



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Introduce Ordinances to Amend the Sunnyvale Municipal Code by Adding Section 2.09.220 to Comply with New State Law for the Payment of Prevailing Wages for Infrastructure Work, and by Modifying Chapter 2.08 to Increase the City Manager's Bid Rejection Threshold

BACKGROUND

Chapters 2.08 and 2.09 of the Sunnyvale Municipal Code ("SMC") establish the procedures for the purchase of goods and services and for public works contracting, respectively. Recent changes in State law necessitate a modification to Chapter 2.09 to comply with prevailing wage requirements in order for charter cities such as Sunnyvale to be eligible for State funding for construction projects, effective January 1, 2015.

A revision to Chapter 2.08 is also recommended to synchronize the Council and City Manager approval thresholds to award contracts and reject competitive bids or proposals. Currently, the City Manager is the awarding authority for contracts of \$100,000 or less, but only has authority to reject bids or proposals that are \$50,000 or less. Council approval is required to reject bids or proposals greater than \$50,000. When the SMC was last updated in 2008 to increase the City Manager's award authority from \$50,000 to \$100,000, the rejection level was left at \$50,000. This discrepancy between approval and rejection thresholds causes confusion and is inconsistent with the companion section in Chapter 2.09, which sets both approval and rejection amounts for the City Manager at \$100,000 or less.

Though the subject matter is different for each code change, the proposed revisions are recommended under one Report to Council for efficiency purposes.

EXISTING POLICY

There are no formally adopted written Council policies or SMC provisions relative to prevailing wages, but the City has required prevailing wages on public works construction contracts since at least 1970, and probably much earlier. The most recent documented actions include a 1996 Resolution in support of a specific piece of State legislation whereby Council expressed the City's "... desire to uphold prevailing wage requirements on City public works projects...", and a motion in 2000 following a Study Issue which affirmed the practice, but exempted the City from paying prevailing wages on maintenance and repair projects.

General public works contracting requirements are set forth in Section 1309 of the City Charter, with implementing provisions codified in Chapter 2.09 of the SMC.

Procedures related to the rejection of bids and proposals for good and services are set forth in SMC Section 2.08.140.

ENVIRONMENTAL REVIEW

Pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA), the adoption of modifications to SMC Chapters 2.08 and 2.09 is not a project having the potential to cause environmental impacts and is therefore exempt from CEQA review.

DISCUSSION

New State Law Regarding Prevailing Wages

The California Labor Code requires that general law cities pay prevailing wages, determined by the Department of Industrial Relations (DIR), to workers in construction trades such as carpenters, electricians, equipment operators, laborers, masons, and surveyors. The prevailing wage is the hourly rate paid on public works projects to a majority of workers engaged in a particular craft or type of work within a given locality, if a majority of such workers are paid at a single rate. If there is no single rate paid to a majority, then the single or modal rate being paid to the greater number of workers prevails. The DIR makes prevailing wage determinations twice annually.

Charter cities such as Sunnyvale could historically exempt themselves from prevailing wage requirements, so long as awarded contracts are within the realm of “municipal affairs” (and not matters of statewide concern), and not funded with State or Federal grants.

Senate Bill 7 (SB7), signed into law in late 2013, will restrict State funding or financial assistance to charter cities for public works construction contracts if the municipalities do not pay prevailing wages on all public works projects, regardless of whether they are purely municipal projects. The new law essentially applies to all contracts awarded after January 1, 2015, regardless of funding source. SB7 is codified in Section 1782 of the Labor Code, which defines public works contracts as construction work greater than \$25,000 or alteration, demolition, maintenance and repair work greater than \$15,000. Under the new law, State funding or financial assistance is defined as direct funding (i.e., grants), loans or loan guarantees, tax credits, and any other type of financial support for a construction project. It does not include revenues that charter cities are entitled to receive without conditions under the California Constitution, such as tax revenue or State subventions like the Motor Vehicle License Fee.

The longstanding, albeit informal City policy, is to pay prevailing wages for public works construction but not for routine maintenance and repair contracts. The SMC defines public works as infrastructure constructed for the use, protection or enjoyment of the public such as buildings, streets and parks. The Code defines maintenance and repair contracts as those intended to preserve and/or restore a public work to a clean, safe and usable condition. These differences are further highlighted in Section 1309 of the City Charter, which specifically differentiates public works construction from maintenance and repair. Specific examples of maintenance and repair include, but are not limited to carpentry, electrical, mowing, painting, plumbing, and pruning.

Legal Challenge to SB7 and Sunset Provision in Ordinance

It should be noted that several California charter cities filed a lawsuit in superior court earlier this year seeking to invalidate SB7 on the grounds that it violated the “home rule” authority of charter cities. The court ruled against the cities but the decision may be appealed. In the meantime, charter cities must comply with the law in order to be eligible for State funding. In the event the law is ultimately repealed, an automatic sunset provision is included in the ordinance amendment.

City Manager's Bid/Proposal Rejection Authority

The proposed amendment to equalize the City Manager's bid rejection threshold with the awarding threshold is suggested for efficiency purposes. Chapter 2.08 of the SMC, which defines the City's centralized purchasing system for the procurement of goods and services, requires formal competitive bids or proposals for any purchasing transaction estimated to cost more than \$50,000. Such bids or proposals can be accepted by awarding a contract, or rejected if in the best interest of the City. Currently, Chapter 2.08 establishes Council as the awarding authority for contracts of more than \$100,000, and the City Manager as the awarding authority for contracts that are \$100,000 or less. On the other hand, Council approval is required to reject bids or proposals greater than \$50,000 (the level at which formal competitive bidding is required).

In order to maintain consistency and uniformity as to what authority each awarding body can exercise, staff recommends that Council be the awarding and rejecting authority for purchases greater than \$100,000, and the City Manager be the awarding and rejecting authority for purchases \$100,000 or less. This recommended change is consistent with current code requirements for public works construction contracting established in Chapter 2.09.

It should be noted that staff periodically evaluates changes to the purchasing ordinances to ensure that approval levels are appropriately set to reflect market conditions and/or resource impacts. Staff will continue to periodically review each ordinance and recommend changes if/as necessary.

FISCAL IMPACT

Over the past year, approximately \$4 million was spent on maintenance/repair work, based on transactions greater than \$15,000 (the contractual level at which prevailing wages would apply as of January 1, 2015). Examples include building maintenance, engine repair and pond sediment removal at the WPCP, landscaping, street tree pruning, and traffic signal repair. This level of expenditure is anticipated to continue.

Since work of this nature is typically bid or contracted based on each job (by lump sum or unit cost) and not on an hourly (time and materials) basis, and some contractors are already paying prevailing wages, it would be extremely difficult to estimate a prospective fiscal impact based on analyzing past expenses. Research studies have estimated cost increases to be between 0% - 35%. It is likely that the cost impact to Sunnyvale lies somewhere in between. Staff will evaluate methods for estimating fiscal impacts and, with experience, work to build these additional costs into the budget going forward. With the rebound of the economy, and a corresponding rise in construction costs due to demand alone, this additional pressure could constrain the City's ability to fund critical or essential maintenance activities.

In addition to increased costs, paying prevailing wages for maintenance and repair contracts will impact staffing resources necessary to track ongoing compliance, which will be done in conjunction with another recently adopted State law, SB854. This law requires contractors and subcontractors to register annually with the Department of Industrial Relations (DIR) in order to bid on public works contracts, and requires local agencies to verify compliance. SB854 will apply to competitive bids issued after March 1, 2015. It is anticipated at this time that additional work will be absorbed with existing staff, but this may be revisited based on actual workload impacts.

Another factor to consider is the potential impact of foregoing State funding or financial assistance if

the City chooses to maintain its current policy of not paying prevailing wages for maintenance and repair contracts. Though the level of direct State funding for construction can vary considerably from year-to-year, the City does receive substantial periodic allocations for infrastructure work such as park building rehabilitation and roadway improvements. For example, the City received more than \$4 million in Proposition 1B local streets and roads funding between 2008 and 2010. Additionally, with the recent passage of Proposition 1 (the statewide Water Bond), the City may become eligible for water supply infrastructure funding in the near future.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Introduce the Ordinance in Attachment 1 amending Chapter 2.08 of the Sunnyvale Municipal Code (Purchases of Goods and Services) to modify the City Manager's rejection authority for goods and services procurements.
2. Introduce the Ordinance in Attachment 2 adding Section 2.09.220 to Chapter 2.09 of the Sunnyvale Municipal Code (Public Works Contracting) to require the payment of prevailing wages on public works projects.
3. Do not approve the proposed amendments.
4. Direct staff to perform further study.

STAFF RECOMMENDATION

Alternatives 1 and 2: 1) Introduce an Ordinance amending Chapter 2.08 of the Sunnyvale Municipal Code (Purchases of Goods and Services) to modify the City Manager's rejection authority for goods and services procurements, and 2) Introduce an Ordinance adding Section 2.09.220 to Chapter 2.09 of the Sunnyvale Municipal Code (Public Works Contracting) to require the payment of prevailing wages on public works projects.

Staff recommends the revision to Chapter 2.08 of the SMC in order to establish uniformity in the City Manager's awarding and rejecting authority for goods and services procurements. This will match the current authority codified in Chapter 2.09 for public works contracting and lessen confusion as to what level of authority each awarding body has.

Staff further recommends the revision to Chapter 2.09 of the SMC to adopt a prevailing wage ordinance to continue to be eligible for State funding for public works construction contracts. Paying prevailing wages for maintenance and repair contracts will likely add cost to the City, but this will be outweighed by retaining eligibility to receive ongoing State funding. Additionally, if the new law is repealed, an automatic sunset provision is included in the Ordinance, which will immediately invalidate the prevailing wage requirement.

Prepared by: Pete Gonda, Purchasing Officer

Reviewed by: Grace K. Leung, Director of Finance

Reviewed by: Manuel Pineda, Director of Public Works

Reviewed by: Kent Steffens and Robert A. Walker, Assistant City Managers

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Ordinance to Amend Chapter 2.08 of the SMC
2. Ordinance to Add Section 2.09.220 to Chapter 2.09 of the SMC