



2.4

DEPARTMENT
OF UTILITIES

ENGINEERING
SERVICES DIVISION

CITY OF SACRAMENTO
CALIFORNIA

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November 1, 2002

Law & Legislative Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: REPORT BACK - ISSUES RELATED TO STANDARD MINIMUM
QUALIFICATIONS FOR BIDDERS ON COMPETITIVELY BID PUBLIC
PROJECTS AND MODIFICATIONS TO THE MINIMUM QUALIFICATIONS
QUESTIONNAIRE**

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report recommends that the Law & Legislation Committee approve and forward to the City Council the attached resolution to authorize modifications to the Minimum Qualifications Questionnaire established under an amendment to Section 3.60.020 of the City Code.

CONTACT PERSONS: Gary A. Reents, Engineering Services Manager, 264-1433
Candace McGahan, Supervising Engineer, 264-1416
Fran Halbakken, Project Delivery Manager, 264-7194

FOR COMMITTEE MEETING OF: November 19, 2002

SUMMARY

This report addresses issues raised by Councilmembers regarding the Standard Minimum Qualifications for bidders on public works construction projects, adopted by the City Council on May 14, 2002, and recommends modifications to the Minimum Qualifications Questionnaire.



CITY OF SACRAMENTO
DEPARTMENT
OF UTILITIES

Making a Difference in Your Neighborhood

BACKGROUND INFORMATION

On May 14, 2002, the City Council adopted an amendment to City Code Section 3.60.020, in response to concerns of City Council regarding the qualifications of prime contractors bidding on public works projects and the quality of their work. The amendment authorized the concurrent adoption, by resolution, of Standard Minimum Qualifications for prime contractors that are determined by a bidder's answers to a short questionnaire accompanying each sealed proposal for competitively bid projects. Councilmembers identified several issues regarding the questionnaire that they asked staff to report back to the Law & Legislative Committee, including:

- Minimum qualifications vs. pre-qualification.

The Standard Minimum Qualifications will be applied to all competitively bid public projects. These qualifications pertain to past performance of the contractor and are determined through a questionnaire submitted at the time of bid. In addition to this requirement, large and/or complex City projects also have used, and will continue to use, a pre-qualification process in which a contractor must demonstrate its ability to perform specialized construction. Past projects that have utilized a pre-qualification procedure include the Sump 2 Improvement Project, expansion of the City's two water treatment plants, construction of the Sacramento River intake structure, and various City buildings. The contractor must complete an extensive pre-qualification package tailored to the specific project and must be approved (prequalified) to perform the work prior to being allowed to bid on the project.

- Comparison of Minimum Qualifications Questionnaire to the State's Department of Industrial Relations Model Questionnaire.

After authorizing legislation was enacted with the adoption of Public Contract Code Section 20101 in 1999, the State Department of Industrial Relations (DIR) adopted a model prequalification questionnaire establishing procedures for public entities to prequalify and rate prospective bidders for public works construction projects. Unlike some public entities, prior to the adoption of Public Contract Code Section 20101, the City of Sacramento, as a charter city, already possessed the authority to prequalify bidders on a public works construction project. The City has successfully utilized this procedure to prequalify bidders on numerous specialized projects, as noted above, and City staff intends to continue using this procedure, where appropriate, to assure that contractors performing City projects possess the necessary qualifications and experience.

The "minimum qualifications" approach enacted by the City Council on May 14, 2002, is not intended to replace this procedure, or perform a function analogous to the DIR's prequalification procedures. Rather than prequalifying and rating the ability of bidders to perform one or more public works construction contracts, the standard minimum qualifications adopted by the City Council are intended simply to establish minimum qualifications that all bidders must meet on all of the City's public works construction projects, in order to be considered a responsible bidder. As the title implies, the purpose of this requirement is to screen out bidders that do not possess a minimum level of qualifications deemed necessary to satisfactorily perform any project.

In spite of these differences, City staff used the DIR's Model Questionnaire as the starting point in developing the City's Minimum Qualifications Questionnaire. The goal in developing the questionnaire was to have a document that:

- ▶ Applied a minimum standard for all contractors, based on their past performance of public works construction contracts.
- ▶ Was objective and required no interpretation or subjective evaluation of answers.
- ▶ Did not extend project schedules.
- ▶ Did not appreciably increase project costs.
- ▶ Did not significantly complicate the bidding process for the contractor.

- Other Agencies' Programs.

As noted above, the DIR Model Questionnaire provides for a relatively elaborate prequalification process. Regional Transit uses the DIR's model with minor modifications. Other contractor qualification programs looked at by staff included those used by East Bay Municipal Utilities District, the City of Woodland, the Sacramento Housing and Redevelopment Agency, the City of West Sacramento, Fairfield Suisun Sewer District, Yolo County, the Sacramento County Water Agency, Placer County Water Agency and American Institute of Architects Document A305 - Contractor's Qualification Statement. These programs range from simple qualification statements based on past projects and reference lists to adaptations of the DIR's model. As stated above, the City's minimum qualifications approach is not intended to perform the same function as the DIR's prequalification process.

- Outreach

Prior to the City Council's action on May 14, City staff met with the Association of General Contractors (AGC) that represents union contractors. The AGC had a lot of input into the DIR's pre-qualification model and, although it supports use of that document, understood the City's need to have a short, concise minimum qualifications questionnaire. Many of the AGC comments were incorporated in the Minimum Qualifications Questionnaire adopted by the City Council on May 14. The Associated Builders and Contractors (ABC), representing non-union contractors, also reviewed the document and wrote to say that "the questions protect the public interest without inadvertently disqualifying any responsive and capable bidders."

Since the City Council's May 14 action, staff met with the Sacramento-Sierra Building and Construction Trades Council (Trades Council) representing union construction workers. The Trades Council had suggestions for the City's questionnaire, particularly adding a requirement that the contractor use apprentices, and adding a question addressing prevailing wage violations. To accommodate their concerns, questions 12 and 13 were added to address contractor compliance with California public works apprenticeship requirements and prevailing wage requirements. The Trades Council in a follow up letter, suggested some additional changes (see Exhibit B). Question 2 was broadened to include along with "firm", any of its owners, officers or partners. Other suggested changes were considered but not acted upon. Exhibit C is a letter from Staff to the Trades Council explaining the reasons for not making the those changes.

Additionally, Staff made minor modifications to question 6 to reflect the number of times a contractor has been assessed liquidated damages rather than the amount of days assessed. The total lost workday cases allowed to be exceeded in question 9 has been changed to 10 because the original 4.5 was an error and is actually below the national average.

A copy of the modified Minimum Qualifications Questionnaire has been sent to the AGC, ABC, the Trades Council and the Sacramento Black Chamber of Commerce.

FINANCIAL CONSIDERATIONS

No significant financial impacts resulted from the amendment to Section 3.60.020 adopted by the City Council on May 14, 2002.

POLICY CONSIDERATIONS

Requiring contractors competitively bidding on and performing the City's construction contracts to meet a standard minimum qualification level will help ensure the highest quality construction projects for the lowest cost by reducing the potential for cost overruns, delays and other adverse consequences of work by unqualified contractors.

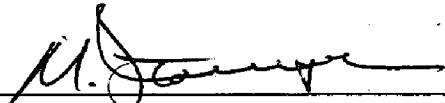
ENVIRONMENTAL CONSIDERATIONS


Adoption of the modified Minimum Qualifications Questionnaire constitutes general policy and procedure making that is not a project for which environmental review was required, pursuant to Section 15378 (b)(2) of the CEQA Guidelines.

ESBD CONSIDERATIONS

Not applicable. There are no goods or services being purchased as a direct result of this report.

Respectfully submitted,


For Jim Sequeira
Director of Utilities


for Mike Kashiwagi
Director of Public Works

RECOMMENDATION APPROVED:


Ken Nishimoto
Deputy City Manager

EXHIBIT A
MINIMUM QUALIFICATIONS QUESTIONNAIRE

Sacramento City Code section 3.60.020 authorizes the Sacramento City Council to adopt standard minimum qualifications for bidders on competitively bid public works construction projects, and requires, among other provisions, that a bidder meet such minimum qualifications at the time of bid opening to be considered responsible. On _____, the City Council adopted Resolution No. _____, establishing these standard minimum qualifications. Pursuant to City Code section 3.60.020, a bidder failing to meet these minimum qualifications at the time of bid opening shall not be considered a responsible bidder.

All bidders must demonstrate compliance with the minimum qualifications established by Resolution No. _____ by completing all of the questions contained in this questionnaire. If a bidder answers "yes" to any single question, fails to submit a fully completed questionnaire, or submits false information, this will result in a determination that the minimum qualifications are not met, and the bidder shall not be considered a responsible bidder for purposes of bidding on this contract. If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must separately meet these minimum qualifications for the Joint Venture to be considered a responsible bidder.

The City of Sacramento ("City") shall make its determination on the basis of the submitted questionnaire, as well as any relevant information that is obtained from others or as a result of investigation by the City. While it is the intent of this questionnaire to assist the City in determining whether bidders possess the minimum qualifications necessary to submit bids on the City's competitively bid public works construction contracts, the fact that a bidder submits a questionnaire demonstrating that it meets these minimum qualifications shall not in any way limit or affect the City's ability to: (1) review other information contained in the bid submitted by the bidder, and additional relevant information, and determine whether the contractor is a responsive and/or responsible bidder; or (2) establish pre-qualification requirements for a specific contract or contracts.

By submitting this questionnaire, the bidder consents to the disclosure of its questionnaire answers: (i) to third parties for the purposes of verification, investigation, and ; (ii) in connection with any protest, challenge or appeal of any action taken by the City; and (iii) as required by any law or regulation, including without limitation the California Public Records Act (Calif. Gov't Code sections 6250 et seq.). Each questionnaire must be signed under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the bidder submitting the questionnaire. If any information provided by a bidder becomes inaccurate, the bidder shall immediately notify the City and provide updated accurate information in writing, under penalty of perjury.

QUESTIONNAIRE

NOTICE: All of the following questions regarding "your firm" refer to the firm (corporation, partnership or sole proprietor) submitting this questionnaire, as well as any firm(s) with which any of your firm's owners, officers, or partners are or have been associated as an owner, officer, partner or similar position within the last five years.

The firm submitting this questionnaire shall not be considered a responsible bidder if the answer to any of these questions is "yes", or if the firm submits a questionnaire that is not fully completed or contains false information.

1. **Classification & Expiration Date(s) of California Contractor's License Number(s)** held by firm:

2. Has a contractor's license held by your firm and/or any owner, officer or partner of your firm been revoked at anytime in the last five years?
☐ Yes ☐ No
3. Within the last five years, has a surety firm completed a contract on your firm's behalf, or paid for completion of a contract to which your firm was a party, because your firm was considered to be in default or was terminated for cause by the project owner?
☐ Yes ☐ No
4. At the time of submitting this minimum qualifications questionnaire, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either California Labor Code section 1777.1 (prevailing wage violations) or Labor Code section 1777.7 (apprenticeship violations)?
☐ Yes ☐ No
5. At any time during the last five years, has your firm, or any of its owners, officers or partners been convicted of a crime involving the awarding of a contract for a government construction project, or the bidding or performance of a government contract?
☐ Yes ☐ No

6. Answer either subsection A or B, as applicable:

- A. Your firm has completed three or more construction contracts for the City within the last five years: Within those five years, has the City assessed your firm liquidated damages on three or more contracts for failure to complete contract work on time?

NOTE: If there is a pending court action challenging the City's assessment of liquidated damages on a City contract within the last five years, you need not include that contract in responding to this question.

☐ Yes ☐ No ☐ Not applicable

- B. Your firm has not completed at least three construction contracts for the City within the last five years: Within the last three years, has your firm been assessed liquidated damages on three or more government construction contracts for failure to complete contract work on time?

NOTE: If there is a pending administrative or court action challenging an assessment of liquidated damages on a government contract within the last three years, you need not include that contract in responding to this question.

☐ Yes ☐ No ☐ Not applicable

7. In the last three years has your firm been debarred from bidding on, or completing, any government agency or public works construction contract for any reason?

NOTE: If there is a pending administrative or court action challenging a debarment, you need not include that debarment in responding to this question.

☐ Yes ☐ No

8. Has CAL OSHA or federal OSHA assessed a total of three or more penalties against your firm for any "serious" or "willful" violation at any time within the last three years?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

9. In the last three years has your firm had a three year average incident rate for total lost workday cases exceeding 10?

NOTE: Incident rates represent the number of lost workday cases per 100 full-time workers and is to be calculated as: $(N/EH) \times 200,000$, where

N = number of lost workday cases (as defined by the U.S. Dept. of Labor, Bureau of Labor Statistics)
EH = total hours worked by all employees during the calendar year
200,000 = base for 100 equivalent full-time working (working 40 hours per week, 50 weeks per year)

☐ Yes ☐ No

10. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed penalties three or more times, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was a contractor?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

11. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed a single penalty of \$100,000 or more, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was the contractor?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

12. In the past three years, have civil penalties been assessed against your firm pursuant to California Labor Code 1777.7 for violation of California public works apprenticeship requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

13. In the past three years, has a public agency in California withheld contract payments or assessed penalties against your firm for violation of public works prevailing wage requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a withholding or penalty assessment, you need not include that withholding or penalty assessment in responding to this question.

☐ Yes ☐ No

VERIFICATION AND SIGNATURE

I, the undersigned, certify and declare that I have read all the foregoing answers to this Minimum Qualifications Questionnaire, and know their contents. The matters stated in these Questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed at _____, on _____.
(Location) (Date)

Signature: _____

Print name: _____

Title: _____

NOTE: If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must submit a separate Minimum Qualifications Questionnaire.



SACRAMENTO-SIERRA BUILDING & CONSTRUCTION TRADES COUNCIL

Representing over 25,000 union construction workers in Sacramento, Yolo, Placer, El Dorado, Amador, Nevada & Sierra Counties

October 16, 2002

Candace A. McGahan, P. E.
Supervising Engineer
City of Sacramento
Department of Utilities
1395 35th Avenue
Sacramento CA 95822

Re: Minimum Qualifications Ordinance

Candace:

We would like to begin by thanking you and your staff for the efforts you have put forth in drafting a minimum qualifications questionnaire for bidders on public works projects. The Building Trades is well aware of the problems the Public Works Department and the Public Utilities Department face in managing the multitude of projects that are in progress at any given time. This is why we consider a qualifications questionnaire to be invaluable in ensuring that capable qualified contractors are bidding on the projects being undertaken by the City of Sacramento.

While we spoke on the telephone yesterday, I became aware of the difference in opinions of the intentions and purposes of the qualifications questionnaire. I think we can agree that the qualifications questionnaire should be used as a tool that allows the City of Sacramento to screen and evaluate bidders based on reasonable and logical criteria.

During previous meetings and communications with your office, we were able to discuss the issues that the Building Trades thought were critical in respect to compliance with labor codes governing the California public works apprenticeship requirements and California public works prevailing wage requirements. The latest revisions to the Minimum Qualifications Questionnaire include questions that address these issues. While some of our concerns have been addressed in the latest revision, we want to be sure that you understand that the Building Trades does not consider these to be "social justice" issues. We consider these issues to be important because they are laws pertaining to California public works requirements.

You have indicated to me that this document is a Minimum Qualification Questionnaire that is not intended to be all encompassing. We would like to point out that there are issues that have not been addressed in this document and may not be Building Trades issues, but should still be considered to make certain that the document is effective.

Let's examine question #2, *Has your firm's contractors license been revoked at any time in the last five years?* This question is vague and should be broadened to include any contractors license held individually or jointly by any owners, officers, or partners of the firm. This is similar to the wording of question #5.

Question #9, *In the last three years has your firm had a three year average incident rate for total workday cases exceeding 4.5?* It is well known that this rate is a poor indicator of an employers actual safety record. A better measure is to use their workers compensation experience modification rate. It is independently verifiable. Lost workday rates are self reported and as such are difficult to independently verify.

Question #12 which has been added inquires, *In the last three years, have civil penalties been assessed against your firm pursuant to California Labor Code 1777.7 for violation of California public works apprenticeship requirements, three or more times.* While this question asks if the bidder has been cited and assessed penalties, it does not ask if the bidder is capable of meeting the apprenticeship requirement. The bidder should also verify that their subcontractors meet the requirements.

Additionally the Building Trades believes that questions regarding financial solvency, bonding abilities, minimum insurance and previous experience on "like" projects should be included when "pre-qualifying" bidders.

The goal of "pre-qualifying" is to help public agencies receive the highest quality project and at the same time comply with all state competitive bidding and public laws.

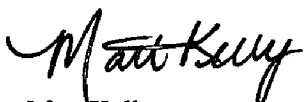
In selecting a contractor to perform a public works project, a public agency is not required to select the lowest bid. A bid can, and must be rejected if the agency determines that it is not "responsive". The term "responsive" relates to whether the bid is based upon all aspects and specifications of the job in question.

Also, the lowest bid can and must be rejected if the agency determines that the bidder is not "responsible." Recent state legislation has given public agencies additional flexibility in determining what "responsible" means. The newest statute includes the issue of "trustworthiness" and past record as a basis for determining whether or not a bidder is responsible.

Whether you decide to expand your "minimum qualifications" questionnaire or generate an additional document to ensure that bidders are qualified and capable, we urge you to consider the issues we have outlined.

If the Building Trades can be of any assistance in helping your department draft a set of bidder qualifications please feel free to enlist our help.

Respectfully,



Matt Kelly
Sacramento-Sierra's
Building & Construction
Trades Council

MK:nc

nc:opeiu#29/afl-cio



DEPARTMENT
OF UTILITIES

ENGINEERING
SERVICES DIVISION

CITY OF SACRAMENTO
CALIFORNIA

November 5, 2002
020720:CM:glg

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Matt Kelly
Sacramento-Sierra Building & Construction Trades Council
2840 El Centro Road, Suite 107
Sacramento, CA 95833

SUBJECT: Minimum Qualifications Questionnaire

Dear Mr. Kelly:

Thank you for your recent letter regarding the City's Minimum Qualifications Questionnaire and its ability to ensure that capable qualified contractors are bidding on our projects. Your letter raised several issues, which are addressed below:

- Question 2 has been re-written to read: "Has a contractor's license held by your firm and/or any owner, officer or partner of your firm been revoked at anytime in the last five years?"
- In Question 9, you suggested that we use the workers compensation experience modification rate (EMR) instead of OSHA Incidence Rates. While it is true that the reliability of OSHA incidence rates is solely dependent on judicious reporting by the employer, correlation between the two has been shown and both are an indicator of past safety performance. The OSHA incidence rates are a uniform national statistic with no limitations in comparing rates in one part of the country with those in another. Moreover, OSHA incidence rates reflect more recent experience than EMR's. We believe that use of the OSHA incidence rates is appropriate for this application and will continue to use it in the questionnaire. However, the number of total lost workday cases the contractor is allowed to exceed (4.5) is not appropriate and will be changed to 10.
- Inclusion of Question 12 satisfies the request you made in your July 31 letter to put contractors on notice that "failure to comply with State Laws regarding use of Apprentices on public works projects will negatively influence consideration of bids by Contractor's that do not comply". A contractor submitting a "yes" answer to the question is not considered to be a responsible bidder. Expanding the questionnaire to require bidders to meet apprenticeship requirements or show capacity to do so exceeds the scope of a minimum qualification approach, as previously discussed. Council can do more in terms of apprenticeship requirements if it desires, but such actions would require a City Code change and another process to do so.



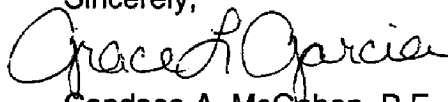
CITY OF SACRAMENTO
DEPARTMENT
OF UTILITIES

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- The Minimum Qualification Questionnaire is signed and submitted by the contractor at the time of the bid opening under the penalty of perjury. Requiring the contractor to verify information and sign on behalf of subcontracts is not appropriate. Subcontractors are often selected by contractors just before bid opening and are the contractual responsibility of the contractor. Subcontractor qualification would not meet several of the original criteria for the Standard Minimum Qualification procedure, such as, "not extending project schedules" and "not significantly complicating the bidding process for the contractor". Historically, problems with the qualifications of subcontractors has rarely been an issue for the City and does not warrant the level of complexity incurred.
- Questions regarding financial solvency and previous experience are not germane to the Minimum Qualification Questionnaire used on the standard City project. The contractor's license along with requisite bonding and insurance required by contractual language is sufficient assurance for most City projects. Detailed questions regarding financial solvency and previous experience are included in a pre-qualification process used on complex City projects requiring specialized expertise and multiple resources. As we've said before, the Minimum Qualification Questionnaire is not a pre-qualification process and is not intended to replace that procedure.
- As mentioned above, bonding and insurance requirements are also included as part of the contract requirements and have not proved to be an issue requiring special attention.

The changes to the Minimum Qualifications Questionnaire previously sent to you and as described above are tentatively scheduled to be presented at the November 19 meeting of the Law and Legislative Committee which meets at 12:30 pm in the City Council Chambers. I've enclosed a copy of the revised Minimum Qualifications Questionnaire for your use. Should the tentative date for presentation to the Law and Legislative Committee change, I will let you know.

Sincerely,


 for Candace A. McGahan, P.E.
 Supervising Engineer

Attachment

cc: Mike Kashiwagi, Director of Public Works
 Jim Sequeira, Director of Utilities
 Fran Halbakken, Division Manager
 Gary Reents, Division Manger
 Tim Mar, Supervising Engineer
 Joe Robinson, Deputy City Attorney
 Tom Lee, Deputy City Manager

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION REVISING THE STANDARD MINIMUM QUALIFICATIONS FOR BIDDERS ON COMPETITIVELY BID CONTRACTS FOR PUBLIC PROJECTS

WHEREAS, Section 3.60.020 of the Sacramento City Code authorizes the City Council, by resolution, to adopt standard minimum qualifications for bidders on competitively bid contracts for public projects; and

WHEREAS, on May 14, 2002, the Sacramento City Council adopted Resolution No. 2002-280 establishing such standard minimum qualifications; and

WHEREAS, this resolution revises the standard minimum qualifications adopted by Resolution No. 2002-280.

NOW, THEREFORE, BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:

1. The standard minimum qualifications for bidders on competitively bid contracts for public projects that are set forth in the Minimum Qualifications Questionnaire attached hereto as Exhibit A are hereby adopted. The Minimum Qualifications Questionnaire attached hereto as Exhibit A shall supercede and replace the Minimum Qualifications Questionnaire that was attached as Exhibit A to Resolution No. 2002-280.
2. Bidders on competitively bid contracts for public projects shall demonstrate compliance with the standard minimum qualifications by completing all of the questions contained in the attached Minimum Qualifications Questionnaire. If a bidder answers "yes" to any single question, fails to submit a fully completed Questionnaire, or submits false information, this will result in a determination that the standard minimum qualifications are not met, and the bidder shall not be considered a responsible bidder, pursuant to Sacramento City Code Section 3.60.020. If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must separately meet the standard minimum qualifications for the Joint Venture to be considered a responsible bidder.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

3. Should any part of the attached Minimum Qualifications Questionnaire be declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Questionnaire shall remain in full force and effect.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

LAW AND LEGISLATION COMMITTEE AGENDA

November 19, 2002

12:30 P.M.

City Council Chambers
915 I Street
Sacramento, California

ROLL CALL

1.0 CONSENT CALENDAR

ALL ITEMS LISTED ON THE CONSENT CALENDAR ARE CONSIDERED AND ACTED UPON BY ONE MOTION. A MEMBER OF THE COMMITTEE OR STAFF MAY REQUEST AN ITEM TO BE REMOVED FOR SEPARATE CONSIDERATION.

1.1 Pending Legislation Log

RECOMMENDATION OF STAFF: Approve Log

2.0 STAFF REPORTS

2.1 Legislative Update /State Budget

RECOMMENDATION OF STAFF: Committee Information

2.2 Living Wage Ordinance Discussion - FINANCE

RECOMMENDATION OF STAFF: Approve Staff Recommendation
and forward to Council

2.3 Infill Fee Reduction Ordinance - PLANNING

RECOMMENDATION OF STAFF: Approve Staff Recommendation
and forward to Council

2.4 Standard Minimum Qualifications- UTILITIES

RECOMMENDATION OF STAFF: Approve Staff Recommendation
and forward to Council

3.0 CITIZENS ADDRESSING COMMITTEE (MATTERS NOT ON AGENDA)

(A two minute time limit is imposed on speakers addressing the Committee under this heading)

4.0 COMMITTEE IDEAS AND QUESTIONS

COMMITTEE MEMBERS: Cohn (Chair), Sheedy, Waters, Pannell

LAW AND LEGISLATION COMMITTEE

As of November 13, 2002

DISCLAIMER: The following information is tentative as to dates and subjects.

Tues., December 3, 2002

Tree Ordinance Amendments – **PARKS AND RECREATION**
Heritage Park “Golf Cart Plan” – **PUBLIC WORKS**

Tues., December 17, 2002

Interim Transit Overlay Ordinance – **PLANNING**
Multifamily Streamlining Ordinance - **PLANNING**

Thursday, January 9, 2003

Report back on Segway (and demonstration)– **POLICE/PUBLIC WORKS**
Report Back on Housing Preservation Ordinance - **SHRA**

PENDING:

Entertainment Ordinance – **NSD**
Interim Commercial Corridor Overlay Zone - **Planning**
Chain Link Fencing Regulation – **Planning**
Sign Regulations – **Planning/Economic Development**
Power Inn SPD – **Planning**
Freeport Reorganization (Annexation) Overlay Zone – **Planning**
Mobil Food Vendor Ordinance – **Finance/Planning**
Maintenance of Parking Lots at Strip Malls – **NSD**
Proposed Change to Ground Floor Retail – **Downtown Partnership/Planning**
Parking Lot Shade Ordinance – **Planning**
Social Services – **Planning**
Gun Shows in City Facilities – **Finance**
Parking of Trailers, Auto Coachs, etc. in Residential Areas – **NSD/Code Enforcement**
Vicious Dog Ordinance – **Public Works/Animal Care**
Access to Healthcare Ordinance – **Finance**
Amend Title 10 Regarding Taxi Zones – **Revenue**
New Code Enforcement Initiatives – **NSD/Code Enforcement**
Ordinance dealing with curfews on Children Suspended from School - **Police**

Legislation Log

revised

13-Nov-02

Number	Subject Matter	Ordinance Sponsor/Staff (Date Requested)	Anticipated Law & Legislation hearing Date	Status	Controversial or Significant Policy Issues	Anticipated Attorney Drafting Time for Completion	City Departments Possibly Affected
NEW ITEMS							
4.9	Parking of Trailers, Auto Coaches, etc in Residential Areas	Code Enforcement/Ma x Fernandez	Date Pending	Item was heard by L&L on 11/7/02. The Commercial Vehicles component of the ordinance was approved and forwarded to City Council. The ordinance changes relative to parking of trailers, auto coaches, etc in residential areas has been referred to the Code Ad Hoc Committee for further discussion.	Potentially yes	Moderate	Planning/NSD (Code)
SCHEDULED ITEMS							
4.5	Tree Ordinance Amendments	Parks and Recreation/ Martin Fitch	3-Dec-02	Staff is working to amend and update City's Tree Ordinance. Specifically, the ordinance amendments would make changes to stump grinding requirements, change the permit appeal process and administrative penalties section	Potentially yes	Moderate	Parks and Recreation
4.6	Heritage Park "Golf Cart Plan"	Public Works Development Div/ Anis Ghobril	3-Dec-02	Staff is currently finalizing the Heritage Park Golf Cart Plan document. City Attorney's office has drafted the needed ordinance for the plan.	No	Moderate	Public Works and Police
4.7	Transit Overlay Interim Ordinance	Planning/ Todd Leon	17-Dec-02	Staff has completed drafting the proposed ordinance and is working with the City Attorney's office in finalizing the ordinance.	To Be Determined	To Be Determined	Planning and Economic Development
4.8	Multifamily Streamlining Ordinance	Planning/ Steve Peterson	17-Dec-02	Staff is finalizing report for Law & Leg.	Yes	Moderate	Planning, NSD (Code)
1.8	Housing Preservation Ordinance	CM David Jones/SHRA	09-Jan-03	Staff working on changes with report back to Law and Legislation Committee.	Potentially Yes	Moderate	SHRA
5.3	Report Back on Segway	Law & Leg Committee/ Finance (10/01/02)	09-Jan-03	Committee Chair requested a report back on Segway and its impact to the City streets. Police is currently working with PW on researching information.	To Be Determined	To Be Determined	Public Works
ORDINANCE - DATE PENDING							
1.1	Chain Link Fencing Regulations	CM Dave Jones/ Joy Patterson	New Date Pending (Summer 2002)	Staff is working with other City departments to gather additional information. City Council directed that this item be forwarded to the Code Ad Hoc Committee for discussion. Code Ad Hoc Committee has referred this item to the NSD directors for further research.	Yes	Significant	Planning/ NSD (Code)

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2 Limited =<10 hrs, Moderate =10-40 hrs, Sig. => 40 hrs

1.1

Legislation Log

Number	Subject Matter	Ordinance Sponsor/Staff (Date Requested)	Anticipated Law & Legislation hearing Date ¹	Status	Controversial or Significant Policy Issues	Anticipated Attorney Drafting Time for Completion	City Departments Possibly Affected ²
1.2	Sign Regulations	Full Council/ Joy Patterson	New Date Pending (Late Summer 2002)	A major section revision. Staff is currently reviewing revising language. Staff anticipates going out to community and scheduling a series of public hearings on item in late Summer 2002.	Yes	Significant	Planning/ Economic Development
1.3	Power Inn SPD	Planning/ Steve Peterson	New Date Pending (Fall 2002)	Working with staff to formulate details of ordinance.	Potentially Yes	Significant	Planning
1.5	Freeport Reorganization (annexation) Overlay Zone	Planning/ Don Lockhart	New Date Pending (October 2002)	City/Comm.. Est. dev. Standards & permitted/ prohibited uses for maintaining the historic Delta River Town theme to prevent intrusion of inappropriate land uses.	Yes (see status box)	Significant	Planning
1.6	Entertainment Permit	NSD/ Max Fernandez	Spring 2003 (Fall 2002)	Originally scheduled for L&L in December. Staff has held several stakeholders meetings regarding input and comments.	Yes	Significant	Police/ Finance/ CC&L
1.9	Ord. Regulating Gun Shows in City Facilities	CM Dave Jones/ Finance	New Date Pending (Nov 7, 2002)	Working with staff to formulate details of ordinance.	Yes	Significant	CC&L/ Planning/ Police
1.11	Mobile Food Vendor Ordinance	CM Trethaway/Bill Spencer	Spring 2003	Staff working on changes with report back to Law and Legislation Committee.	Potentially Yes	Moderate	Finance/Planning
3.1	Access to Healthcare Ord.	CM Steve Cohn/Aaron Chong	No Date Set	City Attorney's Office researching and reviewing details of ordinance.	Yes	Significant	SPD/Planning/ NSD
3.2	Amend to Title 10 re: Taxi Zones	Revenue	No Date Set	Working with staff to formulate details or ordinance. No. L&L date set. Taxi Cab parking issue was addressed separately.	Potentially Yes	Moderate	Public Works
3.3	New Code Enforcement Initiatives	CM Bonnie Pannell	Spring 2003	The Code Ad Hoc Committee will be discussing this item at its next meeting. Item will be forwarded to Law and Legislation for discussion in early Spring 2003.	Yes	Significant	NSD/ Planning
3.4	Ord. Dealing with Curfews on Children Suspended from School.	CM Dave Jones/ SPD	No Date Set	Working with staff to formulate details of ordinance. No L&L date set	Yes	Significant	Police/ NSD
3.5	Parking Lot Shade Ordinance	Planning/ Jim McDonald	No Date Set	Working with staff to formulate details of ordinance. No L&L date set	No	Moderate	Planning
3.6	Social Services	Full Council/ Planning	No Date Set	Reviewing existing City Code provisions that may require updating	Yes	Significant	NSD/ Planning

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Legislation Log

Number	Subject Matter	Ordinance Sponsor/Staff (Date Requested)	Anticipated Law & Legislation hearing Date ₁	Status	Controversial or Significant Policy Issues	Anticipated Attorney Drafting Time for Completion	City Departments Possibly Affected ₂
4.1	Interim Commercial Corridor Overlay Zone	CM Lauren Hammond/CM Sandy Sheedy/Planning	Date Pending	Staff has completed drafting the proposed ordinance and is working with Ordinance Sponsors on whether item can go directly to City Council for discussion.	To Be Determined	To Be Determined	Planning
4.2	Vicious Dog Ordinance	CM Sandy Sheedy/Hector Cazares	Date Pending	Staff is working with Public Works Department to gather additional information. This item will be heard by the Code Enforcement Ah Hoc Committee.	To Be Determined	To Be Determined	Public Works
4.3	Police Patrol Officer Funding	CM Robbie Waters/Police	Date Pending	Police Department currently researching data for report	To Be Determined	To Be Determined	Police
4.4	Proposed Change to Ground Floor Retail	Downtown Partnership/Planning	Date Pending	Downtown Partnership has requested staff reconsider ideas dealing with ground floor retail space.	To Be Determined	To Be Determined	Planning/ Economic Dev
5.2	Maintenance of Parking Lots at Strip Malls	CM Bonnie Pannell/Max Fernandez	Date Pending	Council Member Pannell requested a report back from Neighborhood Services on problems with parking lots located at various strip malls throughout the City. NSD will be providing a report back to the Committee.	Yes	To Be Determined	Neighborhood Services
ORDINANCES/REPORTS BACK TO COUNCIL							
1.7	Commercial Vehicles Parked on Residential Properties	Code Enforcement/Max Fernandez	City Council	<i>Item was heard by L&L on 11/7/02. The Commercial Vehicles component of the ordinance was approved and forwarded to City Council. The ordinance changes relative to parking of trailers, auto coaches, etc in residential areas has been referred to the Code Ad Hoc Committee for further discussion (see item 4.9)</i>	Potentially Yes	Moderate	Planning/ NSD (Code)
2.2	Lobbyist Registration & Regulation	Full Council/ Budget	City Council	Item heard by City Council on 4/16/02. Staff directed to develop a lobbyist registration form and final draft ordinance for Council consideration. Staff is meeting with stakeholders on October 23, 2002. Report anticipated in early 2003.	Yes	Significant	City Clerk
2.3	Interim Transit Village Land Use Regulations	CM Dave Jones & Steve Cohn/ Steve Peterson	City Council	Working with staff to formulate interim regulations pending adoption of ordinance creating Transit Corridor overlay Zone for areas around Light Rail stations. Awaiting RT recommendations on Transit for Livable Communities project anticipated in May 2002. Staff working with City Attorney on report at this time.	No	Moderate - Significant	Public Works/ Planning

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Legislation Log

Number	Subject Matter	Ordinance Sponsor/Staff (Date Requested)	Anticipated Law & Legislation hearing Date ₁	Status	Controversial or Significant Policy Issues	Anticipated Attorney Drafting Time for Completion	City Departments Possibly Affected ₂
2.4	Public Finance & Campaign Spending Limits	Full Council/ Budget	City Council	Issue heard by City Council on 4/16/02. Staff directed to research the suggestion of providing a "trigger mechanism" for Council to consider future funding of the public financing program. Staff is to provide report back to Council after both State budget is finalized and the Revenue Reduction measure is decided by city voters	Yes	Significant	City Clerk
2.6	Code 8.68.200 Noise Ordinance and CD Players	CM Steve Cohn/Max Fernandez	City Council	To City Council. Staff and City Attorney's office working on changes regarding hours and sections C & F. Department is working to schedule a date before Council.	No	Moderate	NSD
2.7	Pet Spay/Neuter Penalty	Public Works (Animal Care)	City Council	Staff report heard at September 3, 2002 L&L meeting. To City Council	No	Limited	Public Works
2.10	M02-003 Transit Corridor Overlay zone/ 65th Street Transit Village Plan	Planning/ Steve Peterson	City Council	Item approved at L&L on October 15, 2002.	Potentially Yes	Moderate - Significant	Planning
2.11	M02-010 Planning Directors Plan Review	Planning/ Steve Peterson	City Council	Item approved at L&L on October 15, 2002.	Potentially Yes	Moderate - Significant	Planning

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2.2

OFFICE OF THE
CITY MANAGER

CITY OF SACRAMENTO
CALIFORNIA

CITY HALL
ROOM 101
SACRAMENTO, CA
95814-2684

PH 916-264-5704
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November 19, 2002

Law & Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Proposed Living Wage Ordinance

LOCATION/COUNCIL DISTRICT: Citywide

RECOMMENDATION:

Staff recommends that the Law & Legislation Committee refer the proposed Living Wage Ordinance to the City Council, requesting a workshop to be held on January 9, 2003, regarding the proposed Living Wage Ordinance and other programs that assist the working poor in the Greater Sacramento Area.

CONTACT PERSON: Michael L. Medema, Special Projects Manager

FOR LAW & LEGISLATION MEETING OF: November 19, 2002

SUMMARY:

Staff recommends that the Law & Legislation Committee refer the Proposed Living Wage Ordinance to the City Council requesting a workshop to be held on January 9, 2003, regarding the Proposed Living Wage Ordinance and other programs that assist the working poor in the Greater Sacramento Area. Three independent studies recommend that policymakers contemplating the "Living Wage" should give consideration to the alternatives for assisting the working poor. Each suggests that the "Living Wage" is not the most efficient method of accomplishing this goal. In addition, Staff believes that helping the working poor is a regional issue, and the City should encourage other local jurisdictions to consider the issue of assisting the working poor in the Greater Sacramento Area.

BACKGROUND AND ANALYSIS:

Living Wage Ordinances are laws that have been passed by some local governmental entities requiring firms that have a contractual relationship with the local government to pay workers wages that exceed the prevailing federal or state minimum wage. The living wage movement began with the adoption of a Living Wage Ordinance by Baltimore, Maryland in 1994. Since 1994, over sixty local government entities, including eleven in California have adopted living wage ordinances. The scope, impact and effectiveness of the ordinances vary considerably.

Staff met with members of the Sacramento Living Wage Committee (LW Committee) in the spring of 2001 to discuss a Proposed Living Wage Ordinance. Staff advised the LW Committee that the City considers the effort to assist the working poor a regional issue and should be pursued on a regional basis. Staff indicated that the LW Committee needed to submit a written proposed ordinance for analysis. (See Attachment A - LW Committee Proposed Living Wage Ordinance).

Staff also concluded that an independent economic analysis should be commissioned to study the impacts of the proposal ordinance. Following a request for qualifications process, staff, the LW Committee and the Sacramento Metro Chamber selected Economic Research Associates to conduct that study. Staff, the LW Committee and the Sacramento Metro Chamber agreed to withhold public comment on possible economic impacts of the proposed living wage pending receipt and analysis of this study. Staff received the analysis on November 8, 2002. The three parties to the agreement have not had sufficient time to review the study and prepare comment.

In addition to the initial scope of work, staff requested Economic Research Associates to expand the scope of analysis including an analysis of alternatives to the proposed living wage. Staff reviewed three independent studies that recommend that policymakers contemplating the "Living Wage" should give consideration to alternatives for assisting the working poor. Each suggested that the "Living Wage" is not the most efficient method of accomplishing this goal.

The University of New Hampshire Survey Center for the Employment Policies Institute surveyed 336 labor economists in 2000. The survey rated three proposed policies. The Earned Income Tax Credit was rated the most efficient followed by Grants. The "Living Wage" was judged the least efficient.

A 2002 study conducted by David Neumark for the Public Policy Institute of California concluded, in part, "cautious reading of the evidence, then, suggests that, on net, living wages may provide some assistance to the urban poor. This may dispel fears that living wage laws have the unintended effect of increasing poverty, but it does not necessarily imply that the living wages constitute the best means of helping the urban poor. Policymakers contemplating implementing living wage laws, and policy analysts assessing living wage laws, should give due consideration to comparisons among alternative methods of reducing poverty, such as the Earned Income Tax Credit."

The study recommended that policymakers should consider a number of issues, "including the effects of living wages on municipal budgets, on the extent to which higher labor costs are absorbed by contractors or passed through to cities, on taxes, property values, and local economic

development; on the provision of city services stemming from budgetary considerations or the effect of living wages on productivity; on compliance and enforcement; on equity effects (including their effect on women and minorities); and on overall economic welfare.”

The third study was conducted by California State University, Sacramento Assistant Professor of Economics Suzanne O’Keefe last summer. Professor O’Keefe recommended, “the city should consider other alternatives for reaching the working poor. Other cities have instituted programs similar to an Earned Income Tax Credit; that provide income targeted to families in need. City funded Child Care Services that would also help single working parents provide for their families. When choosing to implement a living wage, the city needs to believe that it is the best feasible means of reaching their goal of helping working poor families.”

Staff believes that helping the working poor is a regional issue and the City should pursue developing a regional solution to resolve this issue. The Sacramento Metro Chamber is developing a program for the Sacramento region businesses to address this issue. The focus of the Chamber’s effort is on education regarding current programs designed to assist the working poor. The City may want to consider using the Chamber’s effort as a base for developing a regional solution to resolve this issue.

FINANCIAL CONSIDERATION:

Staff is reviewing the Economic Research Associates independent economic analysis study. The analysis has been released to the LW Committee and the Sacramento Metro Chamber for their review. Staff will present the City’s analysis of the study at the recommended City Council workshop if approved, on January 9, 2003.

POLICY CONSIDERATIONS:

1. Staff recommends that the City Council establish the goal for consideration of the proposed living wage. Staff believes that the goal should be to assist the working poor in the greater Sacramento area.
2. Staff recommends that the City Council conduct a workshop to consider the proposed living wage as one of several methods available to achieve the goal of assisting the working poor in the greater Sacramento area.
3. Staff recommends that this is a regional issue and the City should encourage other local jurisdictions to consider the issue of assisting the working poor in the greater Sacramento area.
4. Staff identified several major policy considerations within the Proposed Living Wage Ordinance. These will be presented for consideration during the recommended City Council workshop on January 9, 2003. They are summarized in Attachment B.

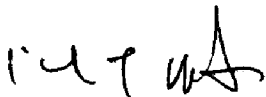
ENVIRONMENTAL CONSIDERATIONS:

This report recommends no action that would constitute a project under the California Environmental Quality Act (CEQA).

ESBD CONSIDERATIONS:

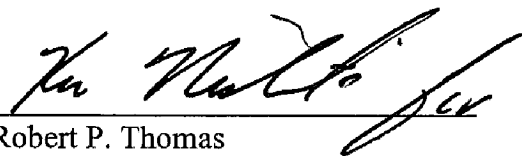
This report recommends no action that involves ESBD consideration.

Respectfully submitted,



Michael L. Medema
Special Projects Manager

RECOMMENDATION APPROVED



Robert P. Thomas
City Manager

Attachment

Sacramento Living Wage, Responsible Contractor and Fair Subsidy Ordinance

The City of Sacramento awards many contracts to private firms to provide services to the public and to Sacramento government. In addition, many lessees or licensees of Sacramento property perform services that affect the proprietary interests of Sacramento government in that their performance influences the success of Sacramento operations. Further, Sacramento gives outright subsidies to businesses and individuals to enhance economic development.

Experience indicates that procurement by contract of services, the awarding of leases and licenses and the giving of subsidies has all too often resulted in the payment by contractors, lessees, licensees, and subsidy recipients to their employees of wages at or slightly above the minimum required by state and federal minimum wage laws. Such minimal compensation results in hidden costs to Sacramento when employees of Sacramento and such employers seek public assistance. Experience also indicates that many employees of Sacramento contractors, lessees, licensees, and subsidy recipients are unable to afford health insurance for themselves or their families and that as a result many of these individuals utilize public facilities at substantial cost to Sacramento. The provision of minimal compensation and benefits by Sacramento service contractors, lessees, licensees, and subsidy recipients tends to undermine the quality and quantity of services rendered by such employees to Sacramento and the public, since such underpayment tends to result in high turnover, absenteeism, and lackluster performance.

Experience has also demonstrated that Sacramento contractors, proprietary lessees, licensees, and subsidy recipients do not always abide by all applicable federal, state, and local laws. When Sacramento contractors violate labor and employment laws, it has the potential to create hidden costs for Sacramento, both because employees may attempt to hold Sacramento liable for subsidy recipients, and because such violations have a tendency to undermine employee morale and performance.

The decision to contract out services, to award a license, or to replace one contractor or licensee with another does not necessarily include a need to replace workers presently performing services who have useful knowledge about the workplace where services are performed. Instead, the decision to award a new contract or license is often based on anticipated changes in managerial skills, new technology or techniques, new themes or presentations, or lower overhead costs. Sacramento, as a principal provider of social support services, has an interest in the stability of employment for Sacramento workers and for those working under contracts with Sacramento.

Experience has demonstrated that contractors and subsidy recipients receiving Sacramento funds have spent money attempting to influence their employees regarding unionization. Sacramento has an interest in ensuring that money received by service contractors to perform contracts with Sacramento goes toward rendering the services, and not toward other ancillary costs. Moreover, since it is Sacramento policy to remain neutral on questions of unionization, Sacramento has an additional interest in preventing the use of Sacramento funds to influence workers on the question of unionization.

Sacramento has a growing economy. The population is increasing and the city of Sacramento is promoting and investing in new development to supply the economic and population growth. Service, entertainment, hospitality, and tourism jobs are a major portion of this Sacramento economy. New, large, subsidized developments for office, hotel, restaurant, and entertainment businesses are regularly asking the city for financial support. The city is committed to supporting such development because they improve the economy and the quality of life for the city's residents. Such developments also supply the city with significant use, sales, and property tax revenues. However, the city government's investment is jeopardized by labor disruption. The city has experience in projects with and without Labor Peace Agreements. The city and its residents have experienced numerous disruptive work stoppages and street protests in the past two years arising from labor disputes. Labor Peace Agreements protect the city's investments and protect the city from loss of future tax revenue.

The Municipal Code of Sacramento is hereby amended by inserting a new Chapter XX, as follows:

Section 1. Title and Purpose.

(a) Sacramento Living Wage Responsible Contractor and Fair Subsidy Ordinance

This Chapter shall be known as the "Sacramento Living Wage Ordinance, Responsible Contractor and Fair Subsidy Ordinance". The purpose of this ordinance is to assure that employees of substantial City contractors, subcontractors and beneficiaries of tax, loan, grant and other subsidy assistance provided by the City earn a fair hourly wage. This ordinance is also designed to maximize access for low- and-moderate income Sacramento residents to the jobs that are created, maintained, or subsidized through direct or indirect City assistance.

Section 2. Definitions.

For the purposes of this ordinance, the term:

(a) "Awarding Agency" means that subordinate or component entity or person of Sacramento (such as a department, office, or agency) that is responsible for solicitation of proposals or bids and responsible for the administration of service contracts or financial assistance agreements.

(b) "Assistance" means:

(1) Any grant, loan, tax incentive or abatement, bond financing, subsidy, contract with a not-for-profit social service (pursuant to Section 3(c)), medical care, or labor service provider, contract with a for profit social service, medical care, or labor service provider, or other form of assistance of \$100,000 or more that is realized by or provided to an employer of at least 15 employees [except within custodial, landscape, recycling industries (in such case the minimum number of employees for coverage is 2) by or through the authority or approval of Sacramento including, but not limited to, Tax Increment Financing (TIF) aid, industrial development bonds, Community Development Block Grant (CDBG) loans, Enterprise Zone-related incentives, awarded, modified or amended, after the effective date of this Chapter;

(2) Any contract or subcontract not listed in the previous paragraph of at least \$25,000 with Sacramento that is made by Sacramento with an employer of at least 15 employees, [except janitorial, landscape and recycling industries, in which case the employer must have at least 2 employees] to provide goods or services, awarded, re-negotiated or renewed after the effective date of this Chapter.

(c) "Beneficiary" means any Person or entity that is a recipient of "Assistance," as defined in this Chapter.

(d) "Card Check Agreement" means a written agreement between an Employer and a Labor Organization providing a procedure for determining employee preference on the subject of whether to be represented by a Labor Organization for collective bargaining, and if so, by which Labor Organization to be represented, which provides, at a minimum, the following:

(1) Determining employee preference regarding union representation shall be by a card check procedure conducted by a neutral third party in lieu of a formal election;

(2) All disputes over interpretation or application of the parties' card check agreement, and over issues regarding how to carry out the card check process or specific card check procedures shall be submitted to binding arbitration;

(3) Forbearance by any Labor Organization from economic action against the Employer at the worksite of an organizing drive covered by this Article, and in relation to an organizing campaign only (not to the terms of a Collective Bargaining Agreement), so long as the employer complies with the terms of the Card Check Agreement;

(4) Language and procedures prohibiting the Labor Organization or the Employer from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a bargaining representative.

(5) Forbearance by an employment from, in any way, attempting to influence employee preference, the outcome of an election or articulating its views on the subject of whether its employees will be represented by a labor organization for collective bargaining .

(e) "Covered Employer" means a Beneficiary of, or an applicant for, Assistance or the Holder of a proprietary lease or license or the holder of a service contract that has not been granted an exemption from this ordinance.

(f) "Violations made in good faith" means, and hereby incorporates, the liquidated damages provisions of the Fair Labor Standards Act, 29 U.S.C. 216(b) and court decisions and the regulations enforcing such Act that were in effect on December 25, 2000.

(g) "Covered Employee" means a person employed, either full or part time, by a Covered Employer in, on, or for the project or matter for which the Beneficiary has received Assistance. Employees of temporary labor service providers are "covered employees" if they perform any work for the benefit of a covered employer.

(h) "Living Wage" has the meaning stated in Section 3.

(i) "Person" means one or more of the following or their agents, employees, representatives, and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and all other entities recognized at law by this City.

(j) "Sacramento" means the City of Sacramento, its departments, joint powers authorities, offices, agencies, or subdivisions thereof.

(k) "Successor contractor" means a contractor where the services to be performed under the new contract are substantially similar to a contract with a covered employer that has recently been termination, or that will be terminated once the term of the new contract begins.

(l) "Willful violation" means that the employer knew or should have known of his, her, or its obligations under this article and volitionally or negligently failed or refused to comply with its provisions.

(m) "Proprietary lease or license" means a lease or license of City property on which services are rendered by employees of the proprietary lessee or licensee or sublessee or sublicensee, but only where any of the following applies: (1) the services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis; or (2) it is anticipated that the proprietary lessee or licensee will employ at least two (15) employees (except janitorial, landscape and recycling industries; in which case, the employer is covered if the employer has at least two employees) and have

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annual gross revenues of more than twenty thousand dollars (\$25,000) from business conducted on the premises. Such annual gross revenue floor of \$25,000 shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 3(a)(b) and (c) of this article. Proprietary "leases" and "licenses" shall be deemed to include subleases and sublicenses, excluding non-service retail selling, (such as non-food tenants at Arden Fair Mall) and in the grocery industry.

(n) "Service contract" means a contract let to a contractor by Sacramento primarily for the furnishing of services to or for Sacramento (as opposed to the purchase of goods or other property of the leasing or renting of property) and that involves an expenditure in excess of an aggregate of \$25,000 in any twelve (12) month period and a contract term of at least three (3) months;

(o) "Subcontractor" means any person not an employee that enters into a contract (and that employs employees for that purpose) with (1) a contractor or subcontractor to assist the contractor in performing a service contract or to perform duties related in any way to the service contract, provided that such duties are performed on the contractor or subcontractor's premises; or (2) a contractor or subcontractor of a proprietary lessee or licensee or sublessee or sublicensee to perform or assist in performing services on the leased or licensed premises, or (3) a supplier of temporary labor services other than a labor organization.

Section 3. Living Wage.

3. Minimum standards.

(a) Living Wage: Covered employers shall pay employees a wage of no less than the hourly rates set under the authority of this article. The initial rates shall be ten dollars (\$10.00) per hour with health benefits, as described in this article, or otherwise \$12.84 per hour.

(b) Health benefits: Health benefits described by this article shall consist of the payment of at least \$2.84 per hour towards the provision of health care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the awarding authority to qualify for the wage rate set in subsection (a) of this section for employees with health benefits.

(c) An otherwise covered employer which is a nonprofit corporation organized under Section 501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. Section 501(d)(3), whose chief executive officer or highest paid managerial employee earns a salary which, when calculated on an hourly basis, is less than six (6) times the lowest wage paid by the corporation, shall be granted an exemption from subsections (a) and (b) of this section.

4. Worker Retention

(a) When Sacramento decides to contract out services that are being performed by employees, Sacramento shall, at the time it awards such contract, provide the contractor with the name, address, date of hire, and employment occupation classification of each employee who would otherwise be displaced by the service contract.

(b) Where Sacramento has given notice that a contract let to a covered employer has been terminated, or where a covered employer has given notice of such termination, upon receiving or giving such notice, as the case may be, the terminated contractor shall within ten (10) days thereafter provide to the successor contractor the name, address, date of hire, and employment occupation classification of each employee in employment, of itself or subcontractors, who is performing services related to the contract at the time of contract termination. If a successor service contract has not been awarded by the end of the ten (10) day period, the terminated contractor shall provide the required information to the department awarding the service contract. Where a service contract or contracts are being let where the same or similar services were rendered under multiple service contracts, Sacramento shall pool the employees, ordered by seniority within job classification, under such prior contracts.

(c) A successor contractor, or an initial contractor, shall retain for a ninety (90) day transition employment period, employees who have been performing the services to be performed under the service contract whether such employees were employed by Sacramento, a terminated contractor, or a subcontractor, except that the successor contractor need not retain such employees whose initial date of hire by Sacramento or terminated contractor was less than twelve (12) months from the date that the new service contract takes effect. Where pooling of employees has occurred, the successor contractor shall draw from such pools in accordance with rules established under this article. During such ninety (90) day period, employees so hired shall be employed under the terms and conditions established by the successor or initial contractor (or subcontractor), or as required by law.

(d) If at anytime the successor or initial contractor determines that fewer employees are required to perform the new service contract than were previously required to perform the same services, the successor or initial contractor shall retain employees by seniority within job classification.

(e) During the ninety (90) day transition employment period, the successor or initial contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered employees which it does not retain, and it shall offer employment to these individuals before making any new hires.

(f) Except as provided in subsection (d) of this Section, during the ninety (90) day transition employment period the successor or initial contractor shall not discharge without cause an employee retained pursuant to this article. "Cause" for this purpose shall include, but not be limited to, the employee's conduct while in the employ of the

terminated contractor or subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance.

(g) At the end of the ninety (90) day transition employment period, the successor or initial contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to this article. If the employee's performance during such ninety (90) day period is satisfactory, the successor or initial contractor (or subcontractor) shall offer the employee continued employment under the terms and conditions established by the successor or initial contractor (or subcontractor), or as required by law.

5. Contractor Standards

(a) Prior to awarding a service contract or proprietary lease or license, the department awarding the contract shall make a determination that the prospective employer is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars. Among the factors which shall be considered in making this determination, are (1) financial resources; (2) technical qualifications; (3) experience; (4) organization, material, equipment, facilities and expertise necessary to carry out the work; (5) a satisfactory record of performance; (6) a satisfactory record of compliance with applicable statutes and regulations; and (7) a satisfactory record of business integrity.

(b) As part of its application or proposal for a service contract or proprietary lease or license, a person shall be required to submit under penalty of perjury such information as the department awarding the contract deems necessary to determine whether the contractor meets the standards set forth in paragraph (a) of this section. Sacramento shall make any such information available to the public. If, after awarding the service contract or proprietary lease or license, Sacramento determines that the employer has provided false information, Sacramento may revoke the service contract or proprietary lease or license without penalty.

(c) Each employer shall comply with all applicable labor and employment laws. Each employer shall notify the department awarding the contract within fourteen (14) days upon receiving notification that a government agency has begun an investigation of an employer which may result in a finding that the employer is not in compliance with an applicable labor or employment law.

6. Service Disruption/Labor Peace Provision.

(a) The Council hereby declares that, to the best of its ability, it intends to ensure that essential services and labor for which it contracts and for which it provides subsidies are provided efficiently and without interruption. Therefore, it is necessary to avoid the potential of disruption by labor disputes with all covered employees.

11

(b) Covered employers shall enter into a Labor Peace Agreement with any labor organization expressing interest in representing that employer's employees.

(c) Such Labor Peace Agreement shall include:

- (1) A procedure for determining employee choice of union representation through a card-check conducted by a neutral third party;
- (2) An expedited procedure for resolving, through binding arbitration, all disputes over the interpretation, or application of the card-check procedure, and the obligations set forth under 1(c). For purposes of the Labor Peace Agreement, absent other agreement between the parties, the arbitrator shall be selected, and the proceedings conducted, in accordance with the American Arbitration Association Labor Arbitration Rules, including its Expedited Labor Arbitration Procedures;
- (3) Forbearance by a labor organization from economic action, including strikes, picketing, boycotts or other such interference with the business of the Contractor regarding its employees performing services under any service contract as defined herein, and by the Contractor from engaging in any lock-outs;
- (4) A procedure for resolving, through binding arbitration, disputes over negotiation, renewal, extension, or modification of any collective bargaining agreement to apply when, or if, the labor organization is, or becomes, the exclusive bargaining representative.
- (5) A card-check agreement.

To facilitate the requirements imposed by this section, the Board shall provide a model recommended Labor Peace Agreement that includes the terms specified above, and make such model agreement available to parties required to enter into a Labor Peace Agreement. The Board may also prepare guidelines establishing standards and procedures related to this Ordinance. Notwithstanding this provision regarding the model agreement, or related guidelines, this Ordinance shall be self-executing, and shall apply in the absence of, or regardless of, such model agreement or guidelines.

7. Restriction on Use of Sacramento Funds

Payments made by Sacramento pursuant to a covered contract or to a beneficiary shall not be used directly or indirectly to persuade employees to support or oppose unionization, except that this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona fide collective bargaining agreement.

8. No Retaliation

Neither an employer, as defined in this article, nor any other person employing individuals, shall discharge or otherwise discriminate against any employee for complaining to Sacramento with regard to the employer's compliance or anticipated compliance with this article, for opposing any practice proscribed by this article, for participating in any proceedings related to this article, for seeking to extend coverage of this article to that person, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting rights under this article. Where an employer takes adverse action against an employee within sixty (60) days of the employee's assertion of rights under this article, such action will be presumed to be in retaliation for the assertion of those rights.

9. Enforcement

(a) An employee or any member of the public claiming violation of this article may bring an action in the Municipal or Superior Court of the State of California pursuant to the laws of the State of California, as appropriate, against a covered employer, and shall be awarded:

- (1) For failure to pay wages required by this article -- back pay for each day during which the violation continued.
- (2) For failure to pay medical benefits -- the differential between the wage required by this article without benefits and such wage with benefits, less amounts paid, if any, toward medical benefits.
- (3) For failure to allow an employee to take requested compensated or uncompensated time off as required by this article -- damages in an amount equivalent to that employee's wages for the time off requested and not received as well as consequential damages in an amount according to proof.
- (4) For failure to comply with the worker retention provisions, back pay for each day during which the violation continued, which shall be calculated at a rate of compensation not less than the higher of (A) the average rate of pay received by the employee during his/her most recent twenty six weeks work in the same occupation classification, or (B) the final regular rate of pay received by the employee.
- (5) For retaliation -- reinstatement, back pay, and other equitable relief the court may deem appropriate.
- (6) For breach of labor peace provision, equitable relief, including but not limited to, rescission of the covered employers' contract, lease or subsidy,

and a make whole remedy patterned after the California Agricultural Labor Relations Act, Cal. Lab. Code § 1140, et seq.

- (7) Unless the covered employer establishes that the violations were in good faith, the amount of money to be paid out under subsections (1) through (5) shall be doubled.
- (8) For willful violations, the amount of monies to be paid out under subsections (1) through (5) shall be trebled.

(b) For any violation in which the employee or member of the public is entitled to remedies under Section 7(a)(6) or (7) of this Article, the Court must:

- (1) Order the awarding department to declare a material breach of the service contract, proprietary lease or license, and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the service contract or proprietary lease or license, and the return of monies paid by Sacramento for services not yet rendered.
- (2) Order the Board of Supervisors to debar the employer from future Sacramento contracts, leases, and licenses for three (3) years or until all penalties and restitution have been fully paid, whichever occurs last. Such debarment shall be the extent permitted by, and under, whatever procedures may be required by law.
 - (i) Order payment of all unpaid wages or health premiums prescribed by this article; and/or
 - (ii) Order fine payable to Sacramento in the amount of \$100 for each violation for each day the violation remains uncured.

(c) The court shall award reasonable attorneys' fees and costs to an employee who prevails in any such enforcement action

(d) Sacramento shall include a summary of the requirements of this article in all requests for proposals for contracts to which it applies. Compliance with this article shall be required in all contracts to which it applies, and such contracts, leases, and licenses shall provide that violation of this article shall constitute a material breach thereof and enable Sacramento to terminate the contract and otherwise pursue legal remedies that may be available. Such contracts shall also include a requirement that employers agree to abide by all applicable labor and employment laws.

10. Limitation of Actions

All claims asserting rights under this Chapter must be brought within three (3) years of the discovery of the violation.

11. Coexistence With Other Available Relief

This article shall not be construed to limit an employee's right to bring legal action for violation of any other law.

12. Supersession by Collective Bargaining Agreement

The requirements of this article are superseded for employees whose terms and conditions of employment are governed by a bona fide collective bargaining agreement containing an explicit provision waiving the terms of this ordinance.

13. Severability

If any provision of this article, or its application to any person or circumstance is held invalid by any court of competent jurisdiction, the remainder of the article or its application to other persons or circumstances shall not be affected.

14. No Reduction In Collective Bargaining Wage Rates

Nothing in this Chapter shall be read to require or authorize any covered employer to reduce wages set by a collective bargaining agreement or required under any prevailing wage law.

15. Cuts In Non-Wage Benefits Prohibited

No covered employer will fund wage increases required by this Chapter, or otherwise respond to the provisions of this Chapter, by reducing the health, insurance, pension, vacation, or other non-wage benefits of any of its employees.

16. Living Wage reporting.

(a) Payroll record keeping and reporting

Each Covered Employer shall maintain payrolls for all Covered Employees and basic records relating thereto and shall preserve them for a period of three years. The records shall contain: the zip code of each employee's place of residence, the number of hours worked each day, the gross wages, deduction made, actual wages paid, a record of fringe benefit payments, and any other data as may be required by the City from time to time.

Every six months, each Covered Employer will file with the Designated Department a complete payroll showing the Covered Employer's payroll records for each of its Covered Employees for one payroll period. Upon request by the Designated Department, a Covered Employer shall produce for inspection and copying its payroll records for any or all of its Covered Employees for the prior three year period.

(b) List of employees

Where an Awarding Agency has given notice that a contract subject to this ordinance has been terminated, the Awarding Agency shall notify the terminated contractor of the identity of the successor contractor, if known, and the terminated contractor shall within ten days thereafter provide to the successor contractor and the Awarding Agency the name, address, date of hire, and employment occupation classification of each employee, or that of its subcontractors, primarily performing work on the terminated contract at the time of contract termination. If a successor contractor has not been awarded the contract by the end of the ten day period, the Awarding Agency shall provide the employment information to the successor contractor upon award.

17. Notifying Employees of their Potential Right to the Federal Earned Income Credit

Covered Employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit ("EIC") under §32 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer. These forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within 30 days of employment under the terms of this Ordinance and as required by the Internal Revenue Code.

18. RFP, Contract and Financial Assistance Agreement Language

All RFP's, City contracts and assistance agreements, regardless of whether they are subject to this Ordinance shall contain language informing the bidders or recipients that this ordinance may apply to the service, assistance, or bid in question.

19. Obligations of Covered Employers

(a) All proposed Beneficiaries subject to the provisions of this Ordinance shall submit a completed Declaration of Compliance form, signed by an authorized representative, along with each proposal. The completed Declaration of Compliance form shall be made a part of the executed contract.

(b) Covered Employers shall require their subcontractors and tenants/leaseholders to comply with the provisions of this Ordinance. Language indicating the subcontractor's or tenants/leaseholders agreement to comply shall be included in the contract between the

contractor and subcontractor or any agreement between a Covered Employer and tenants/leaseholders. A copy of such subcontracts or other such agreements shall be submitted to the City.

(c) Covered Employers shall maintain a listing of the name, address, date of hire, occupation classification, rate of pay and benefits paid for each of its employees, if any, and submit a copy of the list to the City by March 31, June 30, September 30, and December 31 of each year the contract is in effect. Failure to provide this list within five days of the due date will result in a penalty of \$500 per day. Covered Employers shall maintain payrolls for all employees and basic records relating thereto and shall preserve them for a period of three years after termination of their contracts.

(d) Covered Employers shall give written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of this Ordinance. The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification shall be forwarded to the City.

(e) Covered Employers shall permit access to work sites and relevant payroll records for authorized City representatives for the purpose of monitoring compliance with this Ordinance, investigating employee complaints of non-compliance and evaluating the operation and effects of this Ordinance, including the production for inspection and copying of its payroll records for any or all of its employees for the term of the contract or for five years whichever period of compliance is applicable.

20. Ordinance Applicable to New Contracts and City Financial Assistance

The provisions of this Ordinance shall apply to (a) a contract entered into and financial assistance provided after the effective date of this Ordinance; (b) a contract amendment consummated after the effective date of this Ordinance which itself meets the financial threshold requirement of this Ordinance and (c) supplemental financial assistance provided for after the effective date of this Ordinance which itself meets the requirements of this Ordinance.

21. Effective date.

The law shall be effective from the date of _____.

**LW Committee Proposed Living Wage Ordinance
Policy Considerations:**

The economic analysis to be provided by Economic Research Associates addresses the following major policy issues:

1. Provide an economic definition of a "Living Wage" and identifies the appropriate rate of pay for the "Living Wage" in the Sacramento metropolitan area.
6. Compare the rate of pay identified as the appropriate rate of pay for the "Living Wage" in the Sacramento metropolitan area to the rates proposed in the draft ordinance and the corresponding rates of pay of other "Living Wage" Ordinances currently in effect in California.
7. Review the City staff analysis of the economic cost to the City that would occur if the proposed "Living Wage Ordinance" was adopted and all other factors remain constant.
8. Estimate the amount of any cost increase(s) that might be offset by increased productivity and lower employee turnover under the proposed "Living Wage Ordinance".
9. Determine the number of City residents whose annual income is at or below the federal definition of low income, and the numbers of those that may and may not benefit from a "Living Wage Ordinance".
10. Examine the potential for the termination of lower skilled workers replaced by higher skilled workers due to implementation of the proposed "Living Wage Ordinance".
11. Estimate the economic impact offset for affected employees due to any potential loss of state and federal benefits and/or increased income taxes.
12. Estimate the annual City cost to administer the program.
13. Examine and describe the impact the proposed ordinance may have on the City's Economic Development Program.
14. Address any potential adverse economic impact that may result if the City is the only entity in the region that adopts a Living Wage Ordinance.

In addition, a separate report from Economic Research Associates will identify alternative measures to assist the working poor.



2.3

PLANNING AND BUILDING
DEPARTMENT

Planning Division

CITY OF SACRAMENTO
CALIFORNIA

1231 I STREET
ROOM 300
SACRAMENTO,
CA
95814-2998

PLANNING
916-264-5381
FAX 916-264-5328

November 7, 2002

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: Zoning Ordinance Amendment Adding Chapter 17.191 to Title 17 of the City Code to establish the Infill Fee Reduction Fund, relating to reductions in development and impact fees to promote infill development in Target Residential Infill Areas. (M02-049)

LOCATION: Citywide in designated Target Residential Neighborhoods

COUNCIL DISTRICT: All Districts

RECOMMENDATION: Planning Commission and staff recommend that the City Council adopt the attached ordinance related to the reduction of development and impact fees for qualified infill projects.

CONTACT PERSONS: Lucinda Willcox, Senior Planner, 264-5052
Stacia Cosgrove, Associate Planner, 264-7110

FOR COMMITTEE MEETING OF: November 19, 2002

SUMMARY: The Zoning Ordinance Amendment establishes a new Infill Fee Reduction program to write-down development and impact fees for qualified small residential infill projects by up to \$5,000 per unit. Qualified projects must consist of four or fewer single family, duplex, or townhome units, and be located within one of the General Plan's designated Target Residential Neighborhoods (see Attachment A, Exhibit A). The City Council approved funding for this program in its FY 02-03 budget in the amount of \$150,000, which is estimated to assist

up to 30 units annually. The ordinance was identified as an implementation program in the City of Sacramento's recently adopted Infill Strategy.

COMMITTEE/COMMISSION ACTION: On October 24, 2002, the City Planning Commission unanimously recommended approval of the Infill Fee Reduction Fund Ordinance.

BACKGROUND INFORMATION:

On May 14, 2002, the City Council adopted the City of Sacramento Infill Strategy (Res. 2002-277), comprised of a revised and expanded set of General Plan policies, new strategic infill target areas, and a series of programmatic actions intended to promote infill development within the City.

The proposed Infill Fee Reduction Program is included in the Infill Strategy. This program was identified as a high priority in the Infill Strategy for two primary reasons:

- Analysis of vacant infill land in the City determined that of the 5,000 vacant parcels in the city, two-thirds of these are parcels smaller than 10,000 square feet. Not only do these parcels represent a substantial portion of the City's overall infill development potential, but these vacant lots are concentrated in some of the City's older and more challenged neighborhoods. Such vacant lots often cause blight and attract negative activities such as illegal dumping or other illegal activities.
- There are considerable financial challenges involved with constructing small residential infill projects in the City of Sacramento's older neighborhoods, due to potentially significant infrastructure costs, subdivision fees, irregular lot sizes, inability to benefit from economies of scale, and lower sales and rental prices than newer areas of the city.

The proposed ordinance establishes the Infill Fee Reduction program in order to reduce the per-unit fees for eligible residential projects. Eligible projects include projects of four units or less comprised of single family homes, duplexes, or townhomes that are located in the defined Target Residential Neighborhoods (see Attachment A, Exhibit A). These Target Residential Neighborhoods include older residential neighborhoods with significant numbers of individual and small vacant residential lots. These include redevelopment areas, Community Development Block Grant (CDBG) eligible areas, and other transitional neighborhoods. Within these areas, there are approximately 1,600 acres of vacant land representing more than 3,000 potential housing units.

This program is intended to assist small infill projects. Developments that are part of larger subdivisions are not eligible. The program is intended to reduce the total fees due at the time of building permit issuance. It does not address any planning entitlement, design review or subdivision fees, or direct infrastructure costs.

Fees paid at the time of issuing a building permit by a typical infill single family home include fees associated with building permit review (e.g., plan check and inspection), a variety of taxes

and development impact fees (e.g., for parks, schools, water, sewer facilities), and other utility connections (e.g., water tap). These typically are about \$13,000-\$15,000 per unit (see Attachment B). The City has existing infill incentive programs that waive the water development fee (approximately \$2,000 per unit) and reduce the regional sewer facility impact fee (from \$2,300 to \$923) for qualified infill units.

Under this new program, in addition to these existing fee reduction programs, development and impact fees for qualified projects would be written-down by up to an additional \$5,000 per unit. The funds will be dispersed to eligible projects on a first-come, first-served basis in the order in which the Planning Director approves applications. It is anticipated that the currently budgeted amount can assist approximately 30 units per year in FY 02-03. This program will be evaluated annually regarding its effectiveness to determine annual funding and to consider any refinements or modifications to eligible areas.

FINANCIAL CONSIDERATIONS: The City Council approved funding for this program in its FY 02-03 budget in the amount of \$150,000, which is estimated to assist up to 30 units annually.

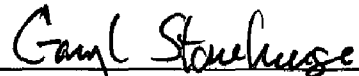
ENVIRONMENTAL CONSIDERATIONS: The Tiered Negative Declaration on the Housing Element and Addendum to the Tiered Negative Declaration prepared and approved in connection with adoption of the City's Infill Strategy includes consideration of this proposed Zoning Ordinance Amendment. As the Infill Fee Reduction program reduces fees for development consistent with the General Plan, Community Plan, zoning, and all other applicable planning and building regulations, no new potential environmental impacts have been identified. The Housing Element Negative Declaration and Addendum were reviewed by the Planning Commission in connection with its actions on the 2000 Housing Element and Citywide infill Strategy. These documents are available for review upon request at the Planning Division at 1231 I Street, Suite 300, or copies can be obtained upon request by contacting Planning staff.

POLICY CONSIDERATIONS: This proposed project implements an action item in the City's adopted Infill Strategy, and is in harmony with General Plan and Housing Element infill policies. Promoting infill development supports many City policies regarding efficient use of land, reinvestment in existing communities, and supporting development that can reduce automobile trips and support alternative modes of transportation, thereby resulting in air quality benefits.

ESBD CONSIDERATIONS: No goods or services are being purchased at this time.

Law and Legislation Committee
Infill Fee Reduction Ordinance (M02-049)
November 7, 2002

Respectfully Submitted,



GARY L. STONEHOUSE
Planning Director

Recommendation Approved:



BETTY MASUOKA
Assistant City Manager

Attachments

Attachment A: Zoning Ordinance Amendment Establishing the Infill Fee Reduction Fund
Attachment B: Example Fee Report for Small Residential Infill

M02-049.L&L

ORDINANCE NO. ____

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON THE DATE OF _____

**AN ORDINANCE ADDING CHAPTER 17.191 TO TITLE 17
OF THE CITY CODE RELATING TO REDUCTIONS IN
DEVELOPMENT AND IMPACT FEES TO PROMOTE
INFILL DEVELOPMENT IN TARGET RESIDENTIAL
INFILL AREAS (M02-049)**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. Findings

The City Council for the City of Sacramento finds as follows:

- A. There are financial challenges to the development of vacant and underutilized lots with small (1-4 units) residential infill development in areas identified as Target Residential Neighborhoods by the City of Sacramento General Plan, Section One.
- B. To cause or promote the development of small residential infill development, it is necessary and appropriate for the City to reduce a portion of the development and impact fees on new residential development in Target Residential Neighborhoods, for projects consisting of 1-4 units of single family, duplex, or townhome units.
- C. By enacting the provisions of Section 2 of this ordinance, thereby adding Chapter 17.191 to the City Code, it is the purpose and intent of the Council to reduce the burden of development and impact fees on small residential infill development in Target Residential Neighborhoods of the City through reduction of some such fees, with the hope and expectation that this will encourage and promote the development of vacant and underutilized residential lots in these established neighborhoods.
- D. To the extent development and impact fees are reduced for small residential infill development in Target Residential Neighborhoods, these fees shall not be passed on through

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ORDINANCE NO.: _____

DATE ADOPTED: _____

an increase in the fees paid by others subject to these fees, but shall instead be paid for out of City funds from one of more sources.

- E. The overall amount of funding to support the reduction of development and impact fees pursuant to Chapter 17.191 of the City Code, as added by Section 2 of this Ordinance, shall be determined on an annual basis. It is anticipated that, subject to funding availability and other budgetary constraints, the amount of funding provided to support small infill projects pursuant to Chapter 17.191 shall not be less than \$150,000.00 annually; and further, that any funds not expended in a given fiscal year shall be carried over to the next fiscal year.
- F. The amount of funding to be provided pursuant to Chapter 17.191 to promote small residential infill development in Target Residential Neighborhoods is contingent upon the annual City budget process, and nothing in this ordinance is intended to, nor could it, bind future City Councils on budgetary decisions, including the decision on whether to carry over funds dedicated to promote small residential infill development but not spent in the prior year(s).
- G. The provisions of Chapter 17.191 enacted pursuant to Section 2 of this Ordinance are consistent with, and enacted pursuant to, the policies contained in Section One of the General Plan and the Infill Strategy, as amended or adopted in 2002 pursuant to Resolution No. 2002-276 and 2002-277, respectively.

SECTION 2.

Chapter 17.191 is hereby added to Title 17 of the City Code, to read as follows:

17.191.010 Purpose.

The Council of the City of Sacramento desires to provide incentives for infill development within the City of Sacramento. It is the intent of the Council in enacting the provisions of this Chapter, to reduce the burden of development and impact fees on small residential infill development (1-4 units) in Target Residential Neighborhoods, through the reduction of some such fees, with the expectation that this will encourage and promote the development of vacant and underutilized residential lots in these established neighborhoods of the City.

17.191.020 Definitions.

The following definitions shall apply for the purposes of this Chapter.

Development and impact fees: "Development and impact fees" shall mean the fees required by City Code, ordinance, resolution or other city law to be paid as a condition of, or prerequisite to, issuance of a building permit for the development of residential uses, as those fees may be amended from time to time.

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ORDINANCE NO.: _____

DATE ADOPTED: _____

Infill development: "Infill development" shall be as defined in Section One of the General Plan of the City of Sacramento.

Infill Fee Reduction Fund: "Infill Fee Reduction Fund" shall mean the fund established pursuant to 17.191.050 of this Chapter to assist in the development of small residential infill development in Target Residential Neighborhoods.

Small residential infill development: "Small residential infill development" shall mean infill development constructing not more than four (4) housing units in total, consisting of single family, duplex, or townhome units.

Target Residential Neighborhoods: "Target Residential Neighborhoods" shall mean those areas designated as "Target Residential Neighborhoods" in Exhibit A of this ordinance.

17.191.030 Fee Reduction Program

- A. Small residential infill development shall be eligible for a reduction of a portion of the development and impact fees that would otherwise be imposed on the development project, as specified herein, provided they meet all of the following requirements:
1. Project is located within a Target Residential Neighborhood.
 2. Entire project consists of four or fewer single family, duplex, or townhome units.
 3. Project is not part of five or more contiguous vacant lots in a subdivision.
 4. Project's residential density is in accordance with applicable General Plan, Community Plan, and zoning specifications, and is at a density not less than four (4) units per net acre.
 5. Project does not exceed 2,500 square feet in any residential unit, excluding space allocated to carports, garages, and other accessory structures.
- B. Subject to the availability of funds and compliance with the other requirements of this Chapter, the development and impact fees otherwise applicable to small residential infill development shall be reduced as follows:
1. The development and impact fees otherwise applicable to eligible small residential infill development meeting the criteria in Subsection 17.191.030(A) shall be reduced by the amount of Five Thousand (\$5,000.00) per unit, less the amount received from fee credits attributable to previous development on the site.
- C. The Planning Director shall be responsible for determining allocation of funds. In making this determination, the Planning Director may consider locational factors to promote fair and equitable dispersal of funds to numerous areas within the Target Residential Areas.

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

17.191.040 Application Process and Approval

- A. Applications for fee reductions shall be submitted to the Planning Director at or before the time of building permit approval. Applications for fee reductions shall not be submitted until after approval of all discretionary planning entitlements, except that applications for fee reductions can be submitted concurrently with applications for design review.
- B. The Planning Director shall approve an application for reservation of funds from the annual allocation established for the fee reduction program, as specified in Section 17.191.050, upon a determination of fee reduction based on the criteria in Subsection 17.191.030(A) and available funds in the annual allocation.
- C. The Planning Director shall establish and maintain a list of approved projects, the date of approval, and the amount of fee reductions approved for the project. The projects shall be prioritized based upon the date of the approval.
- D. Building permits must be obtained within one year of Planning Director approval of the infill fee reduction. If building permits are not obtained within one year of Planning Director approval, the reservation of funds shall be released back into the annual allocation and become available for reallocation. The Planning Director may grant a time extension of up to one year for the reservation of funds. Written requests justifying the need for a time extension must be submitted to the Planning Director prior to expiration of the reservation.

17.191.050 Infill Fee Reduction Fund

- A. There is hereby established an Infill Fee Reduction Fund, which the Council shall fund on an annual basis in such amount(s) as the Council determines are reasonable, appropriate and necessary to fund, or assist in funding, small residential infill development in Target Residential Neighborhoods, as defined by the City's General Plan. The amount of fee waivers or reductions to be approved in any given fiscal (or calendar) year shall be limited to the amount allocated to the Infill Fee Reduction Fund established pursuant to this section.
- B. Subject to the annual appropriations and funding process, any funds allocated for a particular fiscal year and not allocated or spent pursuant to the provisions of this Chapter shall be carried over and included in the funds included in the Infill Fee Reduction Fund established pursuant to this Section.

DATE PASSED FOR PUBLICATION:**DATE ENACTED:**

FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

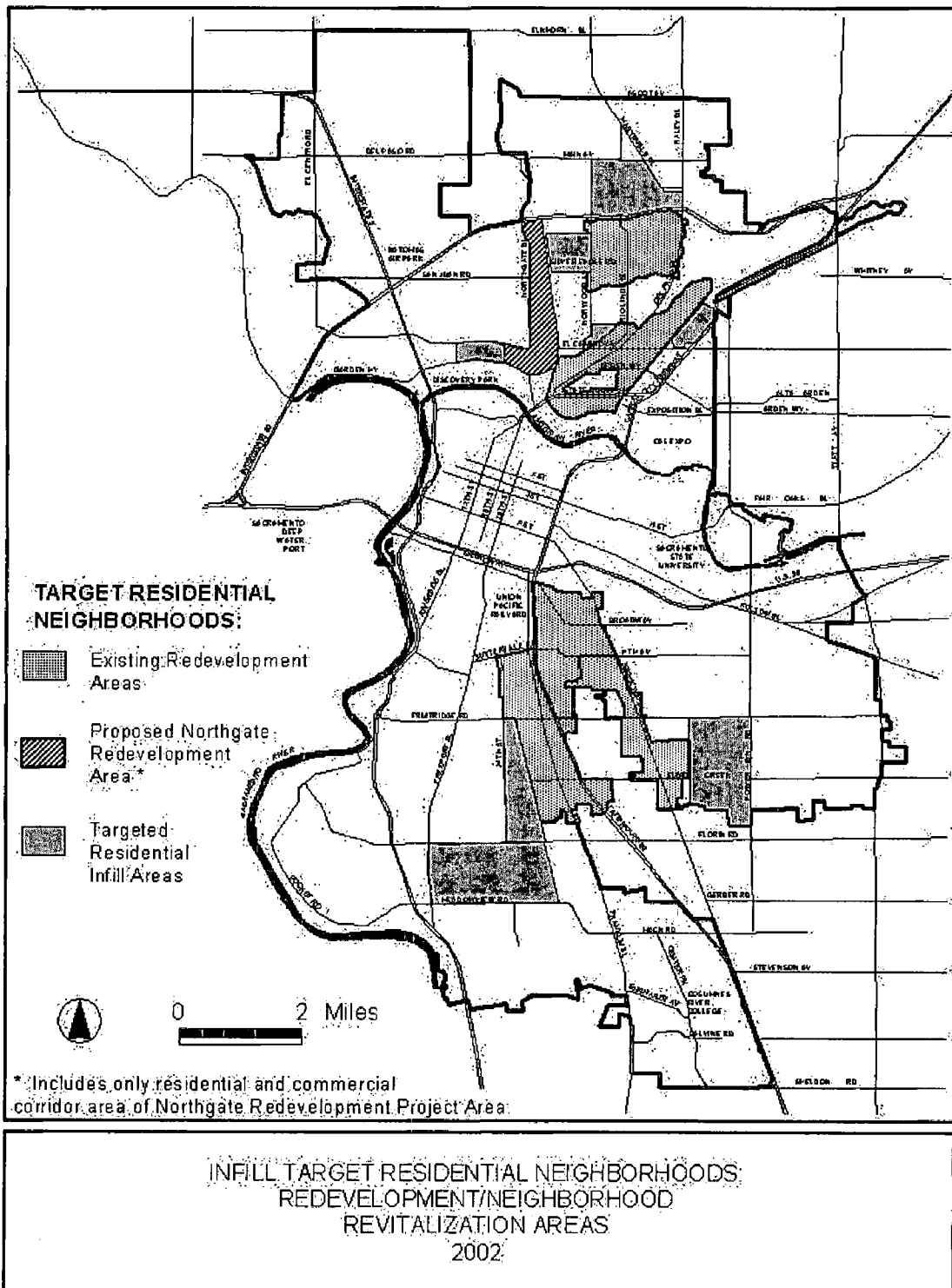
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FOR CITY CLERK USE ONLY

ORDINANCE NO.: _____

DATE ADOPTED: _____

EXHIBIT A



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FOR CITY CLERK USE ONLY

ORDINANCE NO.:

DATE ADOPTED:

TYPICAL PER UNIT DEVELOPMENT AND IMPACT FEES FOR NEW SINGLE FAMILY RESIDENTIAL INFILL ¹		
Fees and Charges	Infill	
	Citywide Average	%
Plan Review and Permit Fees		
Building Permit Fee	\$1,100	8%
Plan Review Fee	\$300	2%
Technology Surcharge	\$53	0%
Sub-Total	\$1,453	10%
Impact Fees and Taxes		
Construction Excise Tax	\$850	6%
Residential Construction Tax	\$385	3%
Water Development ²	\$2,000	14%
Sewer Development	\$124	1%
Regional Sanitation ³	\$2,300	17%
School Impact Fees ⁴	\$2,968	21%
Park Impact Fee	\$1,900	14%
Sub-Total	\$10,527	76%
Other Charges		
Tap Fees	\$1,900	14%
Strong Motion Instrumentation Fee	\$11	0%
Business Operations Tax	\$43	0%
Sub-Total	\$1,954	14%
TOTAL FEES	\$13,934	100%
Direct Infrastructure Improvements	\$5000-\$20,000 per unit	

* Fees can vary depending upon location and size of home.

¹ This list of fees does not include the cost of any necessary planning entitlements, subdivision map fees, assessment fees, or SAFCA fees.

² The Water Development Fee may be waived for qualified infill projects.

³ The Regional Sanitation Fee may be reduced to \$923.00 for qualified infill projects.



2.4

DEPARTMENT
OF UTILITIES

ENGINEERING
SERVICES DIVISION

CITY OF SACRAMENTO
CALIFORNIA

1395 35th AVENUE
SACRAMENTO, CA
95822-2911

PH 916-264-1400
FAX 916-264-1497/1498

November 1, 2002

Law & Legislative Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: REPORT BACK - ISSUES RELATED TO STANDARD MINIMUM
QUALIFICATIONS FOR BIDDERS ON COMPETITIVELY BID PUBLIC
PROJECTS AND MODIFICATIONS TO THE MINIMUM QUALIFICATIONS
QUESTIONNAIRE**

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report recommends that the Law & Legislation Committee approve and forward to the City Council the attached resolution to authorize modifications to the Minimum Qualifications Questionnaire established under an amendment to Section 3.60.020 of the City Code.

CONTACT PERSONS: Gary A. Reents, Engineering Services Manager, 264-1433
Gandace McGahan, Supervising Engineer, 264-1416
Fran Halbakken, Project Delivery Manager, 264-7194

FOR COMMITTEE MEETING OF: November 19, 2002

SUMMARY

This report addresses issues raised by Councilmembers regarding the Standard Minimum Qualifications for bidders on public works construction projects, adopted by the City Council on May 14, 2002, and recommends modifications to the Minimum Qualifications Questionnaire.



CITY OF SACRAMENTO
DEPARTMENT
OF UTILITIES

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BACKGROUND INFORMATION

On May 14, 2002, the City Council adopted an amendment to City Code Section 3.60.020, in response to concerns of City Council regarding the qualifications of prime contractors bidding on public works projects and the quality of their work. The amendment authorized the concurrent adoption, by resolution, of Standard Minimum Qualifications for prime contractors that are determined by a bidder's answers to a short questionnaire accompanying each sealed proposal for competitively bid projects. Councilmembers identified several issues regarding the questionnaire that they asked staff to report back to the Law & Legislative Committee, including:

- Minimum qualifications vs. pre-qualification.

The Standard Minimum Qualifications will be applied to all competitively bid public projects. These qualifications pertain to past performance of the contractor and are determined through a questionnaire submitted at the time of bid. In addition to this requirement, large and/or complex City projects also have used, and will continue to use, a pre-qualification process in which a contractor must demonstrate its ability to perform specialized construction. Past projects that have utilized a pre-qualification procedure include the Sump 2 Improvement Project, expansion of the City's two water treatment plants, construction of the Sacramento River intake structure, and various City buildings. The contractor must complete an extensive pre-qualification package tailored to the specific project and must be approved (prequalified) to perform the work prior to being allowed to bid on the project.

- Comparison of Minimum Qualifications Questionnaire to the State's Department of Industrial Relations Model Questionnaire.

After authorizing legislation was enacted with the adoption of Public Contract Code Section 20101 in 1999, the State Department of Industrial Relations (DIR) adopted a model prequalification questionnaire establishing procedures for public entities to prequalify and rate prospective bidders for public works construction projects. Unlike some public entities, prior to the adoption of Public Contract Code Section 20101, the City of Sacramento, as a charter city, already possessed the authority to prequalify bidders on a public works construction project. The City has successfully utilized this procedure to prequalify bidders on numerous specialized projects, as noted above, and City staff intends to continue using this procedure, where appropriate, to assure that contractors performing City projects possess the necessary qualifications and experience.

The "minimum qualifications" approach enacted by the City Council on May 14, 2002, is not intended to replace this procedure, or perform a function analogous to the DIR's prequalification procedures. Rather than prequalifying and rating the ability of bidders to perform one or more public works construction contracts, the standard minimum qualifications adopted by the City Council are intended simply to establish minimum qualifications that all bidders must meet on all of the City's public works construction projects, in order to be considered a responsible bidder. As the title implies, the purpose of this requirement is to screen out bidders that do not possess a minimum level of qualifications deemed necessary to satisfactorily perform any project.

In spite of these differences, City staff used the DIR's Model Questionnaire as the starting point in developing the City's Minimum Qualifications Questionnaire. The goal in developing the questionnaire was to have a document that:

- ▶ Applied a minimum standard for all contractors, based on their past performance of public works construction contracts.
- ▶ Was objective and required no interpretation or subjective evaluation of answers.
- ▶ Did not extend project schedules.
- ▶ Did not appreciably increase project costs.
- ▶ Did not significantly complicate the bidding process for the contractor.

- Other Agencies' Programs.

As noted above, the DIR Model Questionnaire provides for a relatively elaborate prequalification process. Regional Transit uses the DIR's model with minor modifications. Other contractor qualification programs looked at by staff included those used by East Bay Municipal Utilities District, the City of Woodland, the Sacramento Housing and Redevelopment Agency, the City of West Sacramento, Fairfield Suisun Sewer District, Yolo County, the Sacramento County Water Agency, Placer County Water Agency and American Institute of Architects Document A305 - Contractor's Qualification Statement. These programs range from simple qualification statements based on past projects and reference lists to adaptations of the DIR's model. As stated above, the City's minimum qualifications approach is not intended to perform the same function as the DIR's prequalification process.

- Outreach

Prior to the City Council's action on May 14, City staff met with the Association of General Contractors (AGC) that represents union contractors. The AGC had a lot of input into the DIR's pre-qualification model and, although it supports use of that document, understood the City's need to have a short, concise minimum qualifications questionnaire. Many of the AGC comments were incorporated in the Minimum Qualifications Questionnaire adopted by the City Council on May 14. The Associated Builders and Contractors (ABC), representing non-union contractors, also reviewed the document and wrote to say that "the questions protect the public interest without inadvertently disqualifying any responsive and capable bidders."

Since the City Council's May 14 action, staff met with the Sacramento-Sierra Building and Construction Trades Council (Trades Council) representing union construction workers. The Trades Council had suggestions for the City's questionnaire, particularly adding a requirement that the contractor use apprentices, and adding a question addressing prevailing wage violations. To accommodate their concerns, questions 12 and 13 were added to address contractor compliance with California public works apprenticeship requirements and prevailing wage requirements. The Trades Council in a follow up letter, suggested some additional changes (see Exhibit B). Question 2 was broadened to include along with "firm", any of its owners, officers or partners. Other suggested changes were considered but not acted upon. Exhibit C is a letter from Staff to the Trades Council explaining the reasons for not making the those changes.

Additionally, Staff made minor modifications to question 6 to reflect the number of times a contractor has been assessed liquidated damages rather than the amount of days assessed. The total lost workday cases allowed to be exceeded in question 9 has been changed to 10 because the original 4.5 was an error and is actually below the national average.

A copy of the modified Minimum Qualifications Questionnaire has been sent to the AGC, ABC, the Trades Council and the Sacramento Black Chamber of Commerce.

FINANCIAL CONSIDERATIONS

No significant financial impacts resulted from the amendment to Section 3.60.020 adopted by the City Council on May 14, 2002.

POLICY CONSIDERATIONS

Requiring contractors competitively bidding on and performing the City's construction contracts to meet a standard minimum qualification level will help ensure the highest quality construction projects for the lowest cost by reducing the potential for cost overruns, delays and other adverse consequences of work by unqualified contractors.

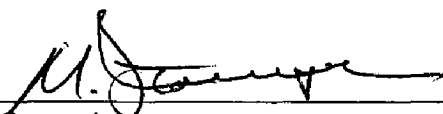
ENVIRONMENTAL CONSIDERATIONS


Adoption of the modified Minimum Qualifications Questionnaire constitutes general policy and procedure making that is not a project for which environmental review was required, pursuant to Section 15378 (b)(2) of the CEQA Guidelines.

ESBD CONSIDERATIONS

Not applicable. There are no goods or services being purchased as a direct result of this report.

Respectfully submitted,


For Jim Sequeira
Director of Utilities


for Mike Kashiwagi
Director of Public Works

RECOMMENDATION APPROVED:


Ken Nishimoto
Deputy City Manager

EXHIBIT A
MINIMUM QUALIFICATIONS QUESTIONNAIRE

Sacramento City Code section 3.60.020 authorizes the Sacramento City Council to adopt standard minimum qualifications for bidders on competitively bid public works construction projects, and requires, among other provisions, that a bidder meet such minimum qualifications at the time of bid opening to be considered responsible. On _____, the City Council adopted Resolution No. _____, establishing these standard minimum qualifications. Pursuant to City Code section 3.60.020, a bidder failing to meet these minimum qualifications at the time of bid opening shall not be considered a responsible bidder.

All bidders must demonstrate compliance with the minimum qualifications established by Resolution No. _____ by completing all of the questions contained in this questionnaire. If a bidder answers "yes" to any single question, fails to submit a fully completed questionnaire, or submits false information, this will result in a determination that the minimum qualifications are not met, and the bidder shall not be considered a responsible bidder for purposes of bidding on this contract. If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must separately meet these minimum qualifications for the Joint Venture to be considered a responsible bidder.

The City of Sacramento ("City") shall make its determination on the basis of the submitted questionnaire, as well as any relevant information that is obtained from others or as a result of investigation by the City. While it is the intent of this questionnaire to assist the City in determining whether bidders possess the minimum qualifications necessary to submit bids on the City's competitively bid public works construction contracts, the fact that a bidder submits a questionnaire demonstrating that it meets these minimum qualifications shall not in any way limit or affect the City's ability to: (1) review other information contained in the bid submitted by the bidder, and additional relevant information, and determine whether the contractor is a responsive and/or responsible bidder; or (2) establish pre-qualification requirements for a specific contract or contracts.

By submitting this questionnaire, the bidder consents to the disclosure of its questionnaire answers: (i) to third parties for the purposes of verification, investigation, and ; (ii) in connection with any protest, challenge or appeal of any action taken by the City; and (iii) as required by any law or regulation, including without limitation the California Public Records Act (Calif. Gov't Code sections 6250 et seq.). Each questionnaire must be signed under penalty of perjury in the manner designated at the end of the form, by an individual who has the legal authority to bind the bidder submitting the questionnaire. If any information provided by a bidder becomes inaccurate, the bidder shall immediately notify the City and provide updated accurate information in writing, under penalty of perjury.

QUESTIONNAIRE

NOTICE: All of the following questions regarding "your firm" refer to the firm (corporation, partnership or sole proprietor) submitting this questionnaire, as well as any firm(s) with which any of your firm's owners, officers, or partners are or have been associated as an owner, officer, partner or similar position within the last five years.

The firm submitting this questionnaire shall not be considered a responsible bidder if the answer to any of these questions is "yes", or if the firm submits a questionnaire that is not fully completed or contains false information.

1. **Classification & Expiration Date(s) of California Contractor's License Number(s)** held by firm:

2. Has a contractor's license held by your firm and/or any owner, officer or partner of your firm been revoked at anytime in the last five years?

☐ Yes ☐ No

3. Within the last five years, has a surety firm completed a contract on your firm's behalf, or paid for completion of a contract to which your firm was a party, because your firm was considered to be in default or was terminated for cause by the project owner?

☐ Yes ☐ No

4. At the time of submitting this minimum qualifications questionnaire, is your firm ineligible to bid on or be awarded a public works contract, or perform as a subcontractor on a public works contract, pursuant to either California Labor Code section 1777.1 (prevailing wage violations) or Labor Code section 1777.7 (apprenticeship violations)?

☐ Yes ☐ No

5. At any time during the last five years, has your firm, or any of its owners, officers or partners been convicted of a crime involving the awarding of a contract for a government construction project, or the bidding or performance of a government contract?

☐ Yes ☐ No

6. Answer either subsection A or B, as applicable:

- A. Your firm has completed three or more construction contracts for the City within the last five years: Within those five years, has the City assessed your firm liquidated damages on three or more contracts for failure to complete contract work on time?

NOTE: If there is a pending court action challenging the City's assessment of liquidated damages on a City contract within the last five years, you need not include that contract in responding to this question.

☐ Yes ☐ No ☐ Not applicable

- B. Your firm has not completed at least three construction contracts for the City within the last five years: Within the last three years, has your firm been assessed liquidated damages on three or more government construction contracts for failure to complete contract work on time?

NOTE: If there is a pending administrative or court action challenging an assessment of liquidated damages on a government contract within the last three years, you need not include that contract in responding to this question.

☐ Yes ☐ No ☐ Not applicable

7. In the last three years has your firm been debarred from bidding on, or completing, any government agency or public works construction contract for any reason?

NOTE: If there is a pending administrative or court action challenging a debarment, you need not include that debarment in responding to this question.

☐ Yes ☐ No

8. Has CAL OSHA or federal OSHA assessed a total of three or more penalties against your firm for any "serious" or "willful" violation at any time within the last three years?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

9. In the last three years has your firm had a three year average incident rate for total lost workday cases exceeding 10?

NOTE: Incident rates represent the number of lost workday cases per 100 full-time workers and is to be calculated as: $(N/EH) \times 200,000$, where

N = number of lost workday cases (as defined by the U.S. Dept. of Labor, Bureau of Labor Statistics)
 EH = total hours worked by all employees during the calendar year
 200,000 = base for 100 equivalent full-time working (working 40 hours per week, 50 weeks per year)

☐ Yes ☐ No

10. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed penalties three or more times, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was a contractor?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

11. In the past three years, has the federal EPA, Region IX or a California Air Quality Management District or Regional Water Quality Control Board assessed a single penalty of \$100,000 or more, either against your firm, or against an owner for a violation resulting in whole or in part from any action or omission by your firm on a project on which your firm was the contractor?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

12. In the past three years, have civil penalties been assessed against your firm pursuant to California Labor Code 1777.7 for violation of California public works apprenticeship requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a penalty assessment, you need not include that penalty assessment in responding to this question.

☐ Yes ☐ No

13. In the past three years, has a public agency in California withheld contract payments or assessed penalties against your firm for violation of public works prevailing wage requirements, three or more times?

NOTE: If there is a pending administrative or court action appealing a withholding or penalty assessment, you need not include that withholding or penalty assessment in responding to this question.

☐ Yes ☐ No

VERIFICATION AND SIGNATURE

I, the undersigned, certify and declare that I have read all the foregoing answers to this Minimum Qualifications Questionnaire, and know their contents. The matters stated in these Questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed at _____, on _____.
(Location) (Date)

Signature: _____

Print name: _____

Title: _____

NOTE: If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must submit a separate Minimum Qualifications Questionnaire.



SACRAMENTO-SIERRA BUILDING & CONSTRUCTION TRADES COUNCIL

Representing over 25,000 union construction workers in Sacramento, Yolo, Placer, El Dorado, Amador, Nevada & Sierra Counties

October 16, 2002

Candace A. McGahan, P. E.
Supervising Engineer
City of Sacramento
Department of Utilities
1395 35th Avenue
Sacramento CA 95822

Re: Minimum Qualifications Ordinance

Candace:

We would like to begin by thanking you and your staff for the efforts you have put forth in drafting a minimum qualifications questionnaire for bidders on public works projects. The Building Trades is well aware of the problems the Public Works Department and the Public Utilities Department face in managing the multitude of projects that are in progress at any given time. This is why we consider a qualifications questionnaire to be invaluable in ensuring that capable qualified contractors are bidding on the projects being undertaken by the City of Sacramento.

While we spoke on the telephone yesterday, I became aware of the difference in opinions of the intentions and purposes of the qualifications questionnaire. I think we can agree that the qualifications questionnaire should be used as a tool that allows the City of Sacramento to screen and evaluate bidders based on reasonable and logical criteria.

During previous meetings and communications with your office, we were able to discuss the issues that the Building Trades thought were critical in respect to compliance with labor codes governing the California public works apprenticeship requirements and California public works prevailing wage requirements. The latest revisions to the Minimum Qualifications Questionnaire include questions that address these issues. While some of our concerns have been addressed in the latest revision, we want to be sure that you understand that the Building Trades does not consider these to be "social justice" issues. We consider these issues to be important because they are laws pertaining to California public works requirements.

You have indicated to me that this document is a Minimum Qualification Questionnaire that is not intended to be all encompassing. We would like to point out that there are issues that have not been addressed in this document and may not be Building Trades issues, but should still be considered to make certain that the document is effective.

Let's examine question #2, *Has your firm's contractors license been revoked at any time in the last five years?* This question is vague and should be broadened to include any contractors license held individually or jointly by any owners, officers, or partners of the firm. This is similar to the wording of question #5.

Question #9, *In the last three years has your firm had a three year average incident rate for total workday cases exceeding 4.5?* It is well known that this rate is a poor indicator of an employers actual safety record. A better measure is to use their workers compensation experience modification rate. It is independently verifiable. Lost workday rates are self reported and as such are difficult to independently verify.

Question #12 which has been added inquires, *In the last three years, have civil penalties been assessed against your firm pursuant to California Labor Code 1777.7 for violation of California public works apprenticeship requirements, three or more times.* While this question asks if the bidder has been cited and assessed penalties, it does not ask if the bidder is capable of meeting the apprenticeship requirement. The bidder should also verify that their subcontractors meet the requirements.

Additionally the Building Trades believes that questions regarding financial solvency, bonding abilities, minimum insurance and previous experience on "like" projects should be included when "pre-qualifying" bidders.

The goal of "pre-qualifying" is to help public agencies receive the highest quality project and at the same time comply with all state competitive bidding and public laws.

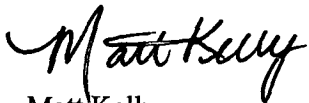
In selecting a contractor to perform a public works project, a public agency is not required to select the lowest bid. A bid can, and must be rejected if the agency determines that it is not "responsive". The term "responsive" relates to whether the bid is based upon all aspects and specifications of the job in question.

Also, the lowest bid can and must be rejected if the agency determines that the bidder is not "responsible." Recent state legislation has given public agencies additional flexibility in determining what "responsible" means. The newest statute includes the issue of "trustworthiness" and past record as a basis for determining whether or not a bidder is responsible.

Whether you decide to expand your "minimum qualifications" questionnaire or generate an additional document to ensure that bidders are qualified and capable, we urge you to consider the issues we have outlined.

If the Building Trades can be of any assistance in helping your department draft a set of bidder qualifications please feel free to enlist our help.

Respectfully,



Matt Kelly
Sacramento-Sierra's
Building & Construction
Trades Council

MK:nc



DEPARTMENT
OF UTILITIES

ENGINEERING
SERVICES DIVISION

CITY OF SACRAMENTO
CALIFORNIA

November 5, 2002
020720:CM:glg

1395 35th AVENUE
SACRAMENTO, CA
95822-2911

PH 916-264-1400
FAX 916-264-1497/1498

Matt Kelly
Sacramento-Sierra Building & Construction Trades Council
2840 El Centro Road, Suite 107
Sacramento, CA 95833

SUBJECT: Minimum Qualifications Questionnaire

Dear Mr. Kelly:

Thank you for your recent letter regarding the City's Minimum Qualifications Questionnaire and its ability to ensure that capable qualified contractors are bidding on our projects. Your letter raised several issues, which are addressed below:

- Question 2 has been re-written to read: "Has a contractor's license held by your firm and/or any owner, officer or partner of your firm been revoked at anytime in the last five years?"
- In Question 9, you suggested that we use the workers compensation experience modification rate (EMR) instead of OSHA Incidence Rates. While it is true that the reliability of OSHA incidence rates is solely dependent on judicious reporting by the employer, correlation between the two has been shown and both are an indicator of past safety performance. The OSHA incidence rates are a uniform national statistic with no limitations in comparing rates in one part of the country with those in another. Moreover, OSHA incidence rates reflect more recent experience than EMR's. We believe that use of the OSHA incidence rates is appropriate for this application and will continue to use it in the questionnaire. However, the number of total lost workday cases the contractor is allowed to exceed (4.5) is not appropriate and will be changed to 10.
- Inclusion of Question 12 satisfies the request you made in your July 31 letter to put contractors on notice that "failure to comply with State Laws regarding use of Apprentices on public works projects will negatively influence consideration of bids by Contractor's that do not comply". A contractor submitting a "yes" answer to the question is not considered to be a responsible bidder. Expanding the questionnaire to require bidders to meet apprenticeship requirements or show capacity to do so exceeds the scope of a minimum qualification approach, as previously discussed. Council can do more in terms of apprenticeship requirements if it desires, but such actions would require a City Code change and another process to do so.




CITY OF SACRAMENTO
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- The Minimum Qualification Questionnaire is signed and submitted by the contractor at the time of the bid opening under the penalty of perjury. Requiring the contractor to verify information and sign on behalf of subcontracts is not appropriate. Subcontractors are often selected by contractors just before bid opening and are the contractual responsibility of the contractor. Subcontractor qualification would not meet several of the original criteria for the Standard Minimum Qualification procedure, such as, "not extending project schedules" and "not significantly complicating the bidding process for the contractor". Historically, problems with the qualifications of subcontractors has rarely been an issue for the City and does not warrant the level of complexity incurred.
- Questions regarding financial solvency and previous experience are not germane to the Minimum Qualification Questionnaire used on the standard City project. The contractor's license along with requisite bonding and insurance required by contractual language is sufficient assurance for most City projects. Detailed questions regarding financial solvency and previous experience are included in a pre-qualification process used on complex City projects requiring specialized expertise and multiple resources. As we've said before, the Minimum Qualification Questionnaire is not a pre-qualification process and is not intended to replace that procedure.
- As mentioned above, bonding and insurance requirements are also included as part of the contract requirements and have not proved to be an issue requiring special attention.

The changes to the Minimum Qualifications Questionnaire previously sent to you and as described above are tentatively scheduled to be presented at the November 19 meeting of the Law and Legislative Committee which meets at 12:30 pm in the City Council Chambers. I've enclosed a copy of the revised Minimum Qualifications Questionnaire for your use. Should the tentative date for presentation to the Law and Legislative Committee change, I will let you know.

Sincerely,


 for Candace A. McGahan, P.E.
 Supervising Engineer

Attachment

cc: Mike Kashiwagi, Director of Public Works
 Jim Sequeira, Director of Utilities
 Fran Halbakken, Division Manager
 Gary Reents, Division Manger
 Tim Mar, Supervising Engineer
 Joe Robinson, Deputy City Attorney
 Tom Lee, Deputy City Manager

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION REVISING THE STANDARD MINIMUM QUALIFICATIONS FOR BIDDERS ON COMPETITIVELY BID CONTRACTS FOR PUBLIC PROJECTS

WHEREAS, Section 3.60.020 of the Sacramento City Code authorizes the City Council, by resolution, to adopt standard minimum qualifications for bidders on competitively bid contracts for public projects; and

WHEREAS, on May 14, 2002, the Sacramento City Council adopted Resolution No. 2002-280 establishing such standard minimum qualifications; and

WHEREAS, this resolution revises the standard minimum qualifications adopted by Resolution No. 2002-280.

NOW, THEREFORE, BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:

1. The standard minimum qualifications for bidders on competitively bid contracts for public projects that are set forth in the Minimum Qualifications Questionnaire attached hereto as Exhibit A are hereby adopted. The Minimum Qualifications Questionnaire attached hereto as Exhibit A shall supercede and replace the Minimum Qualifications Questionnaire that was attached as Exhibit A to Resolution No. 2002-280.
2. Bidders on competitively bid contracts for public projects shall demonstrate compliance with the standard minimum qualifications by completing all of the questions contained in the attached Minimum Qualifications Questionnaire. If a bidder answers "yes" to any single question, fails to submit a fully completed Questionnaire, or submits false information, this will result in a determination that the standard minimum qualifications are not met, and the bidder shall not be considered a responsible bidder, pursuant to Sacramento City Code Section 3.60.020. If two or more entities submit a bid on a contract as a Joint Venture, each entity within the Joint Venture must separately meet the standard minimum qualifications for the Joint Venture to be considered a responsible bidder.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

3. Should any part of the attached Minimum Qualifications Questionnaire be declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Questionnaire shall remain in full force and effect.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____