



City of Sacramento City Council

4

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 10/4/2011

Report Type: Consent

Title: Reestablishment of Exemption from Prevailing Wage Requirement for Public Projects Performed by Volunteers (Passed for Publication on 9-27-11, Published on 9-30-11)

Report ID: 2011-00792

Location: Citywide

Recommendation: Adopt an Ordinance amending Sacramento City Code Chapter 3.60 to add Section 3.60.195 to reestablish the exemption from the City's prevailing wage requirement for volunteers who work on City public projects.

Contact: J.P. Tindell, Park Planning & Development Manager, (916) 808-1955, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: Park Development Services

Dept ID: 19001121

Attachments:

- 1-Description/Analysis
- 2-Issues, Questions and Responses
- 3-Ordinance

City Attorney Review

Approved as to Form
Sheryl N. Patterson
9/19/2011 3:35:50 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
9/16/2011 4:15:26 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 9/19/2011 1:13:50 PM



Description/Analysis

Issue: In 2008, the City Council added Section 3.60.195 to the City Code to clarify the exemption of volunteers from the requirement for payment of prevailing wages for City projects which exceed \$25,000. This section was adopted to facilitate projects such as the Matt Cain Junior Giants Field, which work was donated by the Good Tiding Foundation. As a charter city, the City adopts its own prevailing wage requirements and cannot rely on Labor Code Section 1720.4, which is the state law that exempts volunteers from the state's prevailing wage requirement. The City Code exemption uses the same provisions found in Labor Code Section 1720.4, including a sunset date. Unfortunately, the exemption under the City Code expired on January 1, 2011. Under AB 587, the state law exemption is extended to January 1, 2017. The proposed City Code section includes this same sunset date.

Policy Considerations: The Sacramento City Code currently requires prevailing wages to be paid to all laborers on City public projects which exceed \$25,000. Without an exemption to this requirement for volunteers, many projects could not be completed due to lack of funds. Requiring that volunteers be paid contradicts the spirit and intent of volunteer service and goes contrary to the City's goal to encourage civic engagement in our community.

Environmental Considerations: 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 California Environmental Quality Act (CEQA) [CEQA Guidelines Sections 15061(b)(3); 15378(b)(2)].

Sustainability: Not applicable.

Committee/Commission Action: Not applicable.

Rationale for Recommendation: By utilizing volunteers, the City gains the advantages of a broad source of expertise, talent, and work contributed to City projects, and provides an avenue for the building of better communities. Modifying Chapter 3.60 of the Sacramento City Code to reestablish the exemption for volunteers enables community assistance in appropriate roles on public projects without the expectation of payment.

AB 587 extends the state's prevailing wage law exemption for volunteers by five years, to January 1, 2017. This bill passed the Legislature without any opposition and has been signed by the Governor. The City Code exemption provisions are exactly the same as this state law, but with the addition that the volunteers' work be performed under the oversight of licensed professionals.

Staff has notified representatives of the Sacramento-Sierra's Building and Construction Trades Council, the International Union of Operating Engineers – Northern Nevada/Northern California (Stationary Local No. 39), the Sacramento Central Labor Council and the Plumbing and Pipe Fitting Union regarding the proposed City Code amendment to reestablish the volunteer prevailing wage exemption. When this City Code exemption was first enacted in 2008, questions were raised regarding its scope and effect. Those same questions and answers are provided as an attachment for your reference.

It is recommended that the City Code be amended to allow continued use of unpaid volunteers on City projects. To do so, Section 3.60.195 would be added back into the City Code to provide that Section 3.60.180, which requires payment of prevailing wages on City public projects over \$25,000, shall not apply to work performed by volunteers and volunteer coordinators. Section 3.60.195 includes a new sunset date of January 1, 2017 to correlate with the State Labor Code sunset date under AB 587. The ordinance, once adopted by the City Council, will take effect within 30 days.

Financial Considerations: Not applicable.

Emerging Small Business Development (ESBD): There are no ESBD considerations with this report.

Issues/Questions Raised and Staff Responses

1. Do these changes constitute a change in the City's current requirements to pay prevailing wage for labor when the City contributes funds to a project?

Response: No. The City still must pay prevailing wages as required by Section 3.60.180 to anyone except a volunteer.

2. Do these changes allow use of volunteers to do work normally done by paid City staff, such as facility maintenance?

Response: No. The projects to which these City Code sections apply do not govern the functions of ongoing maintenance or operations of any City facility.

3. Do these changes give the City the ability to require the use of volunteers on the part of contractors that have been awarded City contracts?

Response: No. The use of volunteers remains voluntary, and is driven by community groups or other non-profit organizations offering their contributions to their community.

4. How does the City ensure that volunteers work in roles appropriate to their skill levels?

Response: The design and construction of improvements on City properties are all subject to final approval and acceptance by the City and must comply with all applicable codes and regulations, which also applies to entities to which the City leases property. Additionally, it is incumbent on any outside organizations or groups wishing to contribute volunteer services to a City project to work closely with City staff in its execution. Also, City Code section 3.60.195 includes a provision that volunteers' work be under the oversight of licensed professionals.

5. What examples are there of community volunteers working on City projects, and the types of tasks they perform?

Response: Some more recent examples at City parks include:

- a) Rebuilding Fort Natomas Playground, Jefferson Park: Cutting and securing "wood" beams, transporting soil, adding artwork to concrete wall surface
- b) Softball Fields Installation, Manuel Silva Park: Repainting and repair of bleachers

- c) Park Tree Planting (usually in partnership with the Sacramento Tree Foundation):
Numerous City park sites



ORDINANCE NO. 2011 - ____

Adopted by the Sacramento City Council

October 4, 2011

**AN ORDINANCE ADDING SECTION 3.60.195 TO THE SACRAMENTO CITY CODE
RELATING TO EXEMPTION FROM PREVAILING WAGE REQUIREMENT FOR
WORK PERFORMED BY VOLUNTEERS**

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

SECTION 1. The City Council finds and determines that:

- A. The City of Sacramento encourages the people of Sacramento to volunteer their time, expertise, and talents to the City in various ways including providing assistance with animal care, gardening, tours, arts and crafts, child development, special events, and park projects.
- B. By utilizing volunteers, the City also provides an avenue for people to participate in building better communities.
- C. In some instances, volunteers cannot donate their services because a provision of the City Code requires volunteers to be paid prevailing wages on certain public projects.
- D. Volunteers do not expect payment for their donated contribution of labor. Requiring volunteers to be paid prevailing wages contradicts the spirit and intent of volunteer service and inhibits the City's goal of encouraging civic engagement.
- E. The City Code should be amended to remove impediments to volunteerism.

SECTION 2. Section 3.60.195 shall be added to the City Code to read as follows:

3.60.195 Volunteers.

A. Section 3.60.180 shall not apply to any of the following work:

- 1. Any Work Performed by a Volunteer. For purposes of this section, "volunteer" means an individual who performs work for civic, charitable, or humanitarian

reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

a. An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

b. An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

c. An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that receives payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

2. Any Work Performed by a Volunteer Coordinator. For purposes of this section, "volunteer coordinator" means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

3. Any work performed by members of the California Conservation Corps or the Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

B. All work performed pursuant to this section for which a contractor's license is required shall be performed under the supervision of a licensed contractor classified and qualified to engage in the type of work performed and who is present at the location of the project for which the work is performed.

C. This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted ordinance, which is enacted and effective before January 1, 2017, deletes or extends that date.

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: