



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: July 16, 2013

REPORT NO: 13-065

ATTENTION: City Council docketed for July 30, 2013

SUBJECT: Prevailing Wage Requirements for Municipal Public Works Projects

REFERENCE: Report to the City Council No. 13-051

REQUESTED ACTION:

An ordinance amending Chapter 2, Article 2, Division 30 of the San Diego Municipal Code by adding a new Section 22.3019 relating to compliance with state prevailing wage laws on municipal affairs projects.

STAFF RECOMMENDATION:

Adopt the ordinance.

EXECUTIVE SUMMARY:

Application of prevailing wages to municipal affairs public works contracts above the specified thresholds will yield significant public benefits to those projects. These benefits will supplement other policy goals of the city in providing enhanced value to taxpayers from construction, alteration and maintenance. The City has an existing prevailing wage program that applies to projects funded in whole or in part by state funds, and this ordinance proposes to extend this program to municipally funded projects.

BACKGROUND

The State's prevailing wage law helps to maintain contracted public works that provides middle-class jobs to hundreds of thousands of California workers, enabling the workers to support families and contribute to their communities. The prevailing wage law also provides necessary on-the-job training opportunities for the more than 50,000 apprentices enrolled in state-approved apprenticeship programs in the building and construction trades, enabling the apprentices to graduate from the programs and pursue careers as journey-level workers.

Existing California law requires all employees who work on public works projects costing \$1,000 or more to be paid the general prevailing rate of per diem wages and the general

prevailing rate for holiday and overtime work for the specific location where the public work is to be performed. This requirement is applicable to work performed under contract and it does not apply to work carried out by a public agency with its own forces.

RESPONSE TO IBA REPORT 13-26:

The day before the hearing at the Rules & Economic Development Committee, the Independent Budget Analyst issued a report that cited conflicting studies to make it difficult to accurately predict the impact of prevailing wages on total project costs. However, with questionable empirical or statistical validity, the report assumes an increase of 5%-10% of project costs. Staff disagrees with this assumption, given that market conditions of supply and demand determine the bids, and that labor costs consist of less than a quarter of the share of project costs, with other significant factors being the cost of materials and financing. Lacking sufficient econometric analysis that controls for market variables, and similar project characteristics, the City cannot project either a positive or negative fiscal impact of the prevailing wage requirement on capital project costs.

RESPONSE TO IBA RECOMMENDATION #3: The City Attorney's Draft Ordinance reflects the applicability of the State's current prevailing wage law to the City. Staff believes that the proposed ordinance supplements and enhances the policy objectives of other programs, by standardizing labor rates and contractor bidding process throughout the city.

The City has an existing prevailing wage program that applies to projects funded in whole or in part by state funds. As a Charter City, San Diego is generally not required to follow state prevailing wage law. However, City staff has long been interpreting the City's current prevailing wage ordinance as well as the applicability of prevailing wages in conformance with the California Labor Code definition of "paid for in whole or in part." Sections 1720 and 1771 of the California Labor Code require prevailing wage to be paid on public works and maintenance contracts "paid for in whole or in part out of public funds" in excess of \$1,000 (Attachment 1). Under existing law "paid for in whole or in part out of public funds" means, among other things, the following:

1. The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.
2. The performance of construction work by the state or political subdivision in execution of the project.
3. Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract that are paid, reduced, charged at less than fair market value, waived or forgiven by the state or political subdivision.
4. Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

Under existing law, Community Facilities District financing triggers prevailing wage requirements for all public improvements of a project. In *Azusa Land Partners v. Department of Industrial Relations* (2010) 191 Cal.App.4th, the Second Appellate District Court of Appeal held that where proceeds from Mello-Roos bonds are used to fund a portion of the cost of public improvements, required for approval of the project, this causes the privately-funded portion of such public facilities to be considered a "public work," subject to the Labor Code prevailing wage laws. The court held that the prevailing wage law applied to the entire project's required public improvements, whether publicly or privately funded. (Attachment 2)

Under existing State law, "Public works" means construction, alteration, demolition, installation and repair. California requires companies that want to contract for public works to pay their workers a wage that reflects wages commonly earned in the area. The California Department of Industrial Relations sets the prevailing wage rate for each craft.

In addition to excluding work carried out by a public agency with its own forces, Labor Code Section 1720.4 identifies work not subject to prevailing wage (Attachment 3), including work performed by:

- Volunteers, defined as an individual who performs work for civic, charitable or humanitarian reasons for a public agency or 501 (c)(3) non-profit;
- Volunteer coordinators, paid by a tax-exempt organization to oversee or supervise volunteers; and,
- Members of the California Conservation Corps or of Community Conservation Corps certified by the California Conservation Corps.

Finally, the City of San Diego has a State-approved Labor Compliance Program (Attachment 4). The Labor Code provides a limited exemption to an awarding body having a State-approved Labor Compliance Program. The limited exemption does not require payment of prevailing wage for any public works construction project of \$25,000 or less or any alteration, demolition, repair or maintenance project of \$15,000 or less.

RESPONSE TO IBA RECOMMENDATIONS #5, #6, #7: The current Labor Compliance Program (LCP) is not within the Purchasing & Contracting Department, rather it is within Equal Opportunities Contracting. If the City were to adopt the ordinance, the LCP will not need to be amended. An annual report is required by the state in sufficient detail to afford a basis for evaluating the scope and level of enforcement activity of the LCP. This information report can be distributed to the City Council when it is submitted to the state.

LABOR COMPLIANCE

City staff have begun weighing options for robust compliance with all Federal, State and City requirements to ensure that all contractors and workers employed on Public Works projects are treated equitably, fairly, and compensated in conformity with the applicable prevailing wage

rates.

Educating contractors is important so employers have clear expectations and guidelines for participation in City public works contracting. Furthermore, it is a priority of the Mayor to create more public contracting opportunities for Small and Local Business Enterprises (SLBEs) and increase participation of SLBEs in City contracting. At the City's industry meeting on June 20, 2013 we solicited feedback on implementation of a prevailing wage ordinance. Contractors and contractor organization representatives expressed the importance of having "up front" training, especially for small contractors. There was general consensus that the contractor training conducted at San Diego Unified School District is a good model because SLBE contractors learn about all the requirements and expectations of the District. It was reported that the San Diego Unified School District training is especially important to small contractors because the contractors usually have very lean staffing. Therefore, staff will explore options to include the District model.

The cost of labor compliance generally accepted in the state is $\frac{1}{4}$ of 1% of construction costs. Therefore, we expect about \$250,000 of labor compliance costs that will be charged to the project for every \$100 million of construction costs. It should be noted that a capital project cost includes land acquisition, engineering and design costs that are not included in this rule of thumb for construction costs, and also that there are economies of scale in larger volumes.

The City has begun the use of PRISM, a contractor registration and electronic reporting software. Utilizing PRISM for prevailing wage labor compliance and web-based certified payroll submission will improve efficiency and accuracy of enforcement process.

FINDINGS OF SIGNIFICANT BENEFITS:

Staff reviewed academic literature (listed below), public testimony and expert opinions on several classes of capital projects, and recommends the City implement state prevailing wage laws on construction work over \$25,000 and maintenance/alteration/repair/demolition work over \$15,000. The following matrix identifies project-specific benefits that are anticipated from requiring compliance with state prevailing wage laws above the \$25,000/\$15,000 thresholds:

	Water & Wastewater		Buildings, Parks, & Other Facilities/Public works		Transportation & Stormwater	
	M&A Above \$15,000	Construction Above \$25,000	M&A Above \$15,000	Construction Above \$25,000	M&A Above \$15,000	Construction Above \$25,000
Higher quality project / less defective work	√	√	√	√	√	√
Properly trained apprentices	√	√	√	√	√	√
Fewer change orders / cost overruns	√	√	√	√	√	√
Safer /Better monitoring of work sites		√		√		√
Pre-bid conference with trade-specific subs		√		√		√
More likely to finish on schedule	√	√	√	√	√	√
Better and well-trained workforce	√	√	√	√	√	√

M&A: Maintenance, Alterations, Repair and Demolition

In addition to the above benefits, empirical evidence from other cities in literature review suggests project-specific benefits of prevailing wage requirements that include a larger and better qualified pool of bidders, efficiencies in productivity, and an enhanced value of the built product. Evidence also suggests that prevailing wage requirements will result in a higher percentage of local workers on projects, who enhance jobsites with a better knowledge of local working environments (eg. traffic patterns, subsurface soil conditions, local regulations).

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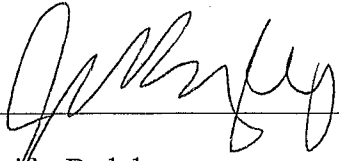
PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

The Rules Committee initially heard the prevailing wage issue on September 22, 2010. The Rules and Economic Development Committee heard the proposed ordinance on May 15, 2013 and June 19, 2013. In the last hearing, the Committee voted 3-2 to move staff recommendation to the City Council.

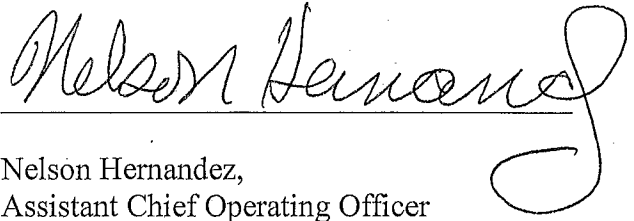
KEY STAKEHOLDERS AND OUTREACH EFFORTS:

Staff presented this proposal to construction industry stakeholders at their quarterly meeting on June 20, 2013. Several contractors and contractors' associations were present, including Associated General Contractors, National Electrical Contractors Association, Western Metal Contractors and Sheet Metal and Air Conditioning Contractors' National Association.

The feedback was quite positive, with contractors' associations offering to provide training and education to implement the proposed prevailing wage ordinance. Staff did not receive any complaints from existing contractors that would not bid on city work, to the contrary, some do not bid on city work because they do not typically require prevailing wages. Some contractors requested electronic forms for easy compliance. It was also requested that the wage requirement be timed to the advertisement of bids, and that it not be applied retroactively.



Jennifer Badgley,
Office of the Mayor



Nelson Hernandez,
Assistant Chief Operating Officer

Attachments:

1. California Labor Code Sections 1720 and 1721
2. Azusa Land Partners v. Department of Industrial Relations (2010) 191 Cal.App.4th
3. California Labor Code Section 1720.4
4. City of San Diego Labor Compliance Manual