



# Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

SUBJECT: SEE BELOW

DATE: March 15, 2019

APPROVED: 

DATE: 3-18-19

**SUBJECT: REPORT ON REQUEST FOR PROPOSAL FOR FINANCIAL SERVICES  
(BANKING SERVICES) RFP 17-18-05 AND RELATED ACTIONS**

## RECOMMENDATION

Direct the City Manager to:

1. Comply strictly with our Wage Theft Prevention Policy, and approve staff recommendation 1(i) to adopt a resolution authorizing the City Manager to reject all proposals, and to issue a new RFP for banking services.
2. Approve staff recommendation to negotiate an extended term of the current agreements with Wells Fargo for general banking and lockbox services, merchant card services, and securities custodial services, but limit the extension to June 30, 2020 to cover the period necessary to issue a new RFP, and return to Council if additional extensions are needed.
3. Recommend that city staff review the *Good Jobs First* report to identify companies with which we currently do business that have multiple violations according to our adopted Wage Theft Prevention Policy (0-44), evaluate the ability of the City to find any competitors in those industries likely to comply with the Policy, and report back on recommendations that enable the City to preserve the intent of the policy but procure essential services for the City.

## BACKGROUND

Due to the complexity of the needs of a city of San Jose's size, only a very small number of large financial institutions meet such critical requirements as experience, technical skill, capacity, and cost. As noted in the staff memo, both of the routinely qualified bidders—JPMorgan and Wells Fargo—do not comply with the City's Wage Theft Prevention Policy. Staff indicates that it is highly unlikely the City will find an institution satisfying the requirements set forth by the current Policy. Nearly every major financial institution, including Bank of America, Citigroup, Morgan Stanley, UBS, HSBC, and USBancorp, similarly have had numerous, multi-million-dollar cases of what is defined as wage theft, in the the June 2018 study, "Grand Theft Paycheck:

The Large Corporations Shortchanging Their Workers' Wages," published by GoodJobsFirst.org and the Jobs with Justice Education Fund. We face conflicting objectives insofar as enforcing the rules literally will almost certainly undermine the reliability and cost-effectiveness of the services that the City—and our residents and taxpayers—receive.

The same report, in Appendix A, lists numerous Fortune 500 and household-name companies with which the City routinely does business in some way, including many airlines, insurance companies, software providers, telecommunications companies, health care providers, auto rental agencies, and retailers, all of whom violate the "more than one (1) wage theft violation" as defined in our policy. For example, the report identifies every major telecom company (or their parent company) that has signed agreements with the City to install "small cells" on city light poles, and pay millions into our "Digital Inclusion Fund," to help us bridge the digital divide.

Due the unique nature of the wage theft laws of the state of California, 90% of state court wage theft cases in the United States involve employers within the state of California, according to page 21 of the report. Accordingly, using the mere fact of civil adjudication as a guide may have the City looking exclusively outside the Golden State for contractual partners, an outcome that would undermine our collective desire to support local business.

Equally problematic, under our existing policy, it is likely that the City of San Jose itself would violate the "more than one" requirement, as we've seen disputes over the years with employees over such differences as the calculation of overtime's impact on pension payments under the Fair Labor Standards Act. The State of California would similarly appear likely to violate the same policy, e.g., the California Supreme Court recently ordered the state to pay \$40 million back wages to judges, as required under a mandatory raise clause in their contract.

In particular, the City's and State of California's alleged violations have a common thread: these compensation disputes do not involve criminal, fraudulent, or blatantly exploitative conduct, but rather reflect conflicting views of contractual interpretation. They have never been deemed criminal matters in any court, but are regarded by some as wage theft because they involve civil matters in which there is an adjudication compelling the employer to compensate employees. Yet "theft" has never been defined as a civil matter; by definition, it's criminal. Staff should review the policy in the context of Council's longstanding intent to avoid doing business with exploitative, fraudulent employers.