

REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2671
CityofSacramento.org



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STAFF
February 23, 2010

**Honorable Mayor and
Members of the City Council**

**Title: Ordinance Amendment: Approval of Amendments to Living Wage and
Prevailing Wage**

Location/Council District: Citywide

Recommendation: Adopt an **Ordinance** a) amending City Code section 3.58.030 pertaining to the payment of a living wage and repealing City Code section 3.56.070 pertaining to the payment of prevailing wages, to establish a single authority for regulating the wage rates and optional health benefit standards for employees of contractors performing non-professional services, and b) adding section 3.56.070 to extend the 60 day transition employment period for janitors set forth in Labor Code §1061 to 90 days.

Contact: Reina J. Schwartz, Director of General Services, 808-7195

Presenter: Christopher Stewart, Procurement Services Manager, 808-6202

Department: General Services

Division: Procurement Services

Organization No: 13001061

Description/Analysis

Issue: On July 21, 2009, City Council rejected all bids for a janitorial services contract. In rejecting all bids, the Council expressed concern that the proposed contract language and the City's existing prevailing wage ordinance lacked provisions to ensure access to adequate health care and other employment protections for covered janitorial employees. In reviewing options relative to this issue, staff reviewed existing ordinances that might affect future contracts, wage rates, health benefits and other employment rights that may be extended to contractor employees performing non-professional services for the City of Sacramento.

In order to address Council's concerns, staff considered the primary purpose of the living and prevailing wage provisions, similar wage ordinances of other local agencies, the current economic climate, and other relevant data. After reviewing

the pertinent information, it appears both sections of the code were intended to improve the wage rates and living standard of workers whom traditionally receive benefits and wages below the local standard.

Though the primary purpose of the two provisions is similar, there are two factors that distinguish the two code sections. First, section 3.58.030 (living wage) requires a city contractor to provide health benefits or their equivalent in pay, based on a statutorily established hourly wage rate. In contrast, section 3.56.070 (prevailing wage) regulates wages only; it does not address benefits. Second, section 3.58.030 (living wage) applies to all occupational classifications defined as non-professional services while section 3.56.070 (prevailing wage) regulates only window washers, janitors and laundry service workers. However, these occupational specialties all fall within the definition of non-professional services for purposes of section 3.58.030.

A survey of several local and State jurisdictions with similar living wage ordinances indicates that the City's existing living wage rate with or without the health benefit provision is reasonable in comparison:

Agency	Hourly wage without health benefit	Hourly wage with health benefit	Value of hourly health benefit
City of Berkeley	\$14.12	\$12.11	\$2.01
Port of Oakland	\$12.45	\$10.83	\$1.62
City of Sacramento	\$12.25	\$10.65	\$1.60
Los Angeles County	\$11.84	\$9.64	\$2.20
State of CA (DIR)	\$11.83	\$8.50	\$3.33
City of San Francisco*	\$11.54		\$2.00
City of San Jose	\$10.75	\$9.50	\$1.25

* The health benefit in the City of San Francisco is governed by a healthcare ordinance rather than a living wage ordinance. The health benefit will change to \$2.80 per hour on May 10, 2010.

During the past few years, the City of Sacramento has made wage determinations for both the living wage and prevailing wage regulations. Both wage rates were reasonably close. Currently, with the exception of the \$13.58 per hour rate for window washers, the rates for all other classifications subject to either regulation have a minimum rate of \$12.25 per hour if the employer is not paying for health insurance directly as a benefit. The health care provision of the Living Wage mandates that contractors provide a value equivalent to \$1.60 per hour when health benefits are offered as an option.

Staff also considered the option of increasing the current living wage rate. However, when using the value of \$1 per hour as a basis for comparison and evaluation of current living wage contracts, it is estimated that the City's cost for existing contracts would increase over \$400,000 annually. While this is an option to consider, it is not financially feasible in our current economic environment.

Based on the forgoing, staff recommends that existing City Code section 3.56.070 (Prevailing Wages for Certain Services) be repealed. This would establish a single authority regulating wage rates and requirements for covered employee health benefits, and reduce confusion.

In addition to recommending repeal of the existing prevailing wage requirements for specified services, staff recommends amending section 3.58.030(A)(3) to revise the time period for advising covered contractors of annual living wage rate changes from January to February. This will allow adequate time to receive, calculate and disseminate Consumer Price Index (CPI) data for future rate determinations; and maintain the existing methodology for calculating the living wage rates, and contributions for health benefits until the economic outlook and financial conditions improve.

Finally, staff recommends adding section 3.56.070 to extend the 60 day transition employment period for janitors set forth in section 1061 of the Labor Code, to a period of 90 days. In general, section 1061 provides for the retention of janitorial employees of a terminated contractor by a successor contractor for a period of 60 days. Adding section 3.56.070 to extend the transition employment period to 90 days would provide increased protection to displaced janitors.

Policy Considerations: The intent of Chapter 3.58 (Living Wage Ordinance) is to improve the circumstances of low wage workers performing non-professional contractual services under city contract. The CPI for All Urban Consumers, San Francisco/Oakland/San Jose area is used to adjust the minimum living wage rate annually. Health benefits are included in this rate. The wage provisions and requirements contained in Section 3.56.070 will be incorporated in Chapter 3.58 and include health benefits.

Repealing City Code section 3.56.070, Prevailing Wages for certain services, eliminates provisions identified as remedies available to the City when contractors are deficient in performing their contractual duties. Though eliminated from this repealed section, the City has more than adequate coverage to challenge the unsatisfactory performance of any contractor through existing City Code and contract provisions. Specifically, there are existing contractual provisions that are currently utilized for living wage contracts that will address concerns relative to contractor termination for not paying the appropriate living wage, and debarment from future contracts for substandard performance.

This recommendation to amend the City Code will not affect the general intent of the current policy contained in Chapter sections 3.56 or 3.58.

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities that will not have a significant effect on the environment, and does not constitute a "project" as defined by the CEQA Sections 15061(b)(3), and 15378(b)(2).

Sustainability Considerations: None

Committee/Commission Action: This item was heard by the Law and Legislation Committee on February 2, 2010 and is now being forwarded to City Council for approval.

Rationale for Recommendation: The proposed amendment of City Code Section 3.58.030 (living wages) and repeal of Section 3.56.070 (prevailing wages) address the City Council's desire to ensure that all covered employees performing contractual services classified as non-professional under city contracts, receive adequate wages relative to occupational classification, regional wages, and health benefits. These recommendations will also diminish the confusion between what is regulated under the living wage and prevailing wage provisions, and minimize staff time required to administer two distinct programs for similar occupational classifications.

If approved, existing contracts will continue to be governed by existing living wage and prevailing wage requirements until such contracts expire or are terminated. Contracts entered into subsequent to the effective date of these revisions will be regulated by the new requirements existing at the time of contract execution. This recommendation is consistent with the intent of the existing Living Wage Ordinance.

The proposed addition of section 3.56.070 to extend the 60 day transition employment period for janitors set forth in Labor Code §1061 to 90 days addresses City Council's recommendation that 60 days is not adequate.

Financial Considerations: There is no change to the existing living wage minimum hourly compensation of \$12.25 per hour as a result of this report. Based on this analysis, it would be reasonable to presume that the cost of existing contracts governed under the proposed recommendation would remain unchanged and the merging of two similar regulations will conceivably reduce overall staff time required to monitor non-professional contracts resulting in an indirect cost savings to the City.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this report.

Approved by: 
Reina J. Schwartz
Director, Department of General Services

Recommendation Approved:

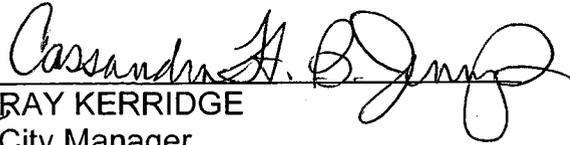

for RAY KERRIDGE
City Manager

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Attachment 1

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 3.58.030 OF THE SACRAMENTO CITY CODE RELATING TO THE PAYMENT OF A LIVING WAGE; REPEALING SECTION 3.56.070 OF THE SACRAMENTO CITY CODE RELATING TO THE PAYMENT OF PREVAILING WAGES AND ADDING SECTION 3.56.070 TO THE SACRAMENTO CITY CODE RELATING TO THE EMPLOYMENT TRANSITION PERIOD FOR DISPLACED JANITORS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 3.58.030 of the Sacramento City Code is amended to read as follows:

3.58.030 Living wage and health benefits.

A. Except as provided in subsection B of this section, a covered employer must pay its covered employees no less than the following rates for all hours worked for the city or while performing under a city contract:

1. If health benefits are provided to covered employees and the covered employer's contribution for the benefits is at least one dollar and fifty cents for each hour the covered employee is entitled by this chapter to a living wage, then the rates are as follows:

a. During 2007, the greater of ten dollars (\$10.00) an hour or nine dollars adjusted by the increase in the Consumer Price Index for all Urban Consumers, San Francisco/Oakland/San Jose area (1982—1984=100) from January 1, 2004, through December 31, 2006.

b. For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for all Urban Consumers, San Francisco/Oakland/San Jose area (1982—1984=100) from January 1st through December 31st of the immediately preceding year.

2. If health benefits are not provided to covered employees or if health benefits are provided but the covered employer's contribution for the benefits is less than one dollar and fifty cents for each hour a covered employee is entitled by this chapter to a living wage, then the rates are as follows:

a. During 2007, the greater of eleven dollars and fifty cents (\$11.50) an hour or ten dollars and fifty cents (\$10.50) adjusted by the increase in the Consumer Price Index for all Urban Consumers, San Francisco/Oakland/ San Jose area (1982—1984=100) from January 1, 2004, through December 31, 2006.

b. For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for all Urban Consumers, San Francisco/Oakland/San Jose area (1982—1984=100) from January 1st through December 31st of the immediately preceding year.

3. In January February of each year, the city manager shall determine the appropriate rate as practicable. Each city department that has city contracts shall give written notice of the rate so determined to the covered employers.

B. Notwithstanding subsection A of this section, the city council may waive, modify or alter the requirements of this chapter when amending a contract that has a remaining term of ten (10) years or more. (Ord. 2007-087 § 1: Ord. 2003-082 (part))

SECTION 2.

Section 3.56.070 of the Sacramento City Code is repealed.

3.56.070 Prevailing wages for certain services .

~~A. Every contract for laundry service, janitorial service, or window washing service to be performed at the expense of the city, whether such work be done directly under contract award, or by or under subcontract, or by any other arrangement whatsoever, must provide in addition to other provisions required by law, that any person performing labor in the state in the execution of such contract, subcontract, or any other arrangement shall be paid not less than the general prevailing rate of wages in private employment for similar work in the county.~~

~~B. The general prevailing rate of wages, required in contracts hereunder shall be as established by the city manager upon a reasonable survey of business establishments performing laundry service, janitorial service or window washing services of the type used by the city not less than one hundred twenty (120) days in advance of the award of any contract for such services. Such prevailing wage rates shall be included in the specification setting forth the terms of performance of any such contract.~~

~~C. The specifications for any such contract and the contract itself shall contain a clause which provides that such contract may be terminated where any contractor or subcontractor has paid any laborer or workman on such contract less than the prevailing rate of wages. The contract further shall contain a liquidated damages clause whereby any contractor or subcontractor who pays any laborer or workman on such contract at less than the prevailing rate of wages shall become jointly and~~

~~severally liable to the city in the amount of ten dollars (\$10.00) per day for each laborer or workman so paid.~~

~~_____ D. _____ Any contractor or subcontractor willfully violating the terms or provisions of any contract or subcontract relating to the payment of prevailing wages shall be deemed not to be a responsible bidder upon all future contracts for laundry service, janitorial service or window washing service.~~

~~_____ E. _____ As used herein, laundry service means the continuous provision of laundered work uniforms for various city employees under contract awarded pursuant to this chapter. (Prior code § 57.01.107)~~

SECTION 3

Section 3.56.070 is added to read as follows:

3.56.070 Transition employment period for displaced janitors

The 60 day transition employment period set forth in section Labor Code section 1061 is extended to 90 days.

Adopted by the City of Sacramento City Council on _____ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

MAYOR

Attest:

City Clerk

Passed for Publication:

Published:

Effective:

Attachment 2

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 3.58.030 OF THE SACRAMENTO CITY CODE RELATING TO THE PAYMENT OF A LIVING WAGE; REPEALING SECTION 3.56.070 OF THE SACRAMENTO CITY CODE RELATING TO THE PAYMENT OF PREVAILING WAGES AND ADDING SECTION 3.56.070 TO THE SACRAMENTO CITY CODE RELATING TO THE EMPLOYMENT TRANSITION PERIOD FOR DISPLACED JANITORS

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1. If health benefits are provided to covered employees and the covered employer's contribution for the benefits is at least one dollar and fifty cents for each hour the covered employee is entitled by this chapter to a living wage, then the rates are as follows:

a. During 2007, the greater of ten dollars (\$10.00) an hour or nine dollars adjusted by the increase in the Consumer Price Index for all Urban Consumers, San Francisco/Oakland/San Jose area (1982—1984=100) from January 1, 2004, through December 31, 2006.

b. For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for all Urban Consumers, San Francisco/Oakland/San Jose area (1982—1984=100) from January 1st through December 31st of the immediately preceding year.

2. If health benefits are not provided to covered employees or if health benefits are provided but the covered employer's contribution for the benefits is less than one dollar and fifty cents for each hour a covered employee is entitled by this chapter to a living wage, then the rates are as follows:

a. During 2007, the greater of eleven dollars and fifty cents (\$11.50) an hour or ten dollars and fifty cents (\$10.50) adjusted by the increase in the Consumer Price Index for all Urban Consumers, San Francisco/Oakland/ San Jose area (1982—1984=100) from January 1, 2004, through December 31, 2006.

b. For each year after 2007, the rate shall be based on the rate from the immediately preceding year adjusted by the increase in the Consumer Price Index for all Urban Consumers, San Francisco/Oakland/San Jose area (1982—1984=100) from January 1st through December 31st of the immediately preceding year.

3. In February of each year, the city manager shall determine the appropriate rate as practicable. Each city department that has city contracts shall give written notice of the rate so determined to the covered employers.

B. Notwithstanding subsection A of this section, the city council may waive, modify or alter the requirements of this chapter when amending a contract that has a remaining term of ten (10) years or more. (Ord. 2007-087 § 1: Ord. 2003-082 (part))

SECTION 2

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SECTION 3

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3.56.070 Transition Employment Period for Displaced Janitors

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Absent:

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