REPORT TO LAW & LEGISLATION COMMITTEE
City of Sacramento

915 I Street, Sacramento, CA 95814-2671

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STAFF REPORT
April 1, 2008

Honorable Members of the
Law and Legislation Committee

Title: Amending City Code Chapter 3.60 for Clarification on Volunteers on Public Projects

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee approve and forward to the full City Council an ordinance amending Sacramento City Code Chapter 3.60 to clarify the involvement of volunteers in City public projects.

Contact: J.P. Tindell, Park Planning and Development Manager, 808-1955

Presenters: J.P. Tindell, Park Planning and Development Manager, 808-1955

Department: Parks and Recreation

Division: Park Planning and Development Services

Organization No: 4727

Description/Analysis

Issue: Staff has identified the need to amend City Code to clarify the circumstances under which the people of Sacramento can volunteer their time, expertise, and talents on City public projects.

Currently there are instances in which volunteers cannot contribute their services because City Code requires payment of prevailing wages on certain public projects. 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 Sacramento. The State of California made the same change to the Labor Code (Section 1720.4) in 2004 (applying retroactively to work concluded on or after January 1, 2002, and then sunset on January 1, 2009).

Policy Considerations: The Sacramento City Code currently requires volunteers be paid prevailing wages on certain public projects, which is contradictory 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)].

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 enables volunteer assistance in appropriate roles on public projects without the expectation of payment.

These proposed Ordinance amendments were first presented to the Law and Legislation Committee on September 4, 2007; no action was taken at that time. Rather, it was requested that additional time be taken to respond to issues raised by labor representation, and to complete additional outreach to these key stakeholders. Since the Committee meeting on September 4, 2007, staff has met with and responded to questions and issues raised by representatives of the Sacramento-Sierra's Building and Construction Trades Council, the International Union of Operating Engineers – Northern Nevada/Northern California (Local 39), and the Sacramento Central Labor Council regarding the proposed City Code modifications. The Plumbing and Pipe Fitting Union representative was also contacted, but did not schedule a meeting with staff. Staff responses to the principal questions and issues raised by these representatives are provided in Attachment 1.

It is recommended that the City Code be amended to remove requirements contradictory to the use of volunteers on City projects. To do so, Sacramento City Code section 3.60.010 (providing Definitions for this Code Chapter on "Contracts for Public Projects") is proposed to be modified by deleting a definition of what is not a "Public Project," and by adding Section 3.60.195 to "Article V: Wages Paid Under Contract with City." This new section states that this entire City Code Chapter ("Contracts for Public Projects") shall not apply to any work performed by a volunteer, clarifies compensation, clarifies who are volunteers and/or volunteer coordinators, and provides a sunset date (January 1, 2011) correlating to similar provisions in the State Labor Code. The ordinance amendments, when adopted by City Council, will take effect within 30 days but will be retroactive to January 1, 2008.

Financial Considerations: Not applicable.

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

Respectfully submitted by: _____
J.P. TINDELL
Park Planning and Development Manager

Approved by: _____
JAMES L. COMBS
Director, Parks and Recreation

Recommendation Approved:

_____
GUSTAVO F. VIÑA
Assistant City Manager

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Attachment 1

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 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.

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 - Redline

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 3.60.010 AND ADDING SECTION 3.60.195 TO CHAPTER 3.60 OF THE SACRAMENTO CITY CODE RELATING TO WAGES PAID UNDER CONTRACTS FOR PUBLIC PROJECTS

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 not only gains the advantage of a broad source of expertise, talent, and work for City programs and projects, but it 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 the utilization of volunteers in public projects and programs.
E. The City Code should be amended to remove impediments to volunteerism in appropriate roles.

SECTION 2.

Section 3.60.010 of Title 3 of the Sacramento City Code is amended to read as follows:

3.60.010 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

"City manager" means the city manager of the city of Sacramento or an official specifically designated to act for the city manager. Authorization not specified in this chapter shall be made in writing by the city manager and filed with the city clerk.

"Maintenance" means recurrent, periodical, or scheduled work required to preserve a facility. It includes:

1. Work required to restore components which have deteriorated from wear and tear; and

2. Other work on a facility to prevent damage or deterioration to that facility which otherwise would be more costly to restore.

"Public project" means and includes the following:

1. A project for the erection, improvement, and remodeling of public buildings and works;

2. Work in or about streams, bays, waterfronts, embankments or other work for protection against overflow;

3. Street, sewer or water work except maintenance or repair;

4. Furnishing supplies or materials for any such projects.

~~"Public project" shall not include any work which meets all of the following conditions:~~

~~1. The work is performed entirely by volunteer labor.~~

~~2. The work involves facilities or structures which are, or will be, used exclusively by, or primarily for or on behalf of, private nonprofit community organizations including, but not limited to, charitable, youth, service, veterans, and sport groups or associations.~~

~~3. The work will not have an adverse impact on city wide employment. The city manager or designated representative, shall determine whether or not the work will have an adverse impact on employment within the city, through a survey of business establishments performing work of the type proposed. This survey shall be performed not more than ninety (90) days before the start of the project.~~

~~4. The work is approved by the city manager as meeting the requirements of this section.~~

"Remodel" means alteration or conversion work on an existing facility to change its use, function, or layout.

"Repair" means restoration of a facility or components to such condition that it may be used effectively for its designated purpose, by overhaul, or replacement of constituent parts or materials that have deteriorated by action of the elements, vandalism, wear and tear which cannot be corrected through maintenance. Repair includes restoring or replacing components of facilities damaged by fire, storm, explosions, the elements, and other such disasters.

SECTION 3.

Section 3.60.195 is added to Title 3 of the Sacramento City Code to read as follows:

3.60.195 Volunteers.

This chapter shall not apply to any of the following work:

A. 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 1 as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

1. 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.

2. 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.

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

B. 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.

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

D. This section shall apply retroactively to otherwise covered work concluded on or after January 1, 2008.

E. This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted ordinance, which is enacted before January 1, 2011, 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:

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Noes:

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Absent:

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MAYOR

Attest:

_____
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