

Ordinance Fact Sheet

TO: CITY COUNCIL

DATE: June 29, 1998

FROM: ACTING CITY MANAGER

SUBJECT: AN ORDINANCE OF THE CITY OF PASADENA AMENDING SECTION 4.08.130 OF THE PASADENA MUNICIPAL CODE, AND ADDING A NEW CHAPTER 4.11 TO SAID CODE, ADOPTING THE PASADENA LIVING WAGE ORDINANCE.

TITLE OF PROPOSED ORDINANCE:

AN ORDINANCE OF THE CITY OF PASADENA AMENDING SECTION 4.08.130 OF THE PASADENA MUNICIPAL CODE, AND ADDING A NEW CHAPTER 4.11 TO SAID CODE, ADOPTING THE PASADENA LIVING WAGE ORDINANCE.

BACKGROUND:

At its meeting of June 8, 1998, the City Council directed preparation of a Living Wage Ordinance which would require that persons receiving City labor or service contracts in excess of \$25,000 pay their employees not less than \$7.25 per hour with employer paid medical benefits or \$8.50 per hour if no medical benefits are provided.

LEGAL CONSIDERATIONS:

There is no California legal authority that explicitly sanctions or, conversely, that explicitly prohibits an ordinance establishing a superminimum wage for City contractors. The legal authority from other jurisdiction is conflicting. As with any new legislative territory affecting

the interests of third parties, there is some risk of litigation. Although the probability of success of a legal attack on the Living Wage Ordinance in the specific configuration adopted by the City Council at its meeting of June 8, 1998 is not high, the possibility of a challenge cannot be entirely dismissed. The features of other Living Wage proposals not adopted by City Council would create additional legal complexities for which, again, there is no California authority directly on point, one way or the other.

It should be noted that the City of Pasadena was not challenged in a prior application of a requirement which affected the economics of bidding. Specifically, a number of years ago, the City Council adopted the South Africa Purchasing Policy Ordinance, as a policy decision, to take a litigation risk because of the identified importance of the human rights issues involved. Similarly, whether or not to adopt a Living Wage Ordinance in the configuration proposed by the City Council at its June 8, 1998 meeting is, ultimately, a policy decision for the City Council of whether the benefits of such an Ordinance outweigh all potential burdens, including any litigation risks.

PROGRAMS, DEPARTMENTS OR GROUPS AFFECTED:

The Purchasing Division will administer this Ordinance, and, therefore, will be primarily affected by this proposed Ordinance. All contractors who deliver labor or services to the City above the amounts stated on the ordinance shall also be affected. However, all departments within the City which procure labor and services will be potentially affected by this proposed Ordinance.

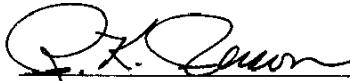
ENVIRONMENTAL IMPACT:

The Environmental Administrator has determined that the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) under the General Rule that CEQA applies only to activities which may have a significant effect on the environment (section 15061(b)(3)). The proposed ordinance would establish a superminimum wage for City contractors; it can have no direct physical impact on the environment.


FISCAL AND SERVICE IMPLICATIONS:

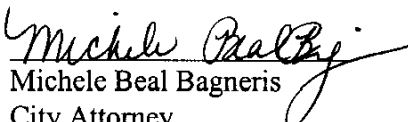
The fiscal and service implications are discussed in separate staff reports.


Respectfully submitted,

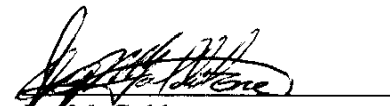

for Cynthia J. Kurtz
Acting City Manager

Concurrence:



Steve Mermell
Purchasing Administrator


Michele Beal Bagneris
City Attorney


Robert Person
Assistant to the City Manager


Jay M. Goldstone
Director of Finance

Prepared by:


Nicholas George Rodriguez
Assistant City Attorney

Introduced by Councilmember

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING SECTION 4.08.130 OF THE PASADENA MUNICIPAL CODE, AND ADDING A NEW CHAPTER 4.11 TO SAID CODE, ADOPTING THE PASADENA LIVING WAGE ORDINANCE.

WHEREAS, the City awards many contracts to private firms to provide services to the public and to City government; and

WHEREAS, experience indicates that procurement by contract of services can result in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws; and

WHEREAS, such minimal compensation tends to inhibit the quantity and quality of services rendered by such employees, to the city and to the public, and can foster high turnover and absenteeism; and

WHEREAS, the city intends to require service contractors to provide a minimum level of compensation that will improve the level of services rendered to and for the city; and

WHEREAS, inadequate compensation fails to provide service employees with resources sufficient to afford to live in Pasadena; and

WHEREAS, it is unacceptable that contracting decisions involving the expenditure of city funds should foster conditions placing a burden on limited social services. The city, as a principal provider of social support services, has an interest in promoting an employment environment that protects such limited resources. In requiring the payment of a higher minimum level of compensation, this chapter benefits that interest; and

WHEREAS, based upon testimony and studies provided, the City Council finds that the wage levels set by this ordinance are minimum compensation levels required to afford a decent standard of living in Pasadena.

THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance reads as follows:

“SUMMARY

The purpose of this chapter, the Pasadena Living Wage Ordinance, is to establish a minimum compensation rate of \$7.25 per hour with medical benefits, or \$8.50 per hour without medical benefits, for employees of City contractors who provide services with a value of greater than \$25,000.00 in any fiscal year. The ordinance establishes review, evaluation and enforcement mechanisms and creates

a private right of action for employees aggrieved under the ordinance.

Ordinance No. _____ shall take effect upon its publication by title and summary."

SECTION 2. Section 4.08.130 of the Pasadena Municipal Code is amended by adding section "J" to read as follows:

"J. Certification by bidder of compliance with the Pasadena Living Wage Ordinance, where applicable."

SECTION 3. The Pasadena Municipal Code is amended by adding a new chapter 4.11 entitled "Pasadena Living Wage Ordinance" to read as follows:

"Chapter 4.11

Pasadena Living Wage Ordinance.

Sections.

- Section 4.11.010 Definitions.**
- Section 4.11.020 Payment of minimum compensation to employees.**
- Section 4.11.040 Notifying employees of their potential right to the federal Earned Income Credit.**
- Section 4.11.050 Enforcement.**
- Section 4.11.060 Administration.**
- Section 4.11.080 Coexistence with other available relief for specific deprivations of protected rights.**
- Section 4.11.090 Expenditures covered by this chapter.**
- Section 4.11.100 Chapter applicable to new contracts.**
- Section 4.11.110 Supersession by collective bargaining agreement**
- Section 4.11.120 Severability.**

Section 4.11.010 Definitions.

The following definitions shall apply throughout this chapter:

(A) 'City' means the city of Pasadena and all employees authorized to award a contract on behalf of the city, including those city departments which exercise independent control over their expenditure of funds, but excludes the Rose Bowl Operating Company ('RBOC') and the Pasadena Center Operating Company ('PCOC'). The RBOC and PCOC are urged, however, to adopt a policy similar to that set forth in this chapter.

(B) 'Contractor' means any person that enters into a service contract with the city.

(C) 'Employee' means any individual employed by a contractor or subcontractor on or under the authority of one or more service contracts and who expends any of his or her time providing labor or delivering services to the city of Pasadena, including but not limited to: restaurant, food service or banquet employees, janitorial employees, security guards, parking attendants, health care employees, gardeners, waste management employees, and clerical employees; except that 'employee' shall not include part time, seasonal or trainee workers as defined by regulations issued pursuant to section 4.11.060 of this chapter.

(D) 'Health benefits' means the payment of no less than one dollar and

twenty-five cents (\$1.25) per hour toward the cost of health and medical care insurance for employees and their dependents.

(E) 'Person' means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(F) 'Service contract' means a contract let to a contractor by the city primarily for the furnishing of services to or for the city (as opposed to the purchase of goods, material or other property or the leasing of property) and that involves an expenditure in excess of twenty-five thousand dollars (\$25,000).

(G) 'Subcontractor' means any person, other than an employee, that enters into a contract with a contractor to assist in performing a service contract.

Section 4.11.020 Payment of Minimum Compensation to Employees.

(A) Wages. Contractors with a service contract with the city shall pay their employees a wage of no less than seven dollars and twenty-five cents (\$7.25) per hour if health benefits, as defined in this chapter, are paid to the employees or eight dollars and fifty cents (\$8.50) per hour if no such health benefits are paid.

(B) Compensated days off. Contractors with a service contract with the city shall provide at least twelve compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and shall also permit

employees to take, at least, an additional ten days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year.

Sec. 4.11.040 Notifying employees of their potential right to the federal earned income credit.

Contractors of the city shall inform employees making less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Credit ('EIC') under § 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments.

Section 4.11.050 Enforcement.

(A) An employee claiming violation of this chapter may bring an action in the Municipal Court or the Superior Court of the State of California, as appropriate, against an employer and may be awarded:

(1) For failure to pay minimum wages, back pay for each day during which the violation continued.

(2) For failure to pay medical benefits, the difference during the involved period between the minimum wage required herein without benefits and such

minimum wage with benefits.

(B) The court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action.

(C) Compliance with this chapter shall be required in all city contracts to which it applies, and such contracts shall provide that violation of this chapter shall entitle the city to terminate the contract and otherwise pursue legal remedies that may be available.

(D) An employee claiming retaliation for alleging non-compliance with this chapter may report such claimed retaliation to the purchasing administrator of the department of finance, who shall investigate such claim and report the results to the city. Service contracts shall expressly prohibit such retaliation.

(E) Notwithstanding any provision of this code or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this chapter.

Section 4.11.060 Administration.

The purchasing administrator of the department of finance shall monitor compliance, including the investigation of claimed violations, and shall promulgate implementing regulations consistent with this chapter. Such regulations shall include, but not be limited to, determination whether particular contracts, leases, or licenses shall be regarded as 'service contracts,' the

establishment of employer reporting requirements on employee compensation and on notification about and usage of the federal Earned Income Credit and establishing and applying definitions, consistent with this chapter, for 'part time,' 'seasonal' and 'trainee workers' and any other terms under this chapter. The purchasing administrator shall report on compliance to the city council no less frequently than annually.

During the first, third, and seventh years of this chapter's operation, and every third year thereafter, the purchasing administrator shall conduct or commission an evaluation of this chapter's operation and effects. The evaluation shall specifically address, at least, the following matters: (a) the extent to which the benefits of this chapter are accruing to Pasadena residents; (b) the extent to which contractors are complying with this chapter; (c) the manner in which this chapter is affecting the workforce composition of contractors; (d) the manner in which this chapter is affecting productivity and service quality of contractors; (e) the manner in which the additional labor costs required by this chapter have been distributed among employers, employees and the city. Within one hundred and twenty days of the adoption of this chapter, the purchasing administrator shall develop detailed plans for evaluation, including a determination of what current and future data will be needed for effective evaluation.

Section 4.11.080 Coexistence with other available relief for specific deprivations of protected rights.

This chapter shall not be construed to limit an employee's right to bring legal action for violation of other minimum compensation laws.

Section 4.11.090 Expenditures covered by this chapter.

To the maximum extent permitted by law, this chapter shall apply to the expenditure of funds entirely within the city's control and to other funds, such as federal or state grant funds, where the application of this chapter is consonant with the laws authorizing the city to expend such other funds; except that this chapter shall not apply to service contracts with other governmental entities. As to any grant or similar program, this chapter shall become applicable to the funds authorized by such program if and only if city purchasing administrator has obtained from the funding source either an opinion or other determination indicating such consonance or a judgment of compliance from a court of law or other tribunal, which procurement has been reported by memorandum to the city clerk.

Section 4.11.100 Chapter applicable to new contracts.

The provisions of this chapter shall apply to, (a) contracts for which the specifications are issued after the effective date of this chapter or, if no

specifications are required, contracts awarded after the effective date of this chapter, and (b) to the maximum extent permitted by law, contract amendments awarded after the effective date of this chapter.

Section 4.11.110. Supersession by collective bargaining agreement.

Parties subject to this chapter may by collective bargaining agreement provide that such agreement shall supersede the requirements of this chapter.

Section 4.11.120 Severability.

If any provision of this chapter is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.”

SECTION 4. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 5. This ordinance shall take effect upon its publication.

Signed and approved this ____ day of _____, 1998.

Chris Holden
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by
the City Council of the City of Pasadena at its meeting held the ____ day of
_____, 1998, by the following vote:

Ayes:

Noes:

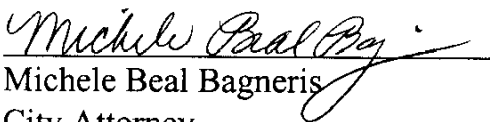
Absent:

Abstain:

Published:

Jane L. Rodriguez
City Clerk

APPROVED AS TO FORM:


Michele Beal Bagneris
City Attorney