



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** David Sykes

**SUBJECT:** LIVING WAGE & COMPENSATED  
TIME OFF      **DATE:** May 21, 2012

Approved

Date 5/24/12

## RECOMMENDATION

Accept staff's report and provide direction on next steps regarding compensated time off on City living wage contracts.

## OUTCOME

Provide direction to staff on next steps regarding compensated time off on City living wage contracts.

## BACKGROUND

The City of San José adopted its Living Wage Policy (Policy) in November 1998, to promote the creation of a livable wage to increase the ability of contract employees to attain sustenance, decrease the amount of poverty and reduce the amount of taxpayer funded social services in the City. The Policy also includes employee retention and harmonious labor and management relations in certain instances. At the time the Policy was developed, City staff did not recommend requiring compensated time off even though other cities included paid time off in their respective wage ordinances.

On December 13, 2011 [Item 3.5], Council referred to the Rules and Open Government Committee (Rules Committee), a memo from Councilmember Rocha dated December 12, 2011. Councilmember Rocha's memo recommended that the City Attorney and City Manager evaluate: (1) various possibilities for the City to ensure that basic vacation, sick leave and holiday benefits be provided to contract employees; and (2) adding criteria to the City's Request for Proposal process to evaluate and award points based on the level of leave benefits proposers provide to their respective employees.

On January 4, 2012 [Item H.2], the Rules Committee recommended that Councilmember Rocha's proposal be referred to the City Attorney for legal analysis and to the City Manager's Office for a report on the range of options.

At the February 8, 2012 [Item H.4.a.b.] Rules Committee meeting, the City Attorney's Office provided a memorandum with legal parameters regarding regulating mandatory paid time off of City contractors and the Department of Public Works provided a memorandum outlining three possible options for the Council to consider. The Rules Committee referred the issue to the February 13, 2012, Priority Setting Study Session for further discussion.

At the February 13, 2012, Priority Setting Study Session, the compensated time off for contract employees issue did not receive an adequate number of votes for inclusion in the City Administration's priority workload for the next six months.

On March 27, 2012 [Item 3.3], Council directed that staff prepare a report to enable a full City Council discussion of compensated time off for contract employees. This memorandum responds to this direction.

Living wage is the rate of pay workers are required to be paid on certain City of San José service contracts or companies receiving direct financial incentives from the City. The City's living wage rate is based on the federal poverty income standard for a family of three, a geographic adjustment factor and whether or not medical benefits are provided by the employer. If health benefits are not provided by the employer, \$1.25 more per hour is required to be paid to the covered workers.

To provide the appropriate context to Council's upcoming discussion, it is important to look back at the City's Living Wage Policy and how it was developed and implemented.

### **Development of the City's Living Wage Policy**

In 1998, when the City of San José was developing its living wage policy, three guiding principles were used to analyze alternatives and determine recommendations. The guiding principles were: (1) utilize approaches and methodologies that were predicated on data that was broadly recognized and readily available; (2) balance competing overall City objectives that may require some trade-offs in reaching ultimate interests of a single perspective; and (3) develop policy provisions in a manner that minimizes subsequent administrative interpretations during implementation.

One important element of a living wage policy is the wage rate and how it is established. At the time, staff searched for a methodology where data for setting the rate would meet three criteria. The methodology: (1) would be based on data that was readily available and easily understood; (2) would consider San José's geographic-specific issues such as cost of living; and (3) could determine a universal rate rather than one based on the individual employee's situation or specific industry.

Three approaches to establishing the rate were reviewed:

#### *Rate Based on Poverty Level Measurement*

Most cities have adopted a living wage using some variation of the federal poverty level. The wage rates were predicated on a family of three or four. Most cities do not use any factors to adjust the federal standard. In cases where there is an adjustment factor, it is typically 110% of the poverty level.

*Rate Based on Negotiations*

In some cities, the living wage rates were achieved through negotiations between cities and labor unions. These rates do not apply any particular standards. For example, the living wage rate adopted in Baltimore, Maryland, was set as a result of negotiations with Baltimore United Leadership, an AFL-CIO affiliate.

*Rate Based on Self-Sufficiency Standard*

This method determines the income needed for individuals and families to cover their basic costs of living without any public or private assistance.

San José's living wage was based on the conclusion that none of the above identified approaches fully met the established guiding principles. However, the federal poverty standard came the closest and was recommended as the primary component of an adjusted formula. Although living at a poverty level is not living at a standard easily or readily acceptable in American society, staff felt it provided a reasonable threshold. The federal poverty level measurement identifies the levels by family size. In 1998, the Association of Bay Area Government (ABAG) estimated that the number of persons per household in Santa Clara County was 2.9; was expected to increase to 3.01 by 2000; decrease to 2.99 by 2005; and decrease to 2.95 by 2010. San José was expected to account for 56% of the total County population in the year 2000. Therefore, staff recommended that the wage rate be based on a family of three.

To address the cost of living issues specific to San José, the federal poverty level was adjusted by a geographic factor. Several reliable sources that attempt to "index" national cost of living information were considered. Staff determined that Economic Research Institution (ERI) provided the most comprehensive and directly relevant data for determining a geographical wage differential. ERI collects and analyzes survey data using various methods that reflect geographic differences among various costs; such as, consumables, transportation, services, rents, and housing expenses, utilities, insurance, income and payroll taxes. ERI's methodology considers variances in spending patterns based on income levels and family sizes.

As provided by ERI and based on the federal poverty level for a family of three, San José's 1998 cost of living factor was 45.2% higher than the national average. The history of San José's cost of living factor is provided in the following chart.

Year	Rate W/Health Benefits	Geographic Adjustment Factor	Year	Rate W/Health Benefits	Geographic Adjustment Factor	Year	Rate W/Health Benefits	Geographic Adjustment Factor
1998	\$9.50	45.2%	2004	\$10.72	42.4%	2009	\$12.83	19.7%
2000	\$10.10	48.6%	2005	\$11.61	50%	2010	\$12.94	47%
2001	\$10.10	41.6%	2006	\$12.27	53.8%	2011	\$13.79	52.7%
2002	\$10.10	24.6%	2007	\$12.66	53.4%	2012	\$14.73	60.5%
2003	\$10.31	40.5%	2008	\$12.83	51.7%			

Based on this methodology, the City, in 1998, set its living wage rate at \$9.50 per hour; the highest living wage rate in the country.

Due to the fact that medical costs can have a significant impact on an employee's income, the living wage rate considers whether or not medical benefits are provided by the employer. Based on information available at the time, setting the "without health benefits" hourly rate at \$10.75

provided a reasonable benefits differential for employees not covered by employer-paid health insurance.

Another element analyzed but not recommended was paid leave time. Although the cities of Los Angeles and Oakland required paid leave time in their respective living wage ordinances, staff did not recommend it to be included since the City's living wage rate was being set \$2.11 per hour higher than Los Angeles' rate and \$1.50 per hour higher than Oakland's rate.

The City's current Living Wage Policy mandates a minimum hourly wage rate if health benefits are provided. Currently the living wage rate is \$13.59 per hour if health benefits are provided and \$14.84 if health benefits are not provided. Effective July 1, 2012, the living wage rate will be \$14.73 if health benefits are provided and \$15.98 if health benefits are not provided. San José's living wage rate continues to be the highest compared to San Francisco, Oakland and Los Angeles.

City	Living Wage Rate
San Jose	\$13.59
Los Angeles	\$10.42
Oakland	\$11.35
San Francisco	\$12.06

The Living Wage Policy applies to service and labor contracts which involve an expenditure in excess of \$20,000 and includes the following services: automotive repair and maintenance; facility and building maintenance; food services; janitorial/custodial services; landscaping; laundry services; parking lot management; operation, programming and maintenance of recreational facilities; security; shuttle transportation; street sweeping; towing; moving services; fabrication and installation of City signs; maintenance of City-owned equipment; and any other services or labor determined by the Office of Equality Assurance's (OEA) Director to meet the intent of the Policy.

Covered employees under the Policy are those who: do not provide volunteer services that are uncompensated; expend at least half of his/her time on the City contract; are at least 18 years of age; and are not in training.

## **ANALYSIS**

### **Compensated Time Off**

Most cities that have living wage ordinances include a compensated time off requirement. The cities of Los Angeles, Oakland, San Francisco and Santa Cruz all require employers to provide at least 12 compensated days off per year for sick leave, vacation or personal necessity at the employee's request.

To analyze compensated time off and its possible cost impacts, staff used the same guiding principles used in the development of the original living wage policy: utilizing approaches predicated on broadly recognized and readily available data; balancing competing City objectives; and minimizing administrative interpretations during implementation.

Staff focused on: specific categories of work covered by living wage rather than prevailing wage since prevailing wage stipulates hourly rates for fringe benefits including health and welfare, pension, vacation and holidays as well as categories of work where workers spend more than 50 percent of their time on work for the City. Living wage contracts where workers spend less than 50 percent of their time on work for the City were excluded from review. Current contracts subject to living wage where workers spend 50 percent or more of their time on work fall within the following six categories: food services (senior nutrition meals); janitorial/custodial services; landscape maintenance services (hand work only – cleaning grounds using rakes, brooms, hoses and leaf blowers); graffiti abatement (time spent patrolling); security services; and ticket processing/collection services.

Within the six categories of service reviewed, there are 15 living wage contracts with an annual cost of \$12,100,000 that require living wages to be paid to workers:

Type of Contract	Contract	Cost Per Year	Contract Expiration Date
<b>Janitorial/Custodial</b>	City Wide Facilities	\$3,000,000	Initial Term: 10/31/14 Options: 10/31/19
	Airport	\$2,600,000	Initial Term: 10/31/14
	Park Restrooms	\$463,000	Options: 10/31/19
	Water Pollution Control Plant	\$370,000	Initial Term: 10/31/14
	Public Art Collection	\$13,000	Options: 10/31/19
<b>Security*</b>	City Hall/PRNS/Work2Future	\$163,000	Initial Term: 3/31/09 Options: 3/31/13
	Airport	\$800,000	Initial Term: 3/31/09 Options: 3/31/13
	Downtown Employee Garage	\$330,000	Initial Term: 3/31/09 Options: 3/31/13
	Water Pollution Control Plant	\$231,000	Initial Term: 3/31/09 Options: 3/31/13
<b>Food</b>			
	Senior Meals	\$940,000	Initial Term: 6/30/12 Options: 6/30/14
<b>Landscape Maintenance</b>			
	Small Parks & Civic Grounds	\$456,000	Initial Term: 12/27/14 Options: 12/27/17
	Landscape Maintenance Services for General Fund & Special Districts	\$1,000,000	Initial Term: 3/31/14 Options: 3/31/19
	Weed Abatement in Right-of Ways & City-Owned Properties	\$340,000	Initial Term: 2/28/19 Options: 2/28/19
<b>Graffiti Abatement</b>			
	City-Wide	\$700,000	Initial Term: 6/30/16 Options: 6/30/18
<b>Parking Citation Processing</b>			
	City-Wide	\$700,000	Initial Term: 12/31/09 Options: 12/31/13
<b>TOTAL</b>		<b>\$12,106,000</b>	

\* Currently, a RFP is being developed for City-Wide Security Services. The RFP will be released in August 2012, in order to allow sufficient time to complete the process and present a recommendation of award to City Council in March 2013. The annual contract value is estimated to be \$2,000,000. In addition, there are a number of smaller Requests for Quote (RFQs) that are currently in-process that require living wage but workers may spend less than 50 percent of their time on the City contract.

Staff surveyed the City's contractors and found that compensated time off varies by service category and by contractor.

**Janitorial/Custodial**

	<b>Number of Paid Days</b>
<b>Holidays</b>	5 days
<b>Sick</b>	2 days after 2 years of service 3 days after 3 years of service
<b>Vacation</b>	5 days 10 days after 3 years of service
<b>Personal Days</b>	n/a

**Security**

	<b>Number of Paid Days</b>
<b>Holidays</b>	0 days
<b>Sick</b>	0 days
<b>Vacation</b>	0 days

**Food (Senior Meals)**

	<b>Number of Paid Days</b>
<b>Holidays</b>	8 days
<b>Sick</b>	6 days
<b>Vacation</b>	5 days after 1 year of service 10 days after 2 years of service 15 days after 8 years of service

**Landscape Maintenance (Hand Work Only – Cleaning grounds using rakes, brooms, hoses and leaf blowers)**

	<b># Paid Days Bayscape Management</b>	<b># Paid Days Flora Terra**</b>	<b># Paid Days Art Cuevas Landscaping</b>	<b># Paid Days Long's Discing Service</b>
<b>Holidays</b>	7 days	0 days	0 days	0 days
<b>Sick Leave</b>	0	0 days	0 days	0 days
<b>Vacation</b>	0	0 days	0 days	0 days
<b>Personal Time Off (PTO)</b>	10 days after 1 year of service 15 days after 4 years of service 20 days after 6 years of service	0 days	0 days	0 days

\*\* Holiday/Sick Leave/Vacation/PTO is included within their pay structure/rate

**Graffiti Abatement (Patrolling)**

	<b>Number of Paid Days</b>
<b>Holidays</b>	4 days
<b>Sick</b>	5 days after 6 months
<b>Vacation</b>	5 days after 1 year of service

**Parking Citation Processing**

	<b>Number of Paid Days</b>
<b>Holidays</b>	11 days after 3 months
<b>Sick</b>	5 days after 3 months
	6 days after 2 years
	7 days after 5 years
	8 days after 7 years
<b>Vacation</b>	6 days after 3 months
	11 days after 2 years
	16 days after 7 years
	21 days after 15 years

**Cost Impacts**

Potential Contract Increases

Based on the number of compensated days off currently provided by City contractors, the cost impact of requiring a minimum number of compensated days off would be less than originally anticipated since most of the current contractors provide some level of paid days off with the exception of security and landscape maintenance. The hourly rate for 12 compensated days off is \$.63 per hour. Assuming that 12 annual leave days are mandated, the estimated average increase in contract costs would be 1.5% or an additional \$181,590 annually for the living wage contracts listed above.

Should the Council wish to apply compensated time off requirements to current contract extensions and the contractor declines, there is a potential cost impact but it is unknown at this time.

City Employees

Full-time benefited employees already receive paid time off in excess of 12 days. The City also has part-time benefited employees who work an average of 20 hours or more a week (or more than 1040 hours in a year). These employees earn paid time off depending on the number of hours worked. The City also has part-time unbenefited employees who work less than 1040 hours in a year or less than 20 hours in a week, who do not receive paid time off. In addition, the City has temporary unbenefited employees who could work part-time or full-time, but only on a temporary basis. Depending on the time of year, there could be thousands of employees in these classifications. Any changes to employees represented by bargaining units, which the majority of these employees are, would be subject to meet and confer with the applicable bargaining units.

### Cost of Administration

Currently, there is 1 full time equivalent (FTE) position in OEA assigned to monitor all service and maintenance contracts. The workload for this 1 FTE is anticipated to increase in FY 2012-2013. As a result, only contracts over a certain dollar threshold are monitored. If a compensated time off requirement is added, additional resources of .25 FTE would be needed in OEA in order to maintain current compliance monitoring. The annual general fund impact of .25 FTE is approximately \$25,250.

The above staffing impacts do not include the impact of potential contract re-negotiations and/or the re-noticing of contracts before it is contractually required to do so.

### **Options**

In staff's February 2, 2012, Rules Committee memo, three possible options were provided:

- Option 1 – Adding criteria to the City's Request for Proposal (RFP) process that would award points based on the level of leave benefits a given proposer provides its employees
- Option 2 – Amend City's Living Wage Policy to Mandate Compensated Time Off
- Option 3 – Make No Change

Should Council wish to require compensated time off on living wage contracts, staff recommends Option 2.

Option 1 would require staff to develop criteria and points to incorporate into the City's RFP process. 15 percent of the available RFP points are currently reserved for Local and Small Businesses (LBE/SBE) and for Environmental Preferable Procurement (EP3). Additional points set aside for compensated time off will erode the importance of Tier 1 (technical) and Tier 2 (cost) criteria. Conversely, setting aside a relatively small weighting for compensated time off may cause proposers to not address it. In addition, proposal evaluation teams are qualified to evaluate technical proposals, but may not be qualified to evaluate fringe benefit packages and compensated time off. From an operational perspective, a separate evaluation team may be required to evaluate employee benefit proposals. Finally, evaluating benefit packages may be somewhat subjective and would be challenging to implement. For instance, is a lower hourly rate of pay and more compensated time off preferable to a higher rate of pay with less time off? A subjective evaluation of benefit packages could lead to a higher potential for protests based on the arbitrary and somewhat ambiguous nature of the scoring.

Option 2, while having its own challenges, would be more in alignment with other cities' living wage ordinances. Should the Council be inclined to mandate compensated days off, additional time is needed to work through certain issues and questions such as:

- Will compensated time off apply to all contracts including the Airport? The Airport Living Wage Ordinance (ALWO) requires a lower living wage rate and contractors can take credit for the provision of health and welfare, vacation and pension benefits to meet the mandated wage rate. If compensated time off is extended to Airport contracts, the ALWO and its regulations will need to be amended. If compensated time off is not

extended to Airport contracts, City contractors providing services at the Airport and other City facilities will have two different wage and benefit requirements.

- Will compensated time off apply to City employees?
- Setting an effective date for new contracts solicited for and entered into. It can be problematic to implement any change while an RFP is in-process and even more problematic attempting to implement any change after a RFP closes and prior to the execution of the contract.
- How to address options to renew and contract extensions. The City cannot unilaterally impose compensated time off requirements on existing contracts. If the contractor does not accept the change, the only option for the City is to work with the contractor to negotiate an amendment to the agreement or re-solicit the requirement. This will cause an additional strain on City resources.
- Addressing situations where there are collective bargaining agreements that provide a different amount of compensated time off – the current Living Wage Policy allows parties with collective bargaining agreements to supersede the requirements of the Policy.

Option 3 would make no change to the current Living Wage Policy. As mentioned previously in this report, the City's living wage rate continues to be higher than Los Angeles, Oakland and San Francisco's living wage rates; a higher hourly wage rate allows workers to have a higher take home pay as a trade off for compensated days off.

### **Implementation and Enforcement**

Should the City Council desire to require compensated time off on living wage contracts, the Finance Department/Purchasing Division, OEA and the City Attorney's Office would be responsible for implementation and working through the issues identified above in Option 2. Enforcement of the revised Policy would continue to be the responsibility of OEA. Tasks related to implementation include: updating OEA's service and maintenance labor compliance documents, forms and instructional materials to reflect the new requirement; and outreach and training the impacted vendor community and various City departments on the new requirements. On the monitoring and enforcement front, compensated time off would require contractors to provide documentation and proof of paid time off to the City. OEA envisions documentation and proof of compensated time off to be provided by the vendors. Documentation would include a copy of the vendor's employee handbook that articulates benefits along with an accounting of each employee's (working on the City contract) paid time off accrual.

### **PUBLIC OUTREACH**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or

a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The recommended action does not meet any above criteria; however this memorandum will be posted on the City's website for the June 5, 2012 City Council agenda. Additionally, staff has contacted current City vendors, the San Jose/Silicon Valley Chamber of Commerce and Working Partnerships.

A much broader outreach effort to the vendor community and other interested stakeholders would occur should the City Council provide direction to advance the concept of requiring compensated time off on living wage contracts.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, City Manager's Office and the Finance Department.

### **CEQA**

CEQA: Not a Project, File No. PP10-069(a), Staff Reports.

/s/  
DAVID SYKES  
Director, Public Works

For questions, contact Nina Grayson, Office of Equality Assurance, at 408-535-8455.

### Attachments

1. Councilmember Rocha's December 12, 2011 memorandum
2. City Attorney's February 1, 2012 memorandum
3. Department of Public Works' February 2, 2012 memorandum





## Memorandum

TO: HONORABLE MAYOR  
AND CITY COUNCIL

FROM: Councilmember  
Donald Rocha

SUBJECT: LANDSCAPING CONTRACT

DATE: December 12, 2011

Approved

*Don Rocha*

Date

*12/12/11*

### RECOMMENDATION

As part of the motion on this item, direct the City Attorney and the City Manager to:

1. Evaluate the various means by which the City can ensure that basic vacation, sick leave and holiday benefits are provided to contract employees, and report back to Council on the range of available options. As part of this analysis, staff should evaluate the possibility of adding criteria to our Request for Proposal (RFP) process that would award points based on the level of leave benefits a given proposer provides to employees.
2. With the assistance of the City's Human Resources staff, attempt to determine industry norms for provision of vacation, sick leave and holiday benefits that may be suitable as minimum standards for City contractors.

### ANALYSIS

A few weeks ago, I was disturbed to learn that our janitors only receive 5 vacation days and 5 holidays per year. My concern has deepened after learning that the landscaping contract before us today would provide a similarly low level of time off for workers. I feel responsible for not having raised this issue earlier, but now that we do know about it, I believe swift action is imperative. I recommend that we direct staff to report back to us on the various means by which we can ensure that contract employees receive a basic level of time-off benefit.

As a measure of just how low the benefits provided in to some of our contract employees are, consider them in comparison to the average level of benefit provided in the private sector. According to the March 2011 National Compensation Survey from the Federal Bureau of Labor Statistics, the following are average benefit rates in the United States:

Employee Tenure	Mean Number of Vacation Days for Private Sector Employees in 2011	Mean Number of Sick Days received by Private Sector Employees in 2011	Mean Number of Paid Holidays for Service Workers in 2011
0-5 years	10	8	6
More than 5 years	14	8	

*Please see Attachments A, B and C for full data and note that holiday benefits in this data set are broken out by industry and job type, not by tenure.*

It seems equitable that the private sector contractors engaged by the City at least provide their employees the average number of days offered in the private sector. As I understand it, the City does collect data on days off as part of the so-called "third tier review" of RFP's, but does not use this information in evaluating proposals. I believe that making the issue of time-off benefits a formal part of the RFP process may be one way to move towards minimally adequate benefit levels, but I'm interested in hearing from staff on all possible approaches to this issue.

Some might suggest that contract employees—janitors or landscapers, for instance—don't deserve to have a basic level of benefits. In response, I would point out that one of the key principles of our democracy is that all human beings are morally equal. Just because some of our contract employees may still be overcoming social and economic barriers, and thus may not yet have a high level of education or work experience, doesn't mean that they don't have human needs, like the need to rest, the need to meet family obligations, the need to take care of pressing personal business. If they have no choice but to work all the time, they can't meet their needs as a person and member of society.

Others may argue that we need not worry because some of our contract employees are represented by a union: they can negotiate for benefits on their own. I would respond that, as an employer and a public agency, it is ultimately our responsibility—not anyone else's—to provide a basic level of benefit that allows those who serve our city to lead a dignified life. If it is within our power to promote minimally acceptable working conditions, we should not sit idly by.

This memo is not intended to express any opinion on the wisdom of contracting out City positions. Instead, I simply seek to establish that insofar as we do contract out, we do it in accordance with our values as citizens of a democracy. There may be some limited cost to amending our RFP process or establishing minimum benefit standards, but that should not dissuade us from doing what's right. Any additional cost pales in comparison with the value of treating other human beings with respect and dignity.

# ATTACHMENT A

Source: www.bls.gov/ncs/ebs/benefits/2011/ownership\_private.htm

Table 38. Paid vacations: Number of annual days by service requirement,<sup>1</sup> private industry workers, National Compensation Survey, March 2011

(All workers with paid vacations = 100 percent)

Characteristics	Paid vacation days by length of service <sup>2</sup>						Mean number of days	Median number of days
	Less than 5 days	5 to 9 days	10 to 14 days	15 to 19 days	20 to 24 days	Greater than 24 days		
<b>After 1 year</b>								
All workers	7	38	38	12	6	2	10	10
Full time	4	37	30	13	0	2	10	10
Part time	24	48	21	4	3	1	7	6
Union	6	47	37	7	3	2	9	8
Nonunion	7	37	30	12	0	2	10	10
1 to 99 workers	0	45	34	0	3	1	8	8
1 to 49 workers	9	45	34	0	3	(3)	8	8
50 to 99 workers	7	47	34	0	3	—	8	7
100 workers or more	6	31	37	16	0	3	11	10
100 to 499 workers	7	41	35	12	4	2	9	10
500 workers or more	3	19	40	18	14	6	13	10
<b>After 5 years</b>								
All workers	2	10	37	34	11	8	14	16
Full time	1	8	37	36	12	7	14	15
Part time	10	24	38	20	6	4	11	10
Union	1	7	47	33	0	4	13	12
Nonunion	2	11	35	34	12	7	14	15
1 to 99 workers	3	14	40	32	0	4	13	10
1 to 49 workers	3	10	39	31	8	3	12	12
50 to 99 workers	2	10	44	33	7	4	13	12
100 workers or more	1	8	33	35	15	0	15	15
100 to 499 workers	1	8	41	34	11	4	14	14
500 workers or more	1	4	24	37	20	14	17	16

numbers that appear in the memo

See footnotes at end of table.

Table 38. Paid vacations: Number of annual days by service requirement,<sup>1</sup> private industry workers, National Compensation Survey, March 2011—Continued

(All workers with paid vacations = 100 percent)

Characteristics	Paid vacation days by length of service <sup>2</sup>						Mean number of days	Median number of days
	Less than 6 days	6 to 9 days	10 to 14 days	15 to 19 days	20 to 24 days	Greater than 24 days		
<b>After 10 years</b>								
All workers	2	7	10	41	22	13	17	16
Full time	1	0	18	42	23	18	17	15
Part time	0	10	17	34	14	9	14	15
Union	1	4	11	58	10	9	17	16
Nonunion	2	8	18	39	22	13	17	16
1 to 99 workers	3	12	21	37	17	7	19	15
1 to 49 workers	3	13	23	37	20	7	18	15
50 to 99 workers	2	8	10	42	25	18	18	16
100 workers or more	1	4	19	49	22	10	17	15
100 to 499 workers	(3)	2	7	33	30	27	20	20
500 workers or more								
<b>After 20 years</b>								
All workers	2	7	13	19	35	25	19	20
Full time	1	5	13	19	36	28	20	20
Part time	0	17	14	10	28	17	18	15
Union	1	3	7	11	43	36	21	20
Nonunion	2	7	13	20	34	23	19	20
1 to 99 workers	3	11	18	25	28	15	18	16
1 to 49 workers	3	13	20	28	25	14	18	15
50 to 99 workers	2	7	14	25	34	17	18	20
100 workers or more	1	3	8	13	42	34	22	20
100 to 499 workers	1	4	9	18	45	23	20	20
500 workers or more	(3)	1	8	7	38	48	24	24

1. Employees who are granted a specific number of days after completion of the indicated length of service or accrue days during the next 12-month period. The total number of days is assumed to be available for use immediately upon completion of the service interval. Periods of service are chosen arbitrarily and do not necessarily reflect individual practices for progression. Fractional vacation amounts were rounded to the nearest full number of days.

2. Employees eligible for paid vacations but who have not fulfilled the minimum service requirement are included as receiving 0 days. Estimates include plans that are

exclusively for paid vacation and vacation plans that are part of a consolidated leave plan that provides a single amount of time-off for workers to use for multiple purposes.

3. Less than 0.5 percent.

NOTE: Because of rounding, sums of individual items may not equal totals. Dash indicates no workers in this category or data did not meet publication criteria. For definitions of major plant, key provisions, and related items, see the "Glossary of Employee Benefit Terms" at www.bls.gov/ncs/ebs/glossary20102011.htm.

# ATTACHMENT B

Source: [www.bls.gov/ncs/ebs/benefits/2011/ownership\\_private.htm](http://www.bls.gov/ncs/ebs/benefits/2011/ownership_private.htm)

Table 36. Paid sick leave: Number of annual days by service requirement,<sup>1</sup> private industry workers, National Compensation Survey, March 2011

(All workers with fixed number of days per year sick leave plans = 100 percent)

Characteristics	Paid sick leave days by length of service <sup>2</sup>					Mean number of days	Median number of days
	Less than 5 days	5 to 9 days	10 to 14 days	15 to 29 days	Greater than 29 days		
<b>After 1 year</b>							
All workers	20	66	21	3	1	8	0
Full time	16	66	22	3	1	8	0
Part time	32	49	17	—	—	6	6
Union	18	43	33	5	1	8	6
Nonunion	20	67	19	2	—	8	6
1 to 99 workers	28	57	16	2	(3)	7	6
1 to 49 workers	26	57	18	1	1	7	5
50 to 99 workers	27	57	13	—	—	6	6
100 workers or more	16	64	26	4	2	9	6
100 to 499 workers	19	63	17	2	(9)	7	6
500 workers or more	9	42	39	6	4	11	9
<b>After 5 years</b>							
All workers	10	66	22	3	2	8	6
Full time	10	68	23	3	2	9	0
Part time	31	60	17	—	—	7	6
Union	16	44	33	5	2	8	6
Nonunion	10	67	20	2	2	8	0
1 to 99 workers	24	57	18	2	1	7	6
1 to 49 workers	23	58	19	2	1	7	6
50 to 99 workers	26	57	14	—	—	8	6
100 workers or more	13	63	22	3	3	10	6
100 to 499 workers	17	62	18	2	1	7	6
500 workers or more	6	41	40	6	7	13	10

Numbers that appear in the Memo

See footnotes at end of table.

Table 36. Paid sick leave: Number of annual days by service requirement,<sup>1</sup> private industry workers, National Compensation Survey, March 2011—Continued

(All workers with fixed number of days per year sick leave plans = 100 percent)

Characteristics	Paid sick leave days by length of service <sup>2</sup>					Mean number of days	Median number of days
	Less than 5 days	5 to 9 days	10 to 14 days	15 to 29 days	Greater than 29 days		
<b>After 10 years</b>							
All workers	19	66	22	3	2	9	6
Full time	16	66	23	3	2	9	0
Part time	31	48	17	—	—	7	6
Union	19	44	32	6	2	10	7
Nonunion	18	68	21	2	2	9	6
1 to 99 workers	24	57	18	2	1	7	6
1 to 49 workers	23	57	17	2	1	7	6
50 to 99 workers	28	58	14	—	—	7	6
100 workers or more	13	63	22	4	3	11	6
100 to 499 workers	18	62	18	2	1	8	6
500 workers or more	0	40	40	6	7	16	10
<b>After 20 years</b>							
All workers	18	66	22	3	2	9	6
Full time	18	66	23	3	2	10	6
Part time	31	48	17	—	—	7	6
Union	16	44	31	7	2	10	7
Nonunion	18	66	21	2	2	9	6
1 to 99 workers	24	57	18	2	1	7	6
1 to 49 workers	23	57	17	2	1	7	6
50 to 99 workers	28	58	15	—	—	7	6
100 workers or more	12	63	22	4	3	12	6
100 to 499 workers	18	63	16	2	1	8	6
500 workers or more	7	49	40	6	7	19	10

<sup>1</sup> Employees either are granted a specific number of days after completion of the indicated length of service or accrue days during the next 12-month period. The total number of days is assumed to be available for use immediately upon completion of the service interval. Periods of service are chosen arbitrarily and do not necessarily reflect individual provisions for progression.

<sup>2</sup> Employees eligible for paid sick leave but who have not satisfied the minimum service requirement are included as receiving 0 days.

<sup>3</sup> Less than 0.5 percent.

NOTE: Because of rounding, sums of individual items may not equal totals. Dash indicates no workers in this category or data did not meet publication criteria. For definitions of major plans, key provisions, and related terms, see the "Glossary of Employee Benefit Terms" at [www.bls.gov/ncs/ebs/benefits/2010/201011.htm](http://www.bls.gov/ncs/ebs/benefits/2010/201011.htm).

# ATTACHMENT C

Source: www.bls.gov/ncs/ebs/benefits/2011/ownership\_private.htm

Table 34. Paid holidays: Number of days provided, private industry workers, National Compensation Survey, March 2011

(All workers with paid holidays = 100 percent)

Characteristics	Paid holidays											Mean number of days	Median number of days
	Less than 6 days	6 days	7 days	8 days	9 days	10 days	11 days	12 days	13 days	14 days	Greater than 14 days		
All workers	10	25	13	14	9	14	6	4	1	1	2	8	8
<b>Worker characteristics</b>													
Management, professional, and related	3	15	13	14	12	21	9	7	2	2	2	8	0
Management, business, and financial	2	11	11	14	13	25	6	8	2	2	2	8	0
Professional and related	3	17	14	14	11	18	6	7	2	2	2	9	0
Service	28	27	14	13	6	5	4	2	1	1	1	6	6
Protective services	20	20	14	13	8	3	6	3	1	1	1	7	7
Sales and office	10	32	13	13	8	14	6	3	1	1	1	7	6
Sales and related	18	47	12	10	6	6	2	1	(1)	1	1	6	6
Office and administrative support	7	24	14	14	10	10	8	3	1	1	1	6	6
Natural resources, construction, and maintenance	10	31	18	13	7	11	5	3	1	(1)	1	7	7
Construction, extraction, farming, fishing, and forestry	14	32	15	13	6	8	3	1	1	1	1	7	7
Installation, maintenance, and repair	7	30	16	12	7	13	6	4	1	(1)	1	6	6
Production, transportation, and material moving	6	23	12	16	10	14	7	4	2	1	3	8	8
Production	6	18	12	14	10	10	6	3	1	1	4	8	8
Transportation and material moving	11	30	12	17	9	10	5	3	1	1	1	7	7
Full time	8	23	14	14	10	18	7	6	2	1	2	6	6
Part time	20	35	11	10	4	7	3	1	(1)	(1)	1	6	6
Union	2	16	10	16	11	18	11	7	3	2	6	8	0
Nonunion	11	28	14	13	9	14	6	4	1	1	1	6	7
<b>Average wage within the following categories:<sup>2</sup></b>													
Lowest 25 percent	27	35	14	10	4	6	2	1	(1)	1	1	8	8
Lowest 10 percent	49	28	11	7	3	2	2	1	1	1	1	5	8
Second 25 percent	11	32	14	14	9	12	5	2	1	1	1	7	7
Third 25 percent	6	22	13	16	10	10	8	5	2	1	1	8	8
Highest 25 percent	3	13	12	15	12	22	9	0	2	1	3	9	8
Highest 10 percent	2	11	11	19	13	24	10	10	3	1	2	9	10
<b>Establishment characteristics</b>													
Goods-producing industries	8	17	17	13	12	18	9	7	3	1	3	8	8
Construction	16	35	19	13	8	6	2	(1)	1	1	1	7	6
Manufacturing	3	12	9	13	19	21	11	6	3	2	4	0	6
Service-providing industries	11	27	14	14	0	14	5	3	1	1	1	8	7
Trade, transportation, and utilities	14	40	12	13	7	7	4	2	1	(1)	1	7	6
Wholesale trade	6	22	19	18	11	10	7	4	1	1	2	0	6
Retail trade	21	58	10	7	3	2	1	1	1	1	1	6	6
Transportation and warehousing	6	22	9	24	7	17	8	1	1	1	1	6	6
Utilities	1	1	1	1	1	1	1	1	1	1	1	10	10

number that appears in the memo

See footnotes at end of table.

Table 34. Paid holidays: Number of days provided, private industry workers, National Compensation Survey, March 2011—Continued

(All workers with paid holidays = 100 percent)

Characteristics	Paid holidays											Mean number of days	Median number of days
	Less than 6 days	6 days	7 days	8 days	9 days	10 days	11 days	12 days	13 days	14 days	Greater than 14 days		
Information	1	18	30	17	8	17	7	4	(1)	1	1	8	8
Financial activities	1	11	8	10	13	35	9	3	1	(1)	1	9	9
Finance and insurance	1	8	5	20	14	41	7	9	1	(1)	1	9	10
Credit intermediation and related activities	2	7	3	14	7	57	6	3	1	1	1	9	9
Insurance carriers and related activities	1	9	12	28	18	20	8	1	1	1	1	9	9
Real estate and rental and leasing	3	24	17	13	10	10	1	4	1	1	1	8	8
Professional and business services	7	21	14	18	10	18	6	9	1	1	1	9	8
Professional and technical services	2	12	14	18	13	24	8	8	1	1	1	9	7
Administrative and waste services	14	36	18	13	6	8	5	3	2	2	3	7	7
Education and health services	7	29	18	12	6	11	6	3	2	2	3	7	7
Educational services	2	2	4	10	6	18	14	14	12	8	15	12	11
Junior colleges, colleges, and universities	2	1	7	7	10	16	15	11	11	16	12	12	12
Health care and social assistance	8	33	18	12	8	11	5	2	1	1	1	7	7
Leisure and hospitality	48	19	14	14	5	2	3	1	1	1	1	6	8
Accommodation and food services	63	10	15	14	6	1	1	1	1	1	1	5	5
Other services	10	26	13	14	7	11	4	6	2	4	3	8	8
1 to 99 workers	14	27	15	14	9	13	4	5	1	1	1	7	7
1 to 49 workers	14	27	16	15	8	13	4	2	1	1	1	7	7
50 to 99 workers	14	26	14	12	11	13	4	4	1	1	1	7	7
100 workers or more	7	23	12	14	9	18	6	6	2	1	2	8	8
100 to 499 workers	8	28	14	12	10	14	7	3	2	1	1	8	8
500 workers or more	6	16	9	15	9	19	10	8	3	2	4	8	9
<b>Geographic areas</b>													
New England	5	15	11	11	12	22	10	7	2	1	3	9	9
Middle Atlantic	10	21	19	12	10	16	8	6	2	1	3	8	8
East North Central	8	27	15	13	10	14	5	3	2	1	3	8	6
West North Central	6	31	19	15	9	8	8	1	3	1	1	7	7
South Atlantic	14	28	13	12	7	14	4	4	1	1	1	7	7
East South Central	16	21	14	16	9	12	6	3	1	1	1	7	7
West South Central	14	27	12	13	8	14	6	4	1	1	1	7	7
Mountain	11	28	12	18	0	11	7	3	1	1	1	8	7
Pacific	8	20	13	10	9	17	6	6	2	1	1	8	8

<sup>1</sup> Less than 0.5 percent.

<sup>2</sup> The categories are based on the average wage for each occupation surveyed, which may include workers with earnings both above and below the threshold. The average wages are based on the estimates published in the National Compensation Survey, Occupational Earnings in the United States, 2010. See Technical Note for more details.

NOTE: Because of rounding, sums of individual items may not equal totals. Dash indicates no workers in this category or data did not meet publication criteria. For definitions of major groups, key provisions, and related terms, see the Glossary of Employee Benefit Terms at www.bls.gov/ncs/ebs/glossary20102011.htm.



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE.

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Legal issues related to vacation,  
sick leave and holiday benefits  
for contract employees

**DATE:** February 1, 2012

## BACKGROUND

On January 4, 2012, the Rules and Open Government Committee directed the City Attorney and City Manager to:

1. Evaluate the various means by which the City can ensure that basic vacation, sick leave and holiday benefits are provided to contract employees, and report back to Council on the range of available options. As part of this analysis, staff should evaluate the possibility of adding criteria to our Request for Proposal (RFP) process that would award points based upon the level of leave benefits a given proposer provides to employees.
2. With the assistance of the City's Human Resources staff, attempt to determine industry norms for provision of vacation, sick leave and holiday benefits that may be suitable as minimum standards for City contractors.

The purpose of this memorandum is to provide you with the legal parameters with respect to regulating mandatory paid time off of City contractors.

## ANALYSIS

### *Prevailing Wage Policy*

For many decades, San José has been requiring the payment of a certain level of wages and benefits for workers providing services to the City under contracts. Prior to the late 1980's San José just relied on state and federal prevailing wages laws that related primarily to construction. With the adoption of its Prevailing Wage Policy, San José began to require the payment of a certain level of wages to workers in nonconstruction fields, such as janitorial, parking lot management, maintenance and other specific categories.

### ***Living Wage Policy***

In 1998, San José expanded its requirements by adopting its Living Wage Policy which provides for a minimum level of wages and health care benefits for workers that provide services under contract with the City. San José's Living Wage Policy does not specifically set forth any requirements with respect to compensated days off.

Before examining the legal issues related to possible changes to San José's Living Wage Policy, it is important to note a distinction between the Prevailing Wage Rates and the City's Living Wage Rate. The Prevailing Wage Rates that are set by the California Department of Industrial Relations include a dollar value that represents the prevailing amount of paid time off for that category of work. Thus, prevailing wage rates already include an element of compensated time off, and there is no additional requirement of a particular amount of mandatory compensated time off.

Living wage ordinances that have been adopted by other cities in the state, on the other hand, do include specific minimum number of compensated days off *in addition* to the requirement of the payment of the minimum rate of pay. For example, the living wage ordinances adopted by Los Angeles, Oakland and San Francisco each require a minimum of 12 paid days off. (See attached chart)

### ***ERISA***

Certain state and local efforts to set wages and benefits of workers have been subject to challenge on the ground that they are preempted by a federal act known as the Employee Retirement Income Security Act or ERISA. In ***WSB Electric, Inc. v. J.R. Roberts Corporation***, 88 F3d 788 (9<sup>th</sup> Cir. 1996), the United States Court of Appeals upheld California's prevailing wage statute against a claim of preemption under ERISA. The court found that the straight wage portion of the prevailing wage requirement was a subject of traditional state concern that did not fall within the ERISA definition of "employee benefit plan."

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In addition to the straight wage rate, prevailing wage rates have a fringe benefit rate per hour to compensate for additional fringe benefits such as health, pension and paid days off. The ***WSB Court*** held that although the prevailing wage *benefit* contribution rate had some connection, "however indirect," to employee benefit plans, the connection was not sufficient to find that the statute was preempted by ERISA.

Similarly, various Living Wage Ordinances and Policies, including San José's, have a straight wage amount that must be paid plus an additional amount for health benefits, if the employer does not provide health benefits. Most of the other cities that have a living wage ordinance also require a minimum number of paid days off as an additional element. (See attached chart) We are not aware of any case deciding whether a mandate to provide a set number of paid days off as part of a living wage requirement would be sufficiently connected to an employee benefit plan to render it preempted under ERISA.

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### **NLRA**

Courts have held that the National Labor Relations Act (NLRA) can preempt state laws that regulate activity that Congress intended to leave unregulated, such as the ability under the NLRA for an employer and its employees to collectively bargain over the terms of employment. Under these cases there is no preemption, however, of a state law which "establishes a minimal employment standard not inconsistent with general legislative goals of the NLRA." *Dillingham Construction N.A. Inc. v. County of Sonoma*, 190 F.3d 1034, 1038 (9<sup>th</sup> Cir. 1999), *quoting Metropolitan Life Ins. v. Massachusetts*, 471 U.S. 724, 757 (1985).

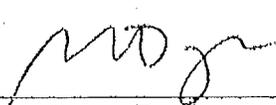
Because a number of mandatory days off would establish nothing more than a minimum labor standard, it would not likely be found to be preempted by the NLRA.

### **CONCLUSION**

If Council gives direction on this issue, the City Attorney's Office will work with City staff to formulate a policy within legal constraints.

RICHARD DOYLE  
City Attorney

By

  
\_\_\_\_\_  
Brian Doyle

Sr. Deputy City Attorney

cc: Debra Figone

## COMPARISON OF LIVING WAGE ORDINANCE REQUIREMENTS

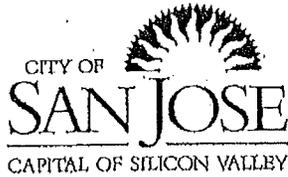
CITY	WAGE RATE	HEALTH BENEFITS	TIME OFF
LOS ANGELES	\$10.42 per hour if health benefits \$11.67 per hour without health benefits <sup>1</sup>	\$1.25/hour	12 compensated days off per year for sick leave, vacation or personal necessity at the employee's request. Employers are also required to permit employees to take at least an additional ten (10) days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his/her immediate family where the employee has exhausted his/her compensated days off for that year.
OAKLAND	\$11.35 per hour if health benefits \$13.05 per hour without health benefits <sup>2</sup>	\$1.70/hour	12 days off per year for sick leave, vacation or personal necessity at the employee's request. Employees accrue one compensated day off per month of full-time employment. Part-time employees accrue compensated days off in increments proportionally. Employees become eligible to use accrued days off after the first six months of employment or consistent with company policy whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve (12) compensated days off. Employees are also required to permit employees to take at least an additional ten (10) days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his/her immediate family where the employee has exhausted his/her compensated days off for that year. The Ordinance does not mandate the accrual from year to year of uncompensated days off.
SAN FRANCISCO	\$12.06 per hour <sup>3</sup>	* <sup>4</sup>	Compensated time off in an hourly amount that on an annualized basis for a full-time employee equals twelve (12) days per year. Time off vests at the end of the applicable pay period and may be used for sick leave, vacation or personal necessity. If a contractor reasonably determines in good faith that the contractor cannot comply with this requirement for compensated time off, the contractor is required to provide the covered employee with a cash equivalent of such compensated time off. Employers are also required to provide uncompensated time off in an hourly amount that on an annualized basis for a full-time employee equals ten (10) days per year. Time off vests with the covered employee at the end of the applicable pay period and may be used at the option of the covered employee for sick leave, for the illness of the covered employee or such covered employee's spouse, domestic partner, child, parent, sibling grandparent of grandchild.
SAN JOSE	\$13.59 per hour if health benefits \$14.84 per hour without health benefits	\$1.25	<i>No Requirement</i>

<sup>1</sup> Adjusted annually to correspond with adjustment, if any, to retirement benefits paid to members of the Los Angeles City Employees Retirement System (LACERS). The LACERS Board approved a 1.2% adjustment for Fiscal Year 2011-2012.

<sup>2</sup> Adjusted annually, not later than April 1 in proportion to the increase immediately preceding December 31<sup>st</sup> of the year earlier level of the Bay Region Consumer Price Index as published by the US Department of Labor/Bureau of Labor Statistics.

<sup>3</sup> Adjusted by prior year's increase, if any, in the CPI

<sup>4</sup> San Francisco has a separate ordinance that mandates a certain level of health care be provided by a wide range of employers that do business with and within the city.



# Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE FROM: David Sykes

SUBJECT: SEE BELOW

DATE: February 2, 2012

Approved

Date

2/3/12

SUBJECT: OPTIONS RELATED TO VACATION, SICK LEAVE AND HOLIDAY BENEFITS FOR CONTRACT EMPLOYEES

## BACKGROUND

On December 13, 2011 [Item 3.5], the Council referred to the Rules and Open Government Committee a memo from Councilmember Rocha dated December 12, 2011. Councilmember Rocha's memo recommended that the City Attorney and City Manager evaluate: (1) various possibilities for the City to ensure that basic vacation, sick leave and holiday benefits are provided to contract employees; and (2) adding criteria to the City's Request for Proposal process to evaluate and award points based on the level of leave benefits proposers provide to their respective employees.

On January 4, 2012 [Item H.2], the Rules and Open Government Committee meeting referred Councilmember Rocha's proposal to the City Attorney for legal analysis and to the City Manager's Office for a report on the range of options.

## ANALYSIS

Although a full analysis has not been conducted, staff sees three possible options for the Council to consider. Following is a brief description of the options, with some issues to consider and a very cursory estimate of the additional work effort needed to develop and implement each option. If the Council is interested in a particular option, a full workload assessment per City Council Policy 0-12 would need to be performed.

Option 1- Adding criteria to the City's Request for Proposal (RFP) process that would award points based on the level of leave benefits a given proposer provides its employees.

Workload Effort: High

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Considerations:

- Staff would need to develop criteria and points to incorporate into the current RFP process.
- Currently, 15% of the available RFP points are reserved for Local and Small Businesses (LBE/SBE) and for Environmental Preferable Procurement (EP3). Additional points set aside for compensated time off will erode the importance of Tier 1 (technical) and Tier 2 (cost) criteria. Conversely, setting aside a relatively small weighting for compensated time off may cause proposers to not address it.
- Evaluation teams are qualified to evaluate technical issues but not well versed to evaluate fringe benefit packages and compensated time off. From an operational perspective, it may require a separate team to evaluate and score the non-technical aspect of the proposals or additional training for the staff conducting the RFP would need to be conducted.
- Evaluating benefit packages is somewhat subjective and may be challenging to implement. For instance, is a lower hourly rate of pay and more compensated time off preferable to a higher hourly rate of pay with less time off? A subjective evaluation of benefit packages could lead to a higher potential for protests based on the arbitrary and somewhat ambiguous nature of the scoring.

Option 2 – Amend City's Living Wage Policy to Mandate Compensated Days Off

Workload Effort: Moderate

Considerations:

- Staff has looked at other cities' living wage ordinances. The cities of Los Angeles, Oakland and San Francisco mandate 12 compensated days off per year. The City Attorney's memo dated February 1, 2012, includes specific information regarding each city's requirements.
- The City's current Living Wage Policy would need to be amended and various boilerplate documents and materials would need to be updated to reflect changes.
- Requiring a minimum number of compensated days off could increase costs to the City. Further analysis on this is needed, but a preliminary evaluation indicates a 0.5% to 2% increase is possible.
- Outreach to stakeholders such as the vendor community and labor interest groups would need to be conducted.
- Operational considerations include implementation and enforcement. Staff will need to consider a method for confirming that benefits are being received as specified.

Option 3 – Make No Change

Workload Effort: Not Applicable

Considerations:

- The City's living wage rates are currently \$1.53 to \$3.17 p/h higher than Los Angeles, Oakland, and San Francisco's living wage rates. One could argue that a higher living wage rate compensates the worker for the lack of compensated days off and thus no further action is required.

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**PUBLIC OUTREACH**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

By providing this document to the Rules and Open Government Committee this memo will be posted on the City's website with the Rules Committee meeting agenda for February 8, 2012 and interested public will have the opportunity to review.

**COORDINATION**

This memorandum has been coordinated with the City Manager's Office, Finance Department/Purchasing Division and the City Attorney's Office.

/s/

DAVID SYKES  
Director of Public Works

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For more information contact: Nina Grayson, Division Manager, at (408) 535-8455.