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MEMORANDUM OF LAW

DATE: November 19, 2013
TO: Honorable City Council
FROM: City Attorney
SUBJECT: The City's Eligibility for State Funding under California Senate Bill 7

INTRODUCTION

On October 13, 2013, Governor Brown signed California Senate Bill 7 (SB 7) adding section 1782 to the California Labor Code. Generally, SB 7 prohibits a charter city like San Diego from receiving state funding or financial assistance for construction projects unless the charter city complies with state prevailing wage laws on all of its public works projects. The purpose of this memorandum is to analyze whether the City is eligible for state funding and financial assistance for construction projects under SB 7.

QUESTION PRESENTED

Is the City eligible for state funding and financial assistance for construction projects under SB 7?

SHORT ANSWER

Yes, because the City's new prevailing wage ordinance complies with SB 7.

ANALYSIS

SB 7 makes charter cities ineligible to receive state funds on construction projects unless they comply with state prevailing wage laws on all their projects, not just the projects with state funding. Specifically, a charter city is prohibited from receiving state funding or financial assistance for construction projects if the city charter or an ordinance authorizes contractors not to comply with state prevailing wage laws. Cal. Lab. Code § 1782(a). SB 7 also prohibits a charter city from receiving such funds if the city intentionally awards a public works contract without requiring compliance with state prevailing wage laws, for a period of two years after the contract was awarded. Cal. Lab. Code § 1782(b). A charter city is eligible for state funding if it

adopts a local prevailing wage ordinance “for all its public works contracts that includes requirements that in all respects are equal to or greater than the requirements” of state prevailing wage laws. Cal. Lab. Code § 1782(c). SB 7 does not apply to contracts advertised or awarded before January 1, 2015. Cal. Lab. Code § 1782(f)(2).

SB 7 focuses only on charter cities because they are generally exempt from state prevailing wage laws. *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista*, 54 Cal. 4th 547 (2012). We previously advised that SB 7 is probably unconstitutional because it likely conflicts with the “home rule” provision in the California Constitution. City Att’y MOL No. 2013-10 (Jun. 17, 2013). For purposes of this analysis, however, we assume SB 7 is a legally enforceable statute.

Earlier this year, the City Council adopted a prevailing wage ordinance. San Diego Ordinance No. O-20299 (Sep. 26, 2013). The ordinance requires certain projects awarded after January 1, 2014, to comply with state prevailing wage laws:

For contracts and *task orders* awarded, entered into, or extended on or after January 1, 2014, the City shall require compliance with California Labor Code sections 1770 - 1781, as may be amended, for construction work over \$25,000 and for alteration, demolition, repair or *maintenance* work over \$15,000.

San Diego Municipal Code (SDMC) § 22.3019(c).

The ordinance incorporates the definition of public works in state prevailing wage law. SDMC § 22.3019(a). This allows the City to rely on interpretive decisions from the State Department of Industrial Relations (DIR) and a body of case law regarding prevailing wages that has developed over many years. SB 7 similarly defines a construction project as a project that involves the award of a public works contract. Cal. Lab. Code § 1782(d)(3). SB 7 excludes “projects of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or projects of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work.” Cal. Lab. Code § 1782(d)(1). The prevailing wage ordinance incorporates the same project thresholds.

State prevailing wage laws apply to maintenance work. Cal. Lab. Code § 1771. The prevailing wage ordinance also applies to maintenance work. SDMC § 22.3019(a). Tree trimming, brush clearing, and habitat restoration is maintenance and alteration work covered by state prevailing wage laws. *Reliable Tree Experts v. Baker*, 200 Cal. App. 4th 785 (2011); DIR Case No. 11-0027-PWH (Jul. 3, 2012). The City’s tree trimming and open space maintenance contracts will now be subject to prevailing wage laws, though there is an exception if the work is performed by volunteers or the California Conservation Corps. Cal. Lab. Code § 1720.4.

The City’s ordinance requires compliance with state prevailing wage laws one year earlier than required by SB 7. When the prevailing wage ordinance was introduced (item S500 on July 30, 2013), SB 7 required charter cities to comply with state prevailing wage laws by January 1, 2014. On August 7, 2013, the State Assembly amended SB 7 to change the compliance date to January 1, 2015. The August 7 amendment to SB 7 is the version of the bill signed by the Governor on October 13, 2013.

SB 7 also applies to agents and entities controlled by charter cities, presumably to prevent charter cities from avoiding compliance by awarding public works contracts through alter egos. Cal. Lab. Code § 1782(d)(2). The City's ordinance reaches the same entities as SB 7, by requiring "all boards, agencies, or districts created pursuant to ordinance or resolution of the City Council" to comply with state prevailing wage laws. SDMC § 22.3019(b). The prevailing wage ordinance therefore extends to entities responsible for City infrastructure like Maintenance Assessment Districts and Business Improvement Districts. This is consistent with state prevailing wage law, which requires compliance based on the source of funding, not the identity of the person responsible for the work. *See Azusa Land Partners v. Dept. of Industrial Relations*, 191 Cal. App. 4th 1 (2010) (private developer using funds from a community facilities district required to pay prevailing wages). State prevailing wage laws will apply whether the City awards the contract directly or through an entity created by the City.

CONCLUSION

As required by SB 7, the City's ordinance fully incorporates state prevailing wage requirements into its public works and maintenance contracts. SB 7 will not preclude the City from receiving state funding or financial assistance on its construction projects so long as the City complies with the prevailing wage ordinance.

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By /s/ *Thomas C. Zeleny*
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TCZ:mb
cc: Independent Budget Analyst
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