



SUMMARY REPORT

Agenda Date: 6/12/2023

To: Sonoma County Board of Supervisors

Department or Agency Name(s): County Administrator's Office

Staff Name and Phone Number: Yvonne Shu 565-1739, Christel Querijero 565-7071

Vote Requirement: Majority

Supervisorial District(s): Countywide

Title:

Proposed Changes to the Living Wage Ordinance

Recommended Action:

- A) Provide direction to staff on the following potential changes to the Living Wage Ordinance (LWO):
 - i. Cost of Living Adjustment (COLA) parameters;
 - ii. Whether lessees and concessionaires should be covered under the LWO, and how; and
 - iii. Whether to add a paid time off (PTO) requirement or other provision to the LWO.
- B) Establish a Periodic LWO Rate Review
- C) Confirm the draft, proposed Living Wage Ordinance (LWO) amendments as to other changes and direct staff to return to the Board for the required ordinance process to formally initiate and adopt the amendments.

Executive Summary:

In October 2022, the Board of Supervisors provided direction to staff on several proposed changes to the County's Living Wage Ordinance (LWO), with two policy areas rescheduled for a future Board discussion. The pending policy areas include whether to include lessees and concessionaires in the LWO and whether to add a paid time off requirement to the ordinance. Additionally, the Board is asked to consider whether to specify an upper limit to any LWO cost-of-living adjustment (COLA) and whether to establish a periodic Board review of the hourly rate, separate from the annual COLA.

The County's current Living Wage Ordinance is available online at https://library.municode.com/ca/sonoma_county/codes/code_of_ordinances?nodeId=CH2AD_ARTXXVILIWA. A racial equity analysis is included for this item.

Discussion:

Background

The County's Living Wage Ordinance (LWO) went into effect on January 1, 2016. Whether to enact living wage requirements (typically, via local legislation) is a policy decision at the discretion of local jurisdictions for their communities.

Living wage requirements most commonly only apply as a condition of a government contract and are different from minimum wage laws. A living wage is generally defined as the lowest hourly wage that can support subsistence needs. These needs vary based on a variety of factors, including family size and

circumstances, lifestyle, and the cost of living in a certain area.

In contrast to a more universally applicable minimum wage, the County's LWO generally only applies to contractors and entities who conduct business with or who obtain financial assistance (or other statutorily listed benefits) from the County. Specifically, employees of covered companies and organizations (e.g., for-profit businesses that have over five employees) that do certain volumes of business (e.g., over \$25,000) with the County or that received certain financial assistance or benefits (i.e., over \$100,000), are required to be paid at least the County's established hourly living wage rate. In sum, Sonoma County's LWO is limited and only covers employees of entities that have contracts or other agreements with the County over a certain amount.

Since implementation of the LWO in 2016, lessons have been learned regarding LWO administration and compliance measures. At the same time, the County recognizes that there are opportunities for improvement, efficiency, and modernization in its procurement process and systems. The County launched an overall assessment of the County's procurement system in early 2023, and the assessment is still underway. The recommendations from this broader procurement assessment may impact the way that the LWO is currently implemented, including compliance, systems, and data collection. Potential LWO-related changes may be more readily incorporated with the broader effort when other changes may be made to general purchasing processes and systems.

Today's Discussion: Two parts

Part One: Discussion regarding the policy areas that have not yet received Board direction or recommendation from the Living Wage Ad Hoc Committee; and

Part Two: Opportunity to review tentative draft amendments to the LWO reflecting proposal and policy areas where consensus was previously indicated.

Should direction from your Board be provided, staff will return to formally initiate and later adopt the amendments using the standard two-read ordinance process.

Part One: Outstanding Proposals/Policy Areas of Discussion

The following remaining LWO policy areas require Board consideration and direction:

1a - COLA upper limit

Last October, the Board provided direction to amend the methodology for living wage rate adjustments to adopt an automatic annual COLA by increasing the living wage rate by the same percentage as the October Bay Area Consumer Price Index for All Urban Consumers (CPI-U) published by the Department of Labor's Bureau of Labor Statistics, and to include a specified cap on the increase.

The exact amount of the specific cap on any COLA increase was not part of the Board's direction last fall. The example cited at the time was San Mateo County, which has a 3.5% cap on any living wage COLA increase. The recently negotiated Service Employees International Union (SEIU) contract includes an annual COLA increase of 5%, 4.5% and 4% for the next three years.

The Living Wage Ad Hoc Committee (Supervisor Hopkins and Supervisor Rabbitt) reviewed and recommended that the full Board consider the following COLA cap options:

- Establish a specific cap percentage as the upper limit of any COLA increase, similar to San Mateo County.
- Use COLA increases specified in the SEIU 2023-2026 labor agreement (5.0% effective May 2023; 4.5% effective March 2024; 4.0% effective March 2025) as the upper limit.
- Use the annual October San Francisco-Oakland-Hayward CPI-U as the upper limit.
- Do not specify an upper limit.

1b - Hourly rate periodic adjustment

Your Board’s previous direction as to the automatic annual COLA included a provision that would allow the County to delay, suspend, or cancel the COLA in any given year, based on discretionary considerations. In addition, the Living Wage Ad Hoc Committee recommends a periodic review and potential adjustment of the living wage rate every four years that is separate from the annual COLA increase. Likely due to a lower initial rate, the County’s hourly living wage rate is lower than comparison counties, except Marin County. Using a starting rate of \$15.00 per hour when the LWO was adopted in 2016, the differences in rates for 2022 using only the County COLA, only the CPI-U, and the current LWO formula are as follows:

Rate if using only County COLA	Rate if using only CPI-U	Rate using the lesser of either the CPI-U and COLA (per current LWO)
\$17.18	\$18.43	\$17.25 *

* Per Ordinance 6418 (adopted April 18, 2023), the County’s Living Wage rate will increase to \$17.65 effective 7/1/23

Any decision about moving forward with a “true-up” adjustment would be at the discretion of the Board based on the results of the periodic review. Staff recommends that the earliest occurrence of any periodic adjustment happen after a revised Living Wage Ordinance has been implemented and no sooner than the living wage COLA adjustment in July 2024.

2 - County concessionaires and lessees

The County’s LWO currently exempts concession agreements, leaseholders, and employees on seasonal projects of less than six months in duration. While the impact of any changes to these provisions has been focused on the fair and airport, taking a broader view of all County leaseholders and concession agreements, including potentially those at the tidelands and at veterans’ buildings, should be considered.

General Considerations

- Restructuring of LWO criteria and applicability thresholds would be needed: currently, LWO application depends on the amount of money or value that the County pays or contributes on an agreement. In contrast, the County does not pay its lessees or concessionaires. New criteria and threshold amount for application in these contexts will need to be determined and added to the LWO.

- If LWO is made to apply to County lessees and or concessionaires, what does that precisely look like? Would it apply to just the employees of the covered lessee at the location? Would it cover all employees, even if not at the County location? Would it apply to the lessee’s own services contractors, or any subcontractors?
- For legal reasons, changes to the LWO could not be applied to existing leases (and similar-type agreements).

The Ad Hoc Committee recommended that the range of proposed options regarding concessionaires and lessees be brought for discussion to the full Board, as follows:

2a - Airport

Considerations, as developed from involved stakeholders

- Sonoma County Airport is a small, growing airport relative to others that have implemented LWO (e.g., Oakland, San Jose, San Francisco).
- Airport lessees could go to neighboring, non-County properties.
- There are transferrable experience and intangible benefits associated with working in the aviation industry.
- Entry-level positions help people get into the aviation industry.
- Because of FAA requirements, there are no subsidized or below-market rent arrangements at the Airport.

Airport Options	Potential impacts
1 - No change to current ordinance. Airport lessees and concessionaires would remain exempt.	<ul style="list-style-type: none"> ▪ Leases, especially long-term ones, will remain as is ▪ Entry-level aviation positions will continue to be offered ▪ No FAA grant compliance risk
2 Apply LWO at Airport on same terms as LWO is applied to all other County lessees/concessionaires.	<ul style="list-style-type: none"> ▪ Consistent treatment across all lessees and concessionaires
3a - LWO applicable to leases, concessions or franchises which employ 25 or more employees and have \$350,000 or more in annual gross receipts 3b - LWO applicable to leases, concessions or franchises which employ 50 or more employees and have \$500,000 or more in annual gross receipts	<ul style="list-style-type: none"> ▪ Obtaining information from companies could be challenging ▪ Some leaseholders could be deterred by increase cost and move off-site ▪ Staffing: time for tracking/monitoring by concessionaires/lessees and airport staff ▪ FAA grant risk re: disparate economic treatment ▪ Deterrent for low-cost carriers ▪ Existing lessee/operator potential claims as to existing contracts, some long-term ▪ Decision needed whether LWO would be applicable to existing or new contracts or both

4 - Apply to all lessees and concessionaires at Airport, regardless of entity operation, scale, amount of employee, etc.	<ul style="list-style-type: none"> ▪ Avoids need to ascertain and maintain information on entity profile ▪ Same treatment as to all users
--	---

2b - Fair

Considerations

- Lessees and concessionaires pay the Fair, which is different from Fair contractors.
- Majority of lessees, licensees, and concessionaires are short-term
- Most are small businesses and sole proprietors on the Fair circuit
- Fair revenue goes toward facility maintenance and operations
- The Fair has approximately 400 seasonal and temporary employees (current LWO exempts employees on projects of less than six months)
- Many people work at the Fair simply because it is the Fair and it’s fun (e.g., retirees, students)

Fair Options	Potential impacts
1 - No change to current ordinance. Fair and Fair lessees and concessionaires would remain exempt.	<ul style="list-style-type: none"> ▪ Fair lessees and concessionaires would remain exempt from the LWO
2 - Apply LWO at the Fair on same terms as LWO is applied to all County lessees/concessionaires.	<ul style="list-style-type: none"> ▪ Consistent treatment across all lessees and concessionaires
3a - LWO applicable to leases, concessions or franchises which employ 25 or more employees and have \$350,000 or more in annual gross receipts 3b - LWO applicable to leases, concessions or franchises which employ 50 or more employees and have \$500,000 or more in annual gross receipts 3c -- Lessees and concessionaires 50+ employees and greater than \$500,000 in annual gross receipts, <u>plus</u> tenancy of greater than six months	<ul style="list-style-type: none"> ▪ Decrease in concessionaires willing to come to Sonoma County due to additional cost and process, as most are small/very small businesses ▪ One existing lessee would be covered/impacted ▪ May require an amendment to the Fair-County Operating Agreement ▪ Staff, concessionaire, lessee time to provide, track, maintain gross receipt documentation, especially since most lessees and concessionaires are short-term ▪ Coordinating necessary paperwork/tracking before annual fair
4 - Apply LWO only to Fair service contractors (e.g., security, manure hauling, janitorial, pest control) but not to Fair lessees, licensees, concessionaires, seasonal employees.	<ul style="list-style-type: none"> ▪ Higher rate/expenses for Fair

3 - Paid Time Off

The question remains whether a PTO requirement or other provision should be added to the LWO, to be applicable to LWO-covered employers. The primary driver behind consideration of a PTO provision, reinforced by the Covid pandemic, is that employees should not go to work when they are ill.

The County employee labor agreements have a sick leave accrual rate of 3.68 hours for each completed 80 paid in-service hours. Assuming 2,080 working hours per year, this rate is equivalent to 96 hours or 12 days.

The [California law for paid sick leave <https://www.dir.ca.gov/dlse/California-Paid-Sick-Leave.html>](https://www.dir.ca.gov/dlse/California-Paid-Sick-Leave.html) includes:

- 1 hour PTO per 30 hours worked, or 3 days per year
- Requires working for same employer for at least 30 days in a year in California
- Requires 90-day employment period before taking any paid sick leave

The Ad Hoc Committee agrees that, if PTO were to be adopted as a LWO requirement, there should be a pro-rated PTO formula for accrual and that any potential PTO provision should consider a gradual accumulation of PTO hours over time.

Considerations

- Perception of and logistics to “backdoor” employee benefits: Many County services contractors have employees who are subject to collectively bargained employment agreements. If an agreement is collectively bargained, what is the timing implication of any provision and/or rate change? This presents a difficult situation for employers if just those employees working on the County contract get either an increase or PTO benefits.
- County Central Landfill: To the extent costs increase due to LWO requirements, under current operating agreements, those costs could be passed on to all landfill users. This could include all waste haulers, who under most franchise agreements may pass-through such cost increases to their user rates. A County LWO cost increase at the landfill could lead to impacts to all refuse customers countywide, including in incorporated areas.
- Employer administrative burdens: currently, LWO applies only to covered employees, who in general are those who spend at least eight hours or twenty percent of their time per week working on the County contract. Unless all an employer’s employees are covered by the LWO, then employers will have to track employee accruals and benefits potentially on a per-employee level and could be forced to have differing employee policies (leave allowances, etc.) across its workforce.

The Ad Hoc Committee has again recommended that the range of proposed options be brought for discussion to the full Board:

Paid Time Off Options	Potential impacts
1 - No change to current ordinance	▪ No County-driven PTO requirement for LWO-covered contractors

<p>2 - Employer voluntary paid leave: County offers a preferential factor in awarding contracts greater than \$50,000, with 12 paid days (excluding holidays) as the high bar</p>	<ul style="list-style-type: none"> ▪ May discourage / decrease number of smaller businesses from submitting bids ▪ This is a simpler way to ensure that the County shows its preference to contractors who provide these types of benefits to their employees
<p>3 - Specify the number of paid days leave but include holidays in PTO total Example: City of Davis <https://library.qcode.us/lib/davis_ca/pub/municipal_code/item/chapter_15-article_15_20-15_20_060></p>	<ul style="list-style-type: none"> ▪ May discourage / decrease number of smaller businesses form submitting bids ▪ Need methodology to standardize or accept various accrual methodologies, based on the number of hours/percentage of time the covered employee spends specifically on the County contract ▪ Variations in number of holidays provided by employers
<p>4 - Covered employees earn at least one hour of compensated time off per 20 hours worked, up to a maximum of 12 days earned per year</p>	<ul style="list-style-type: none"> ▪ If the Fair is to be covered under LWO (separate provision), must consider duration of 10-day fair and 12-day PTO potential provision ▪ Additional expense to contractors ▪ Could be perceived as additional hurdle of doing business with County ▪ Covered employer administrative impact: PTO accrual for only hours spent on County contracts (current LWO model), in contrast to all other employee time ▪ Enforcement ▪ Accrual differences

Part Two: Proposals/Policy Areas of Discussion with Previous Consensus

Draft Amendments based on previous Board direction

Staff has coordinated with other departments, including Public Infrastructure’s Purchasing Division and County Counsel, to draft proposed amendments to the LWO, reflective of policy direction received on October 18, 2022. The Board’s policy direction is summarized in a “Consensus Amendments Table,” *Attachment 1* to this item. In addition, the proposed amendments reflect administrative and other substantive and non-substantive changes to reflect operational and program administration experiences and best practices, conformance with other proposed changes, and routine “clean up” edits for clarity. The draft edits can be viewed in *Attachment 2*, along with explanatory notes.

If the draft edits are acceptable, staff will finalize the edits and bring them to your Board for the required two-step ordinance process to formally initiate and adopt the amendments.

Anticipated Next Steps

With Board majority agreement and direction to staff today on the remaining proposals, staff anticipates returning with draft language for a first read in late summer 2023.

Strategic Plan:

N/A

Racial Equity:

Was this item identified as an opportunity to apply the Racial Equity Toolkit?

Yes

Staff used the Government Alliance on Race and Equity's (GARE) Equity Toolkit to provide a general equity analysis (*Attachment 3*) of the existing LWO. The County does not have an accurate way to collect the data needed for the detailed level of analysis required to understand local impact of the LWO on an individual or neighborhood basis, or as to how LWO impacts persons conducting business with the County. However, anecdotal feedback gathered from community-based organizations (CBO) and departments indicates that the County can simplify and clarify LWO and other procurement processes, which would help to lower transactional costs and burdens associated with contracting with or obtaining assistance from the County. This could potentially expand the pool and diversity of local organizations that would consider working with the County.

Prior Board Actions:

- 4/18/23 Adopted an uncodified ordinance to allow for a supplemental increase of 2.26% to the living wage hourly rate, for the required living wage rate to be \$17.65 per hour, effective July 1, 2023. (Second Read)
- 3/21/23 Adopted a resolution introducing, reading the title of, and waiving further reading of an uncodified ordinance to except certain requirements under the County's existing Living Wage Ordinance and to allow for an increase to the living wage hourly rate by 2.26%, for the required living wage rate to be \$17.65 per hour, effective July 1, 2023. (First Read). Authorized Human Resources staff to offer to meet and confer with affected labor organizations, if necessary to implement the proposed increase.
- 12/6/22 Adopted resolution to increase the living wage hourly rate by 2.74% to \$17.25
- 10/18/22 Received recommendations from the Living Wage Ad Hoc on proposed changes to the Living Wage Ordinance
- 12/14/21 Adopted resolution to increase the living wage hourly rate to \$16.75 and approved Living Wage Ordinance work plan
- 9/21/21 Directed staff on areas of further analysis and evaluation for the Living Wage Ordinance

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

None

Agenda Date: 6/12/2023

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment 1 - Living Wage Ordinance Board Consensus Amendment Table

Attachment 2 - Living Wage Ordinance with red-line revisions based on previous Board direction

Attachment 3 - Racial Equity Analysis

Presentation

Related Items "On File" with the Clerk of the Board:

N/A