits to provide specific services to the City. The only exception is Work Inc, a sheltered work shop, that provides janitorial services to the Waterfront using disabled individuals. The waiver process would be subjective because it would be difficult to determine if a nonprofit should be exempt based on the above criteria.

If the Ordinance Committee supports this recommendation, the waiver decision should be made by Council; not the General Services Manager.

Item 4: Exempt all contracts that fall under the City of Santa Barbara's definition of Professional Services

Professional Services are defined as "Services that require specialty training, education or experience, including, but not limited to, financial, economic, accounting, engineering, legal or administrative matters."

Due to the extremely low occurrence of professional service contracts not complying with the top tier amount, staff time and resources would be better served focusing on the lower wage maintenance service agreements, as opposed to professional service agreements.

Staff's Response:

Staff supports adding language which exempts professional services from the LWO for the reasons cited above.

BUDGET/FINANCIAL INFORMATION:

While there are no measurable budgetary impacts, there is the potential for savings because the majority of our service providers pay at the highest wage tier and these service contracts are labor intensive. Any cost savings for the new hourly rate may be passed onto the City but this would be difficult to quantify.

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SUBMITTED BY: Robert Samario, Finance Director

APPROVED BY: City Administrator's Office