



DATE: April 16, 2018

TO: Transportation Authority of Marin Citizens' Oversight Committee

FROM: Dianne Steinhauser, Executive Director
Dan Cherrier, Principal Project Delivery Manager

SUBJECT: Crossing Guard Costs (Discussion), Agenda Item 6

RECOMMENDATION

Discussion item, invite the COC to provide comments.

DISCUSSION

TAM has been managing the crossing guard program for the past 13 years. Costs have continued to rise over time. Please refer to the Attachment for background information.

Currently TAM is invoiced by our contractor at a rate of \$23.59 per hour with a four hour minimum per site. This amount has steadily risen since 2006 when the invoiced amount was \$15.98 per hour with the same four hour minimum. This cost includes use of the Marin county Living wage that is currently at \$14.20 per hour. The contractor is required by contract to pay a minimum of the Living wage for four hours each day to their employees.

On Page 4 of the Attachment is a discussion of the reasoning that has led to the continuation of the Living Wage. Several years ago, the guards working in Novato were exempt from the living wage and the requirement for a four hour minimum to be paid (this was due to a previously separate negotiated contract prior to TAM administering the Program). This led to discontentment on the part of the guards working in Novato and the decision was made to standardize payment so that all guards received at least the current Living Wage of a minimum of four hours per day.

Also in the Attachment, is a discussion and legal opinion regarding the potential change to a three hour minimum. Several other jurisdictions have changed to three hour minimum in the last few years. A review of recently awarded contracts is shown below,

<u>Jurisdiction</u>	<u>Date Awarded</u>	<u>Number of Guards</u>	<u>Hourly Rate</u>	<u>Minimums</u>
San Clemente	1/2016	10	\$16.09	3 Hr
Fremont	8/2017	22	\$20.73	3 Hr
Huntington Park	10/2017	9	\$16.85	3 Hr
Lomita	8/2017	6	\$17.72	3 Hr
Bell	10/2016	12	\$14.80	None

However, the Marin County Program is unique, due to the difficulty in staffing the guard positions, especially in the southern portions of the County. The current minimum \$14.20 per hour for four hours is the minimum necessary to staff some locations. A change to a three hour minimum would result in each guard position being individually negotiated to establish market rate. This would make it very difficult for the guard contractor to provide TAM with a competitive rate and reintroduce guard concerns over wage differences. Previously, the affected guards organized significant media campaigns, as well as bringing their concerns to the attention of elected officials at TAM, the County of Marin, and also at the City level.

NEXT STEPS

TAM recently released a new RFP for crossing guard services. Proposals are due Thursday April 19. Previously, TAM has contacted for one year of service at a time. The new approach will be for a five year time period with a fixed amount to be added to the current Marin county Living Wage with a four hour minimum. Some modest cost savings are anticipated especially in the last two years of the contract.

The add on amount includes insurance, training, payroll, recruitment, a single point manager, a supervisor for every 25 guards, equipment, rain gear, coordination with the school, background checks, replacements for absences, and constant evaluation.

ATTACHMENTS

Attachment: TAM Board Staff Report from January 22, 2015



DATE: January 22, 2015

TO: Transportation Authority of Marin Board of Commissioners

FROM: Dianne Steinhauser, Executive Director
Dan Cherrier, Principal Project Delivery Manager

SUBJECT: Consider Impact of Marin County Living Wage on Crossing Guard Program (Action),
Agenda Item No. 11

RECOMMENDATION:

Given the recent effective date of January 1st 2015 for a revised Marin County Living Wage, the TAM board is requested to approve continuing to pay the TAM contracted crossing guards the Marin County Living Wage with the understanding this may result in the elimination of six guard locations effective with the 2015/2016 school year.

Other recommendations considered but not supported by the TAM Programming and Projects Committee:

1. Discontinue the requirement to pay crossing guards the Marin County Living Wage. This was brought forward by staff due to the lower wage scale in operation across other jurisdictions.
2. Explore restructuring the contract with the vendor to change the hourly minimums while maintaining the living wage. This was brought forward by staff due to the lower hourly span paid for by many other jurisdictions, supported by a legal analysis done by County Counsel.

The TAM Programming and Projects Committee was also not in favor of reducing guard locations. Staff notes this is inevitable if additional funds cannot be found. The Committee requested staff explore other funding options including additional funding sources and potential cost sharing with school districts and cities.

The TAM board is requested to approve the Executive Director to execute Amendment 3 of Contract C FY 12/13-01 with American Guard Services to raise the Invoice Rate from \$18.70 per Hour to \$19.40 per Hour". A budget amendment is not expected to be required, since usage of the bus pass program has been less than anticipated this year.

BACKGROUND:

At the February 23, 2006 TAM Board meeting, the Commissioners directed staff to implement a county wide crossing guard program utilizing paid crossing guards to supplement or replace the current volunteer or school district paid guards then in place. It was determined that the best action would be to have TAM directly contract with the crossing guard vendor rather than have each individual school district maintain an individual contract.

A Request for Proposals was issued on March 30, 2006 for the crossing guard services with a sample contract containing a requirement for the selected vendor to be in compliance with the Marin County Living Wage Ordinance. The TAM sample contract was based on the contract then in place utilized by the Marin County Public Works Department. At the June 14, 2006 TAM Executive Committee Meeting, ten guiding policies were approved to direct TAM staff in implementing the crossing guard program. Adherence to the Marin County Living Wage was not listed among these.

The 2006 contract with the Living Wage Ordinance requirement was in place until July 31, 2009. By that time, the standard TAM contract no longer included the Marin County Living Wage requirement. It was decided by staff to maintain the living wage as a requirement of the new contract so as not to cause disharmony among the crossing guards in the field. This decision has been reported to the Board on multiple occasions. It should be noted that since the August 1, 2009 contract, there is no longer a requirement to follow the Marin County Living Wage Ordinance, rather a clause to pay the crossing guards an hourly wage that is at or higher than that required by the Ordinance.

DISCUSSION/ANALYSIS:

The contract with the crossing guard vendor requires payment of a wage equal or higher than the Marin County Living Wage. Since crossing guards work part-time without benefits this resulted in a minimum hourly rate of \$11.55 from January 1, 2009 to December 31, 2012, the amount was increased for calendar year 2013 to \$11.90, to \$12.10 for 2014, and has just risen to \$13.00 for 2015. The previous modest increases were planned for and projected in the cash flows projected for the crossing guard program shown in Attachment A.

Based on a small sample of other crossing guard programs, the requirement for a living wage is unique to Marin. Results of the sample are presented below.

Jurisdiction	Locations	Billing Rate	Guard Pay Rate	Hourly Minimum
Bay Point	5	\$14.49	\$9.00	3
College of Marin	2	\$18.70	\$12.10	4
Cypress	7	\$15.47	\$9.00	4
Davis	12	\$14.21	\$9.00	4
Diamond Bar	17	\$14.59	\$9.00	3
Dublin	10	\$16.76	\$9.00	4
Fremont	21	\$15.01	\$9.00	3
Palo Alto	29	\$14.50	\$9.00	4
Pleasant Hill	9	\$14.71	\$9.00	4
Rancho Palos Verdes	2	\$15.87	\$9.00	3
San Gabriel	7	\$15.47	\$9.00	4
TAM	82	\$18.70	\$12.10	4
Tustin	22	\$14.17	\$9.00	3.5
Walnut Creek	11	\$14.67	\$9.00	3

Note: The College of Marin agreed to the TAM cost structure to allow for guards to be placed at any location in Marin. The same rate also applies to single guards contracted by San Rafael City Schools District, Reed Union School District, and Ross School District.

Attachment B shows the estimated costs if the Marin County Living Wage increases at an annual rate between 3 and 4%. For comparison, the increase from last year was 7.4%. This magnitude of increase

will result in the crossing guard program only able to maintain a base of 59 guards over the life of the program until 2024 (ten remaining years). The reduction of the five guards would ideally take place before the start of the 2015/2016 school year. Sufficient funds exist for raising the pay rates under the current contract for the remainder of the school year.

The Living Wage increases will also impact the guards paid for by the Vehicle Registration Fee. Attachment C shows that there would be a reduction of one guard through 2024.

Historically, guard levels have been selected based on a sustainable program until 2024. Staff recommends that the program be right sized on a sustainable basis, as has been the practice for the first ten years of the crossing guard program. The six locations that are at the bottom of the funded portion of the approved TAM Crossing Guard Location List that would be subject to removal are:

North San Pedro & Roosevelt in Santa Venetia near Venetia Valley School;
Center & Tamalpais in Novato near Lu Sutton School;
Throckmorton & Old Mill in Mill Valley at Old Mill School;
Lomita Dr. in Mill Valley in front of Edna Maguire School;
Arthur & Cambridge in Novato near Rancho School;
South Novato Blvd. & Yukon Way in Novato near Rancho School.

The TAM Executive Programming and Projects Committee were in favor of maintaining a wage equivalent to the Marin County Living Wage; however, they were also concerned about the reduction of the six guard locations. They were especially concerned about the impact to Mill Valley and Novato schools (two locations in each city).

TAM staff are always exploring other funding sources for the crossing guard program. Recently based on recommendations from the Safe Routes AD-Hoc Committee and approved by the TAM Board, the program increased by two guards for four years using MTC Safe Routes Funds. Additional funding could also be available with a shared funding agreement with individual cities and school districts. The fixed crossing guard revenues could be stretched over additional locations if a cost sharing arrangement is considered.

The TAM Executive Programming and Projects Committee recommended exploring additional funding opportunities. They would like to see the locations lower on the TAM Board approved location list receive a contribution from the applicable school district or cities. This will allow for the program to maintain the existing guard locations and possibly expand. Difficulties remain in convincing a jurisdiction to pay for a service that has been historically provided at no cost.

Other Options Considered

Attachment A shows that a base of 64 crossing guards can be maintained until the end of the current sales tax in 2024. Sales tax revenue has been estimated for the life of the program. Costs are determined for crossing guards, and required evaluation / location determination costs. Costs are estimated in accordance with recent annual increases and associated contracts. Also included is four years of additional income from the TAM Board-directed OBAG funds from MTC's Safe Routes to School Program.

This approach may result in guards being paid differing pay rates. Guard recruiting and retention has been especially difficult in Tiburon and Mill Valley. Rates at or near the projected Living Wage increases will be necessary in this area, while in other areas, the pay rates may be closer to the State minimum wage. This issue was problematic when crossing guards in Novato were under a separate contract administered directly by Novato Unified School District. Guards in Novato were compensated at the

minimum wage while guards elsewhere were paid the Living Wage. The Novato guards were quite vocal that they believed this situation was unfair since the source of funds for both programs was the same. TAM eliminated this concern with a single contract in 2012 that provided all guards the Living Wage.

The TAM Executive Programming and Projects Committee was not in favor of this option.

An additional option considered by the TAM Executive Programming and Projects Committee was to restructure the minimum hours that each guard is paid. Staff has received an opinion from Marin County Counsel to clarify the minimum number of hours required for a guard to be compensated that work both shifts each day (please refer to Attachment D). Many agencies have interpreted existing labor laws to require a minimum of a two hour show up pay coupled with a split shift differential of one hour. This results in a guard working for one hour in the morning and one hour in the afternoon and being paid for four. Counsel from other agencies have stated that the morning guard should only be paid for one hour, since that is their scheduled work shift. In these jurisdictions, the guard is only paid for three hours.

The California Labor and Workforce Development Agency has provided conflicting responses to this issue. The show up time and the split shift differential are also designed to protect workers making the minimum wage. There is a possibility that neither applies or the second hour of each shift could be paid at a lower rate. TAM County Counsel in Attachment D states that they believe the show-up time minimum does not apply to the crossing guards.

A shift to a three hour minimum coupled with a higher wage would allow for the living wage to continue while maintaining the current cost structure. Problems exist when a different guard works each shift since they would only be entitled to one hour of pay. Issues with how that savings would be passed along to TAM would have to be explored along with the incentive the contractor has to only have a crossing guard work either the morning or afternoon shift. The program may suffer from the lack of continuity with personnel.

The TAM Executive Programming and Projects Committee was not in favor of this approach.

FISCAL CONSIDERATION:

There are no fiscal or budgetary impacts to TAM since the Crossing Guard Program is designed to fund guards within the allocation to crossing guards specified by the Transportation Sales Tax (Measure A) and the Marin County Vehicle Registration Fee (Measure B) Expenditure Plans. Since revenue is basically fixed, any cost increase results in fewer guards available to the program. Additional funding sources would be added to the budget along with the extra guard expenses and not impact other programs.

The recommended rate increase for the contractor will probably not require a budget amendment. As part of the Crossing Guard Program, \$30,000 to \$40,000 has been made available annually to the contractor to reimburse bus usage by the crossing guards. Many of the guards have to travel twice a day from a considerable distance. To date, this school year, no requests for reimbursement have been made. This may change, since the bus payments are processed on a reimbursable basis. However, participation in the program has been historically low. The total impact of the rate increase is expected to be approximately \$25,000. This will fit into allowable funds assumed for this year's budget.

NEXT STEPS:

This information will be presented to the TAM Citizens Oversight Committee on January 20 and their response reported on January 22. A decision is necessary this month as the contractor is contractually required to compensate the guards at a rate of pay equivalent to the current Marin County Living Wage. The contractor has agreed to hold off implementing the pay increase for one month and retroactively pay the guards a higher rate effective January 1, 2015, should the TAM Board decide to continue the Living Wage pay scale.

ATTACHMENTS:

Attachment A – Current Crossing Guard Sales Tax Projected Cash Flows

Attachment B – Projected Crossing Guard Sales Tax Projected Cash Flows with Living Wage

Attachment C – Impact of Living Wage on Crossing Guards paid by Vehicle Registration Fee

Attachment D – Marin County Counsel Opinion on Applicable Minimum Hours

Previous Staff Report

Projected Transportation Sales Tax Crossing Guard Program
Guards Funded through Vehicle Registration Fee and other Agencies are not Shown
Assumes Four Hour Minimum per Day and 180 Day School Year
Sustainable Guard Level is 64 Locations

Fiscal Year	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024	2024/2025
Carry Over from Previous Year	\$ 998,339	\$ 1,010,510	\$ 886,345	\$ 835,000	\$ 745,000	\$ 686,000	\$ 498,000	\$ 420,000	\$ 390,000	\$ 320,000	\$ 90,000	\$ 80,000	\$ 80,000
Sales Tax Revenue (Estimated)	\$ 824,089	\$ 833,086	\$ 833,000	\$ 854,000	\$ 875,000	\$ 896,000	\$ 918,000	\$ 940,000	\$ 960,000	\$ 990,000	\$ 1,010,000	\$ 1,040,000	\$ 1,090,000
OBAG Funding, Note 1.			\$ 26,000	\$ 26,000	\$ 26,000	\$ 26,000							
Total Funding Available	\$ 1,822,428	\$ 1,843,596	\$ 1,745,345	\$ 1,715,000	\$ 1,646,000	\$ 1,608,000	\$ 1,416,000	\$ 1,360,000	\$ 1,350,000	\$ 1,310,000	\$ 1,100,000	\$ 1,120,000	\$ 1,170,000
Program Evaluation		\$ 25,699		\$ 40,000			\$ 50,000			\$ 60,000			\$ 70,000
Location Determination		\$ 54,017				\$ 90,000				\$ 100,000			
Guard Contract	\$ 811,918	\$ 877,535	\$ 910,000	\$ 930,000	\$ 960,000	\$ 1,020,000	\$ 950,000	\$ 970,000	\$ 1,030,000	\$ 1,060,000	\$ 1,020,000	\$ 1,040,000	\$ 1,080,000
Total Expenses	\$ 811,918	\$ 957,251	\$ 910,000	\$ 970,000	\$ 960,000	\$ 1,110,000	\$ 1,000,000	\$ 970,000	\$ 1,030,000	\$ 1,220,000	\$ 1,020,000	\$ 1,040,000	\$ 1,150,000
Program Surplus	\$ 1,010,510	\$ 886,345	\$ 835,000	\$ 745,000	\$ 686,000	\$ 498,000	\$ 420,000	\$ 390,000	\$ 320,000	\$ 90,000	\$ 80,000	\$ 80,000	\$ 20,000
Number of Guards	69, Note 2.	68, Note 3.	68, Note 4.	66, Note 5.	68, Note 4.	70, Note 6.	64	64	66, Note 7.	68, Note 8.	64	64	66, Note 7.
Invoice Hourly Rate	\$ 16.20	\$ 17.70	\$ 18.70	\$ 19.00	\$ 19.00	\$ 19.50	\$ 20.00	\$ 20.50	\$ 21.00	\$ 21.00	\$ 21.50	\$ 22.00	\$ 22.00

Note 1. = TAM Board directed funds from one-time MTC Safe Routes to School funds

Note 2. = 63 scheduled guards plus six extra guards carried by New /Changed Condition Policy

Note 3. = 63 scheduled guards plus five extra guards carried by New / Changed Condition Policy

Note 4. = 64 scheduled guards, plus two guards from supplemental OBAG funding, plus two extra guards carried by New / Changed Condition Policy

Note 5. = 64 scheduled guards plus two guards from supplemental OBAG funding

Note 6. = 64 scheduled guards, plus two guards from supplemental OBAG funding, plus four extra guards carried by New / Changed Condition Policy

Note 7. = 64 scheduled guards, plus two extra guards carried by New / Changed Condition Policy

Note 8. = 64 scheduled guards, plus four extra guards carried by New / Changed Condition Policy

Projected Transportation Sales Tax Crossing Guard Program
Guards Funded through Vehicle Registration Fee and other Agencies are not Shown
Assumes Four Hour Minimum per Day and 180 Day School Year

With Revised Estimated Living Wage Increases
Sustainable Number of Guard Locations is Decreased from 64 to 59

Fiscal Year	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024	2024/2025
Carry Over from Previous Year	\$ 998,339	\$ 1,010,510	\$ 886,345	\$ 835,000	\$ 785,000	\$ 746,000	\$ 568,000	\$ 496,000	\$ 450,000	\$ 370,000	\$ 100,000	\$ 40,000	\$ (10,000)
Sales Tax Revenue (Estimated)	\$ 824,089	\$ 833,086	\$ 833,000	\$ 854,000	\$ 875,000	\$ 896,000	\$ 918,000	\$ 940,000	\$ 960,000	\$ 990,000	\$ 1,010,000	\$ 1,040,000	\$ 1,090,000
OBAG Funding, Note 1.			\$ 26,000	\$ 26,000	\$ 26,000	\$ 26,000							
Total Funding Available	\$ 1,822,428	\$ 1,843,596	\$ 1,745,345	\$ 1,715,000	\$ 1,686,000	\$ 1,668,000	\$ 1,486,000	\$ 1,436,000	\$ 1,410,000	\$ 1,360,000	\$ 1,110,000	\$ 1,080,000	\$ 1,080,000
Program Evaluation		\$ 25,699		\$ 40,000			\$ 50,000			\$ 60,000			\$ 70,000
Location Determination		\$ 54,017				\$ 90,000				\$ 100,000			
Guard Contract	\$ 811,918	\$ 877,535	\$ 910,000	\$ 890,000	\$ 940,000	\$ 1,010,000	\$ 940,000	\$ 990,000	\$ 1,040,000	\$ 1,100,000	\$ 1,070,000	\$ 1,090,000	\$ 1,130,000
Total Expenses	\$ 811,918	\$ 957,251	\$ 910,000	\$ 930,000	\$ 940,000	\$ 1,100,000	\$ 990,000	\$ 990,000	\$ 1,040,000	\$ 1,260,000	\$ 1,070,000	\$ 1,090,000	\$ 1,200,000
Program Surplus	\$ 1,010,510	\$ 886,345	\$ 835,000	\$ 785,000	\$ 746,000	\$ 568,000	\$ 496,000	\$ 450,000	\$ 370,000	\$ 100,000	\$ 40,000	\$ (10,000)	\$ (120,000)
Number of Guards	69, Note 2.	68, Note 3.	68, Note 4.	61, Note 5.	63, Note 9.	65, Note 6.	59	59	61, Note 7.	63, Note 8.	59	59	61, Note 7.
Invoice Hourly Rate	\$ 16.20	\$ 17.70	\$ 18.70	\$ 19.50	\$ 20.00	\$ 21.00	\$ 21.50	\$ 22.50	\$ 23.00	\$ 23.50	\$ 24.50	\$ 25.00	\$ 25.00
Living Wage (Estimated)	\$ 11.55	\$ 11.90	\$ 12.10	\$ 13.00	\$ 13.50	\$ 14.00	\$ 14.50	\$ 15.00	\$ 15.50	\$ 16.00	\$ 16.50	\$ 17.00	\$ 17.50
Increase from Previous Year		3.0%	1.7%	7.4%	3.8%	3.7%	3.6%	3.4%	3.3%	3.2%	3.1%	3.0%	2.9%

Note 1. = TAM Board directed funds from one-time MTC Safe Routes to School funds

Note 2. = 63 scheduled guards plus six extra guards carried by New / Changed Condition Policy

Note 3. = 63 scheduled guards plus five extra guards carried by New / Changed Condition Policy

Note 4. = 64 scheduled guards, plus two guards from supplemental OBAG funding, plus two extra guards carried by New / Changed Condition Policy

Note 5. = 59 scheduled guards plus two guards from supplemental OBAG funding

Note 6. = 59 scheduled guards, plus two guards from supplemental OBAG funding, plus four extra guards carried by New / Changed Condition Policy

Note 7. = 59 scheduled guards, plus two extra guards carried by New / Changed Condition Policy

Note 8. = 59 scheduled guards, plus four extra guards carried by New / Changed Condition Policy

Note 9. = 59 scheduled guards, plus two guards from supplemental OBAG funding, plus two extra guards carried by New / Changed Condition Policy

Projected Vehicle Registration Fee Crossing Guard Program
Guards Funded through Transportation Sales Tax and other Agencies are not Shown
Assumes Four Hour Minimum per Day and 180 Day School Year

Fiscal Year	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024	2024/2025
Carry Over from Previous Year	\$ -	\$ 15,625	\$ 751	\$ 2,751	\$ 2,751	\$ 2,751	\$ (1,249)	\$ 4,751	\$ 6,751	\$ 5,751	\$ 4,751	\$ (249)	\$ (9,249)
VRF Revenue	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000
Total Funding Available	\$ 150,000	\$ 165,625	\$ 150,751	\$ 152,751	\$ 152,751	\$ 152,751	\$ 148,751	\$ 154,751	\$ 156,751	\$ 155,751	\$ 154,751	\$ 149,751	\$ 140,751
Guard Contract	\$ 134,375	\$ 164,874	\$ 148,000	\$ 150,000	\$ 150,000	\$ 154,000	\$ 144,000	\$ 148,000	\$ 151,000	\$ 151,000	\$ 155,000	\$ 159,000	\$ 143,000
Total Expenses	\$ 134,375	\$ 164,874	\$ 148,000	\$ 150,000	\$ 150,000	\$ 154,000	\$ 144,000	\$ 148,000	\$ 151,000	\$ 151,000	\$ 155,000	\$ 159,000	\$ 143,000
Program Surplus	\$ 15,625	\$ 751	\$ 2,751	\$ 2,751	\$ 2,751	\$ (1,249)	\$ 4,751	\$ 6,751	\$ 5,751	\$ 4,751	\$ (249)	\$ (9,249)	\$ (2,249)
Number of Guards	12	12	11	11	11	11	10	10	10	10	10	10	9
Invoice Hourly Rate	\$ 16.20	\$ 17.70	\$ 18.70	\$ 19.00	\$ 19.00	\$ 19.50	\$ 20.00	\$ 20.50	\$ 21.00	\$ 21.00	\$ 21.50	\$ 22.00	\$ 22.00

Projected Vehicle Registration Fee Crossing Guard Program
Guards Funded through Transportation Sales Tax and other Agencies are not Shown
Assumes Four Hour Minimum per Day and 180 Day School Year

With Revised Estimated Living Wage Increases
Living Wage Impact Results in Reduction of One Guard

Fiscal Year	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023	2023/2024	2024/2025
Carry Over from Previous Year	\$ -	\$ 15,625	\$ 751	\$ 3,000	\$ 13,000	\$ 19,000	\$ 18,000	\$ 29,000	\$ 33,000	\$ 34,000	\$ 32,000	\$ 23,000	\$ 11,000
VRF Revenue	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000
Total Funding Available	\$ 150,000	\$ 165,625	\$ 150,751	\$ 153,000	\$ 163,000	\$ 169,000	\$ 168,000	\$ 179,000	\$ 183,000	\$ 184,000	\$ 182,000	\$ 173,000	\$ 161,000
Guard Contract	\$ 134,375	\$ 164,874	\$ 148,000	\$ 140,000	\$ 144,000	\$ 151,000	\$ 139,000	\$ 146,000	\$ 149,000	\$ 152,000	\$ 159,000	\$ 162,000	\$ 162,000
Total Expenses	\$ 134,375	\$ 164,874	\$ 148,000	\$ 140,000	\$ 144,000	\$ 151,000	\$ 139,000	\$ 146,000	\$ 149,000	\$ 152,000	\$ 159,000	\$ 162,000	\$ 162,000
Program Surplus	\$ 15,625	\$ 751	\$ 3,000	\$ 13,000	\$ 19,000	\$ 18,000	\$ 29,000	\$ 33,000	\$ 34,000	\$ 32,000	\$ 23,000	\$ 11,000	\$ (1,000)
Number of Guards	12	12	11	10	10	10	9	9	9	9	9	9	9
Invoice Hourly Rate	\$ 16.20	\$ 17.70	\$ 18.70	\$ 19.50	\$ 20.00	\$ 21.00	\$ 21.50	\$ 22.50	\$ 23.00	\$ 23.50	\$ 24.50	\$ 25.00	\$ 25.00
Living Wage (Estimated)	\$ 11.55	\$ 11.90	\$ 12.10	\$ 13.00	\$ 13.50	\$ 14.00	\$ 14.50	\$ 15.00	\$ 15.50	\$ 16.00	\$ 16.50	\$ 17.00	\$ 17.50
Increase from Previous Year		3.0%	1.7%	7.4%	3.8%	3.7%	3.6%	3.4%	3.3%	3.2%	3.1%	3.0%	2.9%



Steven M. Woodside
COUNTY COUNSEL

January 10, 2015

Jack F. Govi
ASSISTANT COUNTY COUNSEL

Ms. Steinhauser:

Renee Giacomini Brewer
SUPERVISING DEPUTY

I am in receipt of a December 20, 2014 e-mail from Dan Cherrier, which presents the following legal question:

Whether crossing guards who are scheduled to work one hour in the morning and one hour in the afternoon are entitled to (1) "reporting time pay"; and or (2) a "split shift premium"?

Mari-Ann G. Rivers
David L. Zaltsman
Michele Keno
Patrick M. K. Richardson
Stephen R. Raab
Steven M. Perl
Sheila Shah Lichtblau
Edward J. Kiernan
Jessica Mills Sutherland
Brian C. Case
Jenna J. Brady
Valorie R. Boughey

After reviewing the applicable law, I offer the following short answer to the question presented:

Because the guards are scheduled to work one hour time-slots, Transportation Authority of Marin (TAM) is not required to give the guards "reporting time pay" in this situation.

Because the law is unsettled about what, exactly, it means to "work a split-shift," there are two ways of looking at the split-shift premium question. My opinion is that the better view is that the "split-shift premium" does not apply in this sort of situation.

DEPUTIES

Jeanine Michaels
ADMINISTRATIVE ASSISTANT

Background Facts

Dan Cherrier has explained that the crossing guards are scheduled to work two hours a day: one hour at the beginning of the school day, and one hour at the end.

There are no employment agreements that might alter the terms of payment.

Reporting Time Pay

The provisions of the law regarding reporting time pay are as follows:

1. Each workday an employee is required to report to work, but is not put to work or is furnished with less than half of his or her usual or scheduled day's work, he or she must be paid for half the usual or scheduled day's work, but in no event for less than two hours nor more than four hours, at his or her regular rate of pay.
2. If an employee is required to report to work a second time in any one workday and is furnished less than two hours of work on the second reporting, he or she must be paid for two hours at his or her regular rate of pay.

Here, because the crossing guards "report to work a second time" in a single day, the applicability of the second provision, above, is considered.

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ATTORNEY CLIENT PRIVILEGE AND WORK PRODUCT DOCTRINE**

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The California Court of Appeal has held, “There is only one reasonable interpretation of [the “reporting time pay” rule] as it pertains to scheduled work—when an employee is scheduled to work, the minimum two-hour pay requirement applies **only if** the employee is furnished work for less than half the scheduled time [emphasis added].” (See *Aleman v. Airtouch Cellular* (2012) 209 Cal.App.4th 556, 659-574 where employee was not entitled to reporting time pay, even though his only work scheduled for the day was a mandatory meeting of 1.5 hours and some meetings ended early, where meetings were scheduled and employee was never sent home from scheduled period of work before he had worked at least half the scheduled period.)

Here, the crossing guards are *scheduled* to work one hour time-slots. As in *Aleman*, we are dealing with the reporting time pay rule in the context of purely scheduled, expected work. Thus, applying the reporting time pay principles set forth in the *Aleman* decision, no minimum two-hour pay requirement applies in TAM’s crossing guard program simply because they must “report to work a second time.” The guards have no expectation of working more than an hour.

This opinion is consistent with the Department of Industrial Relations website, which explains, “ ‘Reporting time pay’ is partial compensation for employees who report to work expecting to work a specified number of hours and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” (See http://www.dir.ca.gov/dlse/faq_reportingtimepay.htm). In the case of the crossing guards, there is no deprivation of expected work hours.

Split Shift Premium

In 2011, the Court of Appeal considered the question of what it really means to work a “split shift.” The Court of Appeal held that, just because an overnight shift spanned two days, it was not a “split shift.” Specifically, *Securitas Sec. Services USA, Inc. v. Superior Court* (2011) 197 Cal.App.4th 115, 122-123 held that such a situation was not a “split shift” because the “split shift” rules were not *intended* to compensate employees in that sort of a situation:

[The Supreme Court of California, in its *Murphy* decision] held that the “one additional hour of pay” (Lab.Code, § 226.7, subd. (b)) required under Labor Code section 226.7 for an employer’s failure to provide a meal or rest break constitutes wages or premium pay, rather than a penalty, for purposes of the statute of limitations ... we believe that *Murphy* is consistent with our conclusion that plaintiffs working uninterrupted overnight shifts on consecutive days do not work a split shift and that the wage order was not intended to compensate employees in those circumstances.

Applying the rationale of *Securitas Sec. Services USA, Inc*, it seems that, here too, the crossing guards working one hour in the morning and one hour in the afternoon do not truly “work a split shift.” The split shift premium rules do not appear to be *intended to compensate* employees in these circumstances, where only two hours a day are being worked. Because the crossing guards only work two hours a day, there isn’t an issue about the employer’s “failure to provide a meal or rest break.”

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That said, a strict reading of the law could lead to another conclusion. In *Securitas Sec. Services USA, Inc.*, the Court of Appeal did define a split shift: "A 'split shift' occurs only when an employee's designated working hours are interrupted by one or more unpaid, nonworking periods established by the employer that are not bona fide rest or meal periods." Technically, the crossing guards schedule meets this definition: their working hours are interrupted by one nonworking period, established by the employer, that is not a bona fide rest or meal period."

To reiterate, because the law is unsettled about when, exactly, a "split shift premium" applies, there are two ways of looking at this question. My opinion is that the better view is that the "split shift premium" does not apply in this sort of situation.

However, to avoid exposure to liability for unpaid wages and attorney's fees, the more cautious approach would be to simply apply the strict definition, call this situation a "split shift," and pay the premium (if any is due, as any payment in excess over the minimum wage is credited toward the split-shift premium).

Regards,



Brian Case, Deputy County Counsel

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