



City of Sunnyvale

Agenda Item

17-0100
Agenda Date: 2/17/2017

2017 COUNCIL STUDY ISSUE

NUMBER

OCM 16-02

TITLE Consider Adoption of a Wage Theft Ordinance

BACKGROUND

Lead Department : Office of the City Manager

Support Department(s): Office of the City Attorney

Sponsor(s) :

Councilmembers: Klein, Smith, Melton, Goldman

History :

1 year ago: Dropped

2 years ago: N/A

SCOPE OF THE STUDY

What are the key elements of the study?

The California Labor Commissioner, also known as the Division of Labor Standards Enforcement (DLSE), and a division of the State of California Department of Industrial Relations (DIR) enforces laws against wage theft violators; but, under State law, local jurisdictions can establish their own standards and enforcement procedures in addition to what the State provides. Workers can file individual claims on their own behalf for nonpayment of wages or benefits with the DLSE. The DLSE does not enforce local city or county laws regarding wage theft claims.

This study would examine existing wage theft laws, ordinances and policies at the State level as well as in other local jurisdictions. This study would also review and examine existing methods for employees to recover unpaid wages. The study would ascertain what monitoring and enforcement efforts have been implemented by other jurisdictions, including the required resources to sustain such a program, and the outcome of SB 588 at the State level. The study would consider whether additional local remedies to this statewide issue would be viable and/or effective.

The City of Sunnyvale has a municipal code provision (Section 2.09.220) specifically designed to protect employees from wage theft by requiring City contractors to pay the prevailing wages. These wage requirements are contained in the City's construction contracts, and staff monitors the certified payrolls of construction contractors to help ensure that prevailing wages are being paid. Additionally, Council Policy 5.1.5, Utilization of Local Workforce in Construction Projects, encourages developers and contractors to pay workers a fair wage consistent with the prevailing wages set forth by DIR.

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Specifically, the City would review the City of San Jose's "Wage Theft Prevention Policy", the City and County of San Francisco's wage theft program and enforcement, and the Santa Clara County's contracting policy regarding wage theft as models. The focus of the study will be on the actions that are under the City's control such as the City's contract award and competitive bidding policies to protect the City from contracting for services from businesses that have unpaid wage theft judgments that have not been satisfied. The study will also review all City policies to determine if the City has the authority to suspend or revoke permits for businesses that have unpaid wage theft judgments.

What precipitated this study?

During the Public Comments section of the January 10, 2017 Council meeting, a member of the public spoke in support of the City adopting a wage theft ordinance in Sunnyvale. The speaker stated that employees are being deprived of earned wages and that the City needs to adopt an ordinance to ensure these employees are properly compensated for wages earned. Previously, in 2016, the Council had dropped this proposed study issue. In order to revive it for consideration in 2017, the study required at least four sponsors; Councilmembers Klein, Smith, Melton, and Goldman sponsored the issue to be presented at the February 17, 2017 Study/Budget Issues workshop.

Planned Completion Year: 2017**FISCAL IMPACT****Cost to Conduct Study**

Level of staff effort required (opportunity cost): Moderate

Amount of funding above current budget required: \$20,000

Funding Source: N/A

Explanation of Cost: The study would require a minimum 120 hours of staff time from the Offices of the City Manager, City Attorney and Departments of Finance and Public Works. Staff assigned to work on this study may not be able to accomplish other tasks and the requested funds are for consultant and/or legal services that may be needed to put a comprehensive program in place. At this time, given the complexity of the topic and that this would require establishing a new program, without the addition of new permanent resources; staff would need to request some consultant funds.

Cost to Implement Study Results

Unknown. Study would include assessment of potential costs based on similar programs in other local jurisdictions.

Explanation of Cost: Potential costs of implementing study results may include additional personnel and resources needed for enforcement activities.

EXPECTED PARTICIPATION IN THE PROCESS

Council-approved work plan: No

Council Study Session: No

Reviewed by Boards/Commissions: N/A

STAFF RECOMMENDATION

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Position : Support

Explanation : Staff supports this study issue to evaluate the options for providing standards and enforcement procedures for wage theft in public contracts. Support for this study is based on the limited review and analysis as described in the *Key Elements of the Study* section of this paper. Efforts to ensure that public funds are used for intended purpose and to protect wages are important to the City's procurement processes.

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Reviewed By: John Nagel, City Attorney

Approved By: Deanna J. Santana, City Manager