

## Attachment A

30 September 2021

City Manager, Ed Zuercher  
200 W. Washington St., 12<sup>th</sup> Floor  
Phoenix, AZ 85003

### **Re: Add On Item – Prevailing Wage Ordinance**

City Manager Ed Zuercher,

On June 22, 2021 we requested a discussion about prevailing wage after staff research. On September 7<sup>th</sup>, Council had a follow up discussion about prevailing wage in Executive Session. We believe that now is the time for the public to hear directly from their Council on this issue.

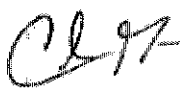
The pandemic has shown us that current wages are not enough for working class families to meet their basic needs. While the federal government continues to discuss the potential for major investment in infrastructure, as leaders of Phoenix we must ensure that the jobs that come to our city and are created by our city are good paying jobs. It is imperative that we, as the elected leaders in our city, do everything we can to improve the working and living conditions of our constituents.

We know that areas with prevailing wages have a greater supply of apprentices and training programs in the construction industry and will create equitable access for women and people of color into good paying, career-path jobs. This will also ensure that businesses and developers have access to the skilled labor necessary to build new projects efficiently and effectively.

Not only will the prevailing wage improve outcomes for individual workers and their families, but it will also stimulate local tax revenue and economic development by supporting high quality, middle-class jobs in the construction industry. Raising the standards for skilled construction workers working on city projects will lift up the standards for all construction workers. This will allow our city to thrive.

It is for those reasons we are requesting the City of Phoenix add the attached Prevailing Wage Ordinance to the Formal Council Meeting agenda on Wednesday, October 6, 2021.

Sincerely,



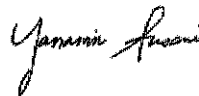
**Vice Mayor Carlos Garcia**  
Phoenix City Council – District 8



**Councilwoman Laura Pastor**  
Phoenix City Council – District 4



**Councilwoman Betty Guardado**  
Phoenix City Council – District 5



**Councilwoman Yassamin Ansari**  
Phoenix City Council – District 7

## **RESOLUTION**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PHOENIX, ARIZONA, ENACTING THE FOLLOWING PREVAILING WAGE ORDINANCE TO BE CODIFIED AS ARTICLE XIV OF CHAPTER 43 OF THE PHOENIX CITY CODE**

#### **Chapter 43 - Article XIV. Prevailing Wage Ordinance**

##### **Sec. 43-51. Purpose.**

The purpose of this Article is to regulate the minimum wages and benefits paid to construction workers within the City's geographic boundaries on projects either directly funded or otherwise benefit from direct action by the City for the exclusive benefit of the project. In no circumstances may the wage or benefits paid to such workers be lower than that provided under state or federal law.

##### **Sec. 43-52. Definitions.**

In this Article, unless the context otherwise requires:

*Covered Employee* means every worker, mechanic or other laborer employed by any contractor or subcontractor in the work of drayage or of construction, alteration, improvement, repair, maintenance, or demolition on any city-owned or leased building, on any city-owned land, or on any project that is the recipient of a subsidy pursuant to a contract in excess of \$2000.

*Employ* shall mean to permit a person to work for wages.

*Prevailing wages* shall mean, for each class of work covered by this section, but not covered by the Davis-Bacon Act, the rate of pay and the overtime and other benefits granted to such full-time workers in the local area.

*Subsidy* means either of the following:

- a. The City's contribution of land, money or other direct financial assistance to a project including instances in which the project is financed in whole or in part by the city, or any agency of the city; or
- b. The City's reduction, permanent suspension or exemption of any fee or tax applicable to a single project or multiple projects.

*Willfully* means representations that are known to be false or representations made with deliberate ignorance or reckless disregard for their truth or falsity.

## **Sec. 43-53. Payment of Prevailing Wages.**

### **A. *Minimum Wages and Benefits.***

1. Every Covered Employee employed by any contractor or subcontractor, pursuant to a contract in excess of \$2000, by or on behalf of the City, shall be paid not less than the wages and fringe benefits prevailing for the same class and kind of work in the local area as determined by Procurement Division, which shall refer to the federal Davis-Bacon Act (40 U.S.C. § 276a to 276a-5) for guidance.

Furthermore, every Covered Employee shall not be terminated from employment without cause, that is for failure to meet minimum work requirements or for unsatisfactory work conduct.

2. Every Employer of a Covered Employee shall support the employee benefit of apprenticeship participation as follows:

a. contribute an amount to an apprenticeship program approved by the U.S. Department of Labor equivalent to that provided in the collective bargaining agreement of the labor organization that's collectively bargained for rate prevailed, should the prevailing wage for a particular class of work as determined by the U.S. Department of Labor, or equivalent, be a collectively bargained for wage; and

b. shall employ apprentices from a U.S. Department of Labor approved apprenticeship program for not less than fifteen percent of the labor hours performed on the contract.

3. No contractor or subcontractor shall misclassify any worker as an independent contractor unless the subject work relationship satisfies the Fair Labor Standards Act requirements for the definition of independent contractor.

### **B. *Posting.***

Employers of Covered Employees shall post notices in the workplace in at least two public locations, including the main entrance to job, in such format specified by the Procurement Division, notifying employees of their rights, including wage

rate, under this article. Employers shall provide their business name, address, and telephone number in writing to Covered Employees upon hire.

### **C. Payrolls.**

Employers shall maintain certified payroll records, which shall be in substantially the same form as Wage and Hour Form 347, for a period of four years. Failure to do so shall raise a rebuttable presumption that the employer did not pay the required minimum wage rate and benefits.

## **Sec. 43-54. Determination of Prevailing Wages.**

### **A. *Declaration of Interest***

The city council hereby declares that it is in the best interests of the City to have a uniform determination of the prevailing wages to be paid to the various classes of laborers, mechanics, and workers which will be required in the performance of work covered by this Article.

### **B. *Procedure***

1. The city council hereby finds and concludes that the federal government, in implementing the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5), possesses and exercises a superior capability with superior resources to ascertain the basic rate of pay, overtime, and other benefits which accurately represent the current prevailing rate of wages for work covered by that federal law. The Procurement Division shall determine that the prevailing wages applicable to the various classes of laborers, mechanic, and workers covered by this section and the Davis-Bacon Act correspond to the prevailing wage determinations made pursuant to that federal law as the same may be amended. The Procurement Division shall keep and maintain copies of prevailing wage determinations made pursuant to the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5) and any amendments to that federal law. The Procurement Division shall also keep and maintain such other information as shall come to its attention concerning wages paid in the local area. The provisions of this section shall supersede any differing provisions of that federal law, except when that federal law is applicable independent of this section.

2. The Procurement Division shall determine, after hearing, the prevailing wages for the various classes of laborers, mechanics, and workers which will be required in the performance of work covered by this Article but not be covered by the Davis-Bacon Act, which determinations shall be made at least annually, and as frequently as may be considered necessary by the Procurement Division in order that the determination which is currently in effect will accurately represent the current prevailing rates of wages.

3. Prior to making such a determination, the Procurement Division shall give reasonable public notice of the time and place of the hearing concerning such proposed determination and shall afford to all interested parties the right to appear before it and to present evidence. The Procurement Division shall determine the rates using the same method as used for those classes which are covered by the Davis-Bacon Act. Should this method cause a reduction in compensation of any class of workers, the Procurement Division will review the appropriateness of using this methodology and may recommend to city council a different method for establishing prevailing wage rates.

4. If there is insufficient data available in the local area to determine the rate of pay and the overtime and other benefits, or should comparable classes of work not be performed within the local area for each class of work covered by this section and not covered by the Davis-Bacon Act, the Procurement Division shall refer to the Service Contract Labor Act of 1965, as amended (41 U.S.C. § 351 et seq.) to determine the rate of pay and the overtime and other benefits.

5. The Procurement Division shall issue clarifications or interpretations of the prevailing wage, and shall provide the controller any issued clarification or interpretation. If the controller does not advise the Procurement Division in writing that it disagrees with any issued clarification or interpretation within 30 days, the clarification/interpretation will be final. If the controller advises the Procurement Division in writing that it disagrees with the clarification or interpretation, then the controller and official responsible for the Procurement Division must meet to resolve the conflict issue a final agreed upon clarification or interpretation, or may withdraw the clarification or interpretation, as appropriate.

**Sec. 43-55. Compliance; corrective action; consequences for noncompliance.**

**A. *Monitoring***

1. Employers of Covered Employees shall provide certified payrolls to the Procurement Division on a biweekly schedule. Such records, with the exception of personal identifying information shall be a public record.

2. All contractors shall weekly report to the Procurement Division all individuals providing labor to the contractors as independent contractors.

3. If the contractor fails to comply with the requirements of this Article and associated contractual requirements, or with the Fair Labor Standards Act requirements of use of independent contractors, the Procurement Division shall address such noncompliance as follows:

a. For the first failure to comply with the requirements of this Article and associated contractual requirements—The contractor shall pay unpaid or underpaid covered employees an amount equal to three times the unpaid wages.

b. For the second failure to comply with the requirements of this Article and associated contractual requirements—The contractor will pay wages in an amount described above and be debarred from responding to solicitations for all City contracts for three years in accordance with Section 43-56.

c. For the third failure to comply with the requirements of this division and associated contractual requirements—The contractor will pay wages in an amount described above and be debarred from responding to solicitations for all City contracts for ten years in accordance with Section 43-56.

**B. *Authority of the Procurement Division***

The Procurement Division is authorized to monitor construction project contracts and contractors for compliance with the requirements of this Article throughout the duration of the construction project. The Procurement Division is authorized to prepare administrative policies and procedures to implement, monitor, and enforce the requirements of this Article.

**C. *Compliance with federal and state regulations.***

The provisions of this Article shall be construed according to and in conformity with state, federal, and local laws concerning the solicitation and awarding of contracts. Where a construction project involves the expenditure of state or federal funds, the Procurement Division shall comply with such state or federal law and authorized regulations which are mandatorily applicable, including those which dictate that the provisions of this division may not be required on a particular project.

**Sec. 43-56. Mandatory Contract Provisions; Enforcement.**

**A. *Provisions***

1. Every contract covered by this section must contain a provision requiring the contractor and every subcontractor under such contract to pay every Covered Employee employed under such contract not less than the scale of wages as provided for under this Article.

2. Every contract must further require the contractor and subcontractors to pay all construction workers, mechanics, and other laborers at least once a week the full amounts of wages accrued at the time of payment, computed at wage rates not less than those stated in the specifications.

3. Every contract must further provide that the contractor shall comply with the posting requirements of this Article.

4. Every contract must further provide that certified payrolls required by the Article are public records, but for personal identifying information contained therein.

**B. *Enforcement***

1. The contractor must further provide that if the contractor or any subcontractor shall fail to pay such wages as are required by the contract, the contracting department shall not approve a warrant or demand for payment to the contractor until the contractor furnishes the controller evidence satisfactory to the controller that such wages so required by the contract have been paid. Nothing herein shall preclude the contracting department from approving a partial warrant or demand for payment to the contractor to the extent the

controller has been furnished evidence satisfactory to the controller that one or more subcontractors has paid such wages required by the contract, even if the contractor has not furnished evidence that all of the subcontractors have paid wages as required by the contract. Any contractor or subcontractor may utilize the following procedure in order to satisfy the requirements of this Article.

2. In the event that the contractor takes an adverse employment action against a covered employee within 90 days of making any report to the contractor or to any government official of a violation of this Article or any law applicable to contractors operating within the geographic boundaries of the City, shall be liable for triple the amount of wages lost by the covered employee unless the contractor can show by clear and convincing evidence that the action was not taken in retaliation for actions described in this paragraph.