



CITY OF HAYWARD

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Cover Memo

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DATE: February 23, 2016

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT

Review of Potential Elements of Citywide Community Workforce Agreement

RECOMMENDATION

That Council receives this report and provides direction to staff on whether to pursue a Citywide Community Workforce Agreement (CWA). If Council chooses to pursue a CWA, staff requests direction on the elements to be negotiated with the Alameda County Building Trades Council and affiliated parties.

SUMMARY

The Building and Construction Trades Council of Alameda County (“Building Trades Council”) and the City of Hayward have been discussing and working on a Community Workforce Agreement (CWA) for the past four years. In 2015, the Building Trades Council and the City executed a CWA for the new Library and Community Learning Center project, which was advertised for construction bids in May 2015. Staff has now had several months of experiencing in implementing the CWA for the Library construction project.

The Council has asked staff to bring forward an item that would allow for discussion of creating a “Citywide” CWA that could apply to a broader scope of projects within the community. Staff has drafted this report to help frame the policy discussion for the Council and to receive direction on how a Citywide CWA might be structured.

If the Council directs staff to pursue a Citywide CWA based on the discussion at this meeting, staff will work with representatives from the Building Trades Council to negotiate the various terms and conditions. These terms and conditions would be similar to those in the CWA for the Library project. The key difference will be the scope of projects subject to the Citywide CWA. This agreement would then return to Council for final approval and eventual implementation.

BACKGROUND

Over the years, CWAs/PLAs have been utilized in the construction industry to assure that labor issues related to major construction projects are minimized and to accomplish some local goals. They are a type of collective pre-hire bargaining agreement between project managers or owners and organized labor that outline a variety of employment and other working conditions with the express purpose of providing

peaceful settlement of labor disputes and grievances without work stoppages, strikes, or lockouts; thereby allowing for the timely and cost-effective completion of projects.

CWA agreements were entirely prohibited on federal and federally funded construction projects from 2001 to 2009 pursuant to Presidential Executive Order. In 2009, a new Executive Order was issued that encouraged Project Labor Agreements (PLAs) on large-scale construction projects where the total cost to the Federal Government is \$25 million or more. One exception to this is that projects receiving Federal Highway funds cannot have a local hire requirement. These types of agreements have been historically used on larger scale construction projects until recently when some cities have negotiated agreements to apply them more broadly to smaller public works projects on a citywide basis.

Hayward has long been a solid supporter of labor rights, fair wages, and the creation of quality jobs within the community. Many actions taken by Council over time are in support of these values. For instance, Hayward has long required payment of prevailing wages on construction projects whether or not such was required by state or federal regulations. Hayward has had a Living Wage Ordinance in place for many years. In addition, the creation of quality jobs is a core value of the Economic Development Strategic Plan.

While California General Law cities are constrained by the elements of the Public Contract Code when bidding construction projects, charter cities, like Hayward, have much more latitude to establish local bidding criteria to address other legitimate municipal concerns, such as to promote the hiring of local residents or the support of local business where possible. Some charter cities have chosen to simply adopt local hire ordinances or require the payment of prevailing wages, while others have gone a step further to adopt CWAs, or PLAs, to govern either individual, large scale construction projects, or to more generally include larger public works projects in a community.

As noted above, Hayward already requires the payment of prevailing wages on its public works projects. Based on staff evaluation of construction projects for the past three to five years, more than 90% of those projects were performed by contractors that already belong to a local labor union (i.e., “union contractors”). Despite this historically progressive approach, Council has over the last few years expressed interest in being even more proactive regarding assuring quality wages on all City construction projects, supporting and procuring from local businesses, and protecting and increasing quality jobs for local residents.

In April 2015, the Council directed staff to negotiate and execute a CWA with the Building Trades Council for the new Library and Community Learning Center (<http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2015/CCA15PDF/cca041415full.pdf>). That agreement includes the following types of provisions:

- 1) Requirements that the contractor and subcontractors on the project use local union hiring halls to hire trades workers for the projects;
- 2) “Local Hire” provision, encouraging the contractor to employ Hayward residents or HUSD graduates;
- 3) Requirements that all hired workers pay union dues and other benefit trust fund contributions;
- 4) Management rights regarding employment procedures, including hiring, discipline, etc;
- 5) Grievance and arbitration procedures to allow for timely resolution of disputes;

- 6) Standardized work rules and regulations; and
- 7) Provisions governing requirements around apprenticeships.

The April 2015 report to Council outlined many of the benefits and challenges associated with CWAs (Report is linked above).

DISCUSSION

Prior reports to Council have reported on Citywide CWAs in the City of Berkeley, where all City capital projects over \$1 million in value are subject to the Citywide CWA; and HUSD, where a CWA is applicable to capital projects funded by recent school bonds. In addition, the only Alameda County agency that has entered into a CWA is the General Services Agency and the CWA only applies to “vertical” projects (those that include building construction). The Council has asked staff to bring forward an item that would allow for discussion of creating a broader “Citywide” CWA that could apply to a broader scope of projects within the community. Staff has drafted this report to help frame the policy discussion for the Council and to receive direction on how a Citywide CWA might be structured.

There are a number of policy questions for Council discussion related to a Citywide CWA/PLA.

- 1) Should a Citywide CWA apply only to City projects or should it also apply to private development projects?

The first element needed for discussion of this question is a common definition of “private” projects. For purposes of the Citywide CWA, a private project is in essence any project where the City does not provide a financial contribution to the project in some way. The only real role the City has in these projects is to review the land use application and perform the environmental review. Staff is not aware of any other local agencies that require CWAs on all “private” projects. Staff recommends that Council not apply a Citywide CWA to “private” projects at this time.

One of the Council’s key priorities is economic development and encouraging an environment where the City has a reputation of being business friendly. There is an overall opinion in the development community that CWAs make development more costly and more challenging. In addition, staff has received data from a developer who built the same residential product (single family homes with the same floor plans) in two adjacent communities in the Bay Area, one that required a CWA and one that did not. The building cost per square foot for the CWA project was \$4 more expensive per square foot than the building cost for the non-CWA project. Staff recommends that the Council exclude “private” projects from the requirements of the CWA/PLA due to the current economic conditions and land values in Hayward. This does not prohibit the BTC and a private developer from entering into a CWA/PLA on a private project within the City should they choose to do so. However, it removes the City from the negotiating and monitoring process on these agreements.

An important distinction of “private” projects are those that require or request the City’s partnership, whether financially or in some other manner. Often there is a partnership or a request for the City’s participation because the City wants to achieve a broader goal or priority for the community that may not be entirely economically feasible, (e.g. enhanced community benefits or a higher level of sustainable features). SB 972 requires that developers pay prevailing wages on any projects where they have received a fee waiver, reduction, or credit on City permit fees. This legislation addresses one of the key

goals of the Council, which is to ensure that workers in Hayward receive fair and equitable wages. If there are private development projects in the future that require or request the City's partnership, staff would recommend that these be evaluated individually and in the current context at that time. In these circumstances (which are likely to be small in number), staff would recommend a case-by-case review of whether these projects would be subject to the requirements of a Citywide CWA/PLA given the competing Council priorities that might arise.

Another important distinction and essential exemption from the Citywide CWA/PLA for "private" projects would be the City's future entitlement and sale of any of the former Caltrans Route 238 Bypass parcels (or other City-owned parcels). The primary goals of selling these parcels are to ensure development that is consistent with the City's General Plan and zoning requirements and goals, and to maximize the dollar value generated by the sale of the properties. The City is not financially participating in these transactions; the City is simply acting as the conduit to get these parcels onto the private market. Associating the sale and development of these land parcels with a Citywide CWA/PLA would dramatically reduce staff's ability to achieve the larger goals expressed above.

2) Scope of public projects to be included in the Citywide CWA

If the Council chooses to only pursue a Citywide CWA on "public" projects, there are a few questions that arise where Council direction is requested.

- a. Should the CWA apply to all types of capital projects or only to those above a certain project cost threshold?

In prior discussions with the BTC, staff had identified the types of public projects that would be subject to the CWA. These generally included on-site construction, demolition, and site preparation. Other off-site fabrication and other specialty work could be covered by the CWA if this work is covered under an existing master labor agreement between the trade unions and contractor representatives. The CWA would only apply to projects awarded by the City and not projects awarded/managed by another third party public agency where the City has contributed funding. An example of this might be the upgrade of AC Transit bus shelters throughout the City. The City might contribute supplemental funding to a project of this nature to enhance the outcome for the community but AC Transit would be the agency responsible for awarding the contract and managing the project. This list of projects mirrors what other local agencies have covered as part of their CWAs.

In addition, other agencies have established a minimum project cost threshold. If the project construction cost is above a certain amount, then that project (and the contractor selected to perform the work) would be subject to the requirements of the CWA. In the City of Berkeley, for example, a \$1 million minimum project cost threshold was established. On projects smaller than this amount, monitoring of the agreements becomes more burdensome on staff as the contractors bidding on these types of projects are typically less knowledgeable about navigating the various requirements. In addition, smaller projects are often more time-sensitive and may require flexibility to meet time or other demands. This would require more time to secure and implement contracts, and a lot more staff engagement and interaction with the contractor to ensure understanding of and compliance with the CWA requirements. Given these issues, staff would actually prefer a higher threshold (e.g. \$3 million or greater).

In addition, staff would recommend that the City retain the ability to exempt certain specialty or unique projects from the CWA requirements as needed and upon approval by the City Council. Given that staff has not implemented this type of agreement before, staff has concerns that there may be projects that arise during the term of the agreement where implementation of a CWA may not be in the best interest of the City or the community for a variety of reasons. Staff would recommend retention of the right to ask the Council to exempt a project from the CWA if the circumstances warrant. This has been a key discussion item with the BTC previously. Staff and the Building Trades would first meet in good faith to discuss the exemption. However, if the parties fail to reach a consensus, staff would be able to bring the project to the Council for review and consideration.

Staff does not anticipate utilizing this mechanism very often for a couple of reasons. First and foremost, there will likely be limited examples where projects would need to be exempted from the CWA. Secondly, the desired goal would be to reach consensus with the Building Trades on these exemptions without the necessity of bringing the items to Council for direction.

Current experiences with Library CWA

Staff has been working with the BTC to implement the CWA for the Library and Community Learning Center project since May 2015. While the experience is relatively new, there are a few insights that can be shared with Council. The most important for Council consideration prior to embarking on a Citywide CWA is the amount of staff time spent on issues related to the CWA. This has been more burdensome on the project manager and Public Works management staff than previously anticipated by past Council discussions. For instance during the contract bidding period, obtaining Master Agreements for the bid documents involved contacting numerous sources to determine where information was located, contacting each of the building trades to get a copy of their master agreements, then distributing those agreements to plan holders and responding to questions related to the agreements. Clerical and engineering staff members were involved in making telephone calls to each trade and follow-up to obtain the master agreements.

Also, arranging for Pre-job conferences involves contacts with contractors, building trades, obtaining agreements to be bound, attending meetings, and follow-up. Each meeting takes between eight to twelve hours of staff time. There have been six meetings to date, with another two to four more expected. Staff has been separately tracking the hours spent administering the CWA. Currently, the project manager is spending between 5% to 10% of his time on issues related to the CWA. The Public Works department management team members are spending approximately 2% to 3% of their time on the CWA. At this current rate, the staff's administrative efforts for CWA will be at least \$100,000 at the completion of the project.

Given the volume of capital projects that the City designs and constructs every year and the low-level of staffing throughout the City, spending this much time on CWA implementation will impact the volume of work that staff can deliver. As discussed more in the fiscal impact section below, staff strongly recommends that if the Council wishes to pursue a Citywide CWA, an additional staff position for monitoring and implementing the agreement be added to the budget.

Hidden costs of CWA - At least two of the subcontractors who initially bid on the project and were selected by the general contractor have since declined working on the project primarily due to the

requirements of the CWA. The contractor was forced to re-bid that part of the project and will be required to pay more to attract the labor to perform the work. While the general contractor will need to absorb this cost given our current contract, this is an example of why contractors inflate their initial overall job estimates by 10-20% when bidding on a project that includes a CWA. They need to account for issues like this that will increase their costs of doing business.

One other issue that can become a hidden cost of a CWA is the payment of dual benefits and union benefit trust fund contributions by nonunion contractors. The payment of prevailing wages is required by law on all public works projects. Under the law's requirements, workers are paid a base salary component that must be in cash, and a benefits component that may be paid either as cash or as payments to a benefits program on behalf of the worker. Under a CWA/PLA, typically the benefits portion of workers' wages must be paid into the benefits program run by and for the benefit of the signatory union and its members. A nonunion contractor will be required to pay the benefits portion of its nonunion workers' wages to the union benefits plan even if they already have their own benefits program in place and even if the nonunion contractor's workers may never be entitled to receive the benefits through the union. The nonunion contractor may then have to pay the benefits portion a second time to its employees so that its employees receive the full value of their required wages. This could impact contractor participation and workforce equity and is an issue that would need to be monitored as part of a Citywide CWA.

Summary of Staff's Request for Council Direction

1. The first decision point for the Council associated with this report is whether to pursue a Citywide CWA.
2. If Council chooses to pursue a Citywide CWA, other decisions must be made:
 - a. Should the CWA apply to private and public projects or public projects only; how will each of these categories be defined; and will a CWA apply or not to the development and sale process of Caltrans lands?
 - b. Should there be a minimum project cost threshold for projects?
 - c. Should the CWA apply to all projects (i.e. should the CWA be restricted to vertical projects as is most common or apply to all projects such as roadways, sidewalks, utilities, etc.)?
 - d. Should Council retain the right to exempt future as yet unknown projects (in certain limited circumstances) based on recommendations from staff (and after first attempting to gain consensus with the BTC on these exemptions)?

ECONOMIC AND FISCAL IMPACT

There has been much debate over the years regarding the fiscal impacts of CWAs/PLAs and the actual benefits they achieve (i.e., smoother management/labor relationships, increased local hiring, and improved pay and benefits to workers over and above that of a prevailing wage job). Prior staff reports to Council have provided detail regarding project cost implications. There are academic studies on both sides of the issue indicating that the application of CWAs does or does not add costs to construction projects and does and does not achieve the other intended benefits.

Staff's two primary concerns related to the CWA are (1) the administrative burden on City project managers for implementing and monitoring the agreement and (2) the financial impact the CWA might have on limited project resources. These concerns have been somewhat substantiated through current experiences with implementing the CWA on the Library construction project.

The City of Berkeley has a staff position dedicated to working with the BTC and Public Works on implementation of the CWA and on workforce development. Having a single point of contact for implementation of the CWA is critical for a couple of reasons. First and foremost, it is essential for workload management with the current Public Works and Utilities staff members. Second, with a dedicated staff person, there will be consistent implementation of the CWA across all of the projects, potentially resulting in fewer issues or concerns and ultimately saving staff time. Project managers unfamiliar with the CWA would not have to spend valuable project development and management time learning the terms of the CWA, figuring out how to implement it, and developing the necessary relationships and lines of communication with both labor and contractor.

NEXT STEPS

If the Council so directs, staff will proceed to finalize negotiations on the Citywide CWA based on the direction provided by Council; and will bring the terms of the final agreement back for Council approval once negotiated with the BTC representatives.

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Approved by:



Fran David, City Manager