

ORDINANCE G-7217

AN ORDINANCE AMENDING CHAPTER 43 OF THE PHOENIX CITY CODE ENACTING THE FOLLOWING PREVAILING WAGE ORDINANCE FOR CITY CONSTRUCTION PROJECTS TO BE CODIFIED AS ARTICLE XIV OF CHAPTER 43 OF THE PHOENIX CITY CODE.

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**WHEREAS**, the City Council for the City of Phoenix 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 mechanics, laborer or other workers on City construction projects which will be required in the performance of work covered by this Ordinance.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That Chapter 43 of the Phoenix City Code is amended and a new Article XIV is adopted as follows:

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...

**Chapter 43 –Article XIV.**

**Payment of Prevailing Wage for Work Performed on City Construction Projects.**

**Sec. 43-51. Definitions.**

In this Article, unless the context otherwise requires:

*Affordable Housing* means residential or mixed-use development, excluding any projects that are subject to the Davis-Bacon Act, that provides low-to-moderate-income housing to at least 50% of the dwelling units at a site committed for a minimum term through covenants or restrictions to households with incomes at 80% or less of the area median income as defined by the United States Department of Housing and Urban Development.

*City* means the City of Phoenix and any related City agency, department or authority.

*Construction* in the context of *Construction Contracting* has the meaning as set forth in Section 34-101(3) of Title 34, Chapter 1, Article 1 of the Arizona Revised Statutes. For the purposes of this Article, Construction Contracting is limited to construction conducted on City-owned or leased property and does not include work performed by employees of the City.

*City Construction Contract* means a contract for construction on City-owned or City-leased property and to which the City is the contracting party financially obligated to pay the contract sum and which is solicited in accordance with the City Procurement Code.

*Covered Employer* means any employer obligated to pay employees a prevailing wage under this Article.

*Prevailing Wage Rate* means the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding class of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the construction takes place, as determined by the City Engineer on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 3142 et seq., as amended.

*Willfully* means any act which is intentional, deliberate, conscious or voluntary and designed to achieve a particular result.

**Sec. 43-52. Payment of Prevailing Wages.**

(A) *Required.* Every mechanic, laborer or other worker employed by any contractor or subcontractor under any applicable City Construction Contract to perform Construction Contracting shall be paid not less than the Prevailing Wage Rate for the same class and kind of work in the Phoenix metropolitan area. This section shall not apply to: (i) any participant in a youth employment program where the participant is employed in non-construction work; (ii) situations where there is no contract directly requiring or permitting construction work; or (iii) contracts that are neither a revenue nor expenditure contract contemplating construction work, such as licenses or permits to use city-owned land.

(B) *Apprenticeship Programs.* Every Covered Employer may support employee apprenticeship participation by contributing an amount to an apprenticeship program approved by the U.S. Department of Labor that is equivalent to and consistent with the appropriate Prevailing Wage Rate as

determined by the U.S. Department of Labor and registered with the State of Arizona, Western Maricopa Education Center, East Valley Institute of Technology, or an equivalent career training program.

(c) *Contract Specifications.* Every City Construction Contract with an aggregate value of four million dollars (\$4,000,000) or greater at the time the City Construction Contract is entered into shall contain a provision: (i) stating that the minimum wages to be paid for every class of mechanic, laborer and worker shall be not less than the Prevailing Wage Rate for each class of worker; (ii) requiring a Covered Employer to pay every mechanic, laborer or other worker at least once a week the full amount of wages accrued at the time of payment at the applicable Prevailing Wage Rate; (iii) mandating that every Covered Employer comply with the recordkeeping and notice posting requirements in Section 43-53 of this Article. No Covered Employer shall misclassify any mechanic, laborer or other worker as an independent contractor, as defined in CFR 541. A mechanic, laborer or other worker shall be classified as an independent contractor only if their work relationship satisfies the legal definition of an independent contractor under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., as amended.

**Sec. 43-53. Required Recordkeeping and Notice Posting.**

(A) Every Covered Employer shall keep certified payroll records showing the name, address, job classification, wages and benefits paid or provided, and the number of hours worked for each employee. These records shall be preserved for four (4) years from the date of an employee's final payment and shall be considered public records under Arizona Public Records Law, A.R.S.

§ 39-101 et seq.

(B) Every Covered Employer shall file weekly Federal Form WH-347 or its equivalent which shall specify for each employee the employee's name, address, employee ID#/last four digits of the Social Security Number, job classification, hourly wage rate paid, the number of hours worked each week, all deductions made from gross pay, and net weekly pay, with the City Engineer. Every Covered Employer shall file a statement weekly with the City Engineer certifying that all workers have been paid no less than the wage required by their contract, if any wages remain unpaid to set forth the amount of wages due and owing to each worker respectively, and that the job classification for each employee conforms with the work performed. Social Security Numbers and other personal identifying information shall be kept confidential by the City, unless otherwise required by law.

(C) The City Engineer must notify in writing all Covered Employers at least once every twelve (12) months of their obligation to file weekly the Federal Form WH-347 or its equivalent. The notification must include a copy of the Federal Form WH-347 with instructions for completing the form, the dates that the completed form is due throughout the proceeding twelve (12) months, contact information for an employee within the City Engineer's office where questions can be referred, a notice of the penalties that can be assessed if the Covered Employer becomes non-compliant. In addition, the notice shall include a letter that provides the name, address and telephone number of the City Engineer, the applicable prevailing wages for the job classifications at the Covered Employer,

and a statement advising workers that if they have been paid less than the Prevailing Wage Rate they may notify the City Engineer and request an investigation. The City's failure to provide the previously described written notification to covered employers does not relieve Covered Employers of their obligations under this Article.

(D) Every Covered Employer shall post the letter with the related information referenced in Subsection C above at the job site in an area easily accessible by all employees.

**Sec. 43-54. Enforcement.**

(A) *Complaint Procedure.* The City Engineer shall provide a complaint form on the official City website. Any affected individual or organization representing such individual(s) may file a complaint with the City Engineer for any violation of this Article.

(B) *Review and Investigation.* The City Engineer shall review and investigate the complaint and shall make a finding of compliance or noncompliance within sixty (60) days of the complaint being filed, including a determination of whether an employer is covered by this Article. The Covered Employer shall permit authorized agents of the City Engineer to observe the work being performed on the work site, to interview employees, and examine the books and records relating to the payrolls being investigated to determine whether or not the Covered Employer is in compliance with this Article. Failure of the City Engineer to issue a finding of compliance or noncompliance does not relieve the Covered Employer of their obligations under this Article.

(C) *Finding of Noncompliance.* If at any time the City Engineer, upon investigation of a complaint or upon independent investigation, finds that a violation of this Article has occurred, it shall issue a finding of noncompliance and notice of corrective action to the Covered Employer. The finding of noncompliance shall specify the areas of noncompliance, indicate such corrective action as may be necessary to achieve compliance, and impose deadlines for achieving compliance.

(D) *Dispute of Finding of Noncompliance.* A Covered Employer may dispute a finding of noncompliance and notice of corrective action by requesting a review within thirty (30) days of the date of the finding. The City Engineer shall appoint a hearing officer, who shall affirm or reverse the finding of noncompliance based upon evidence presented by the applicable City department and the Covered Employer. Where the finding of noncompliance and notice of corrective action requires wage restitution, the Covered Employer must, as a precondition to a request for review, provide evidence that such wages have either been paid or placed into an escrow account for the satisfaction of the judgment of the hearing officer. A Covered Employer who does not request review or appeal, or who fails to pay or escrow wages as provided herein, waives the right to dispute a finding of noncompliance. A finding of noncompliance and notice of corrective action shall become final if either the Covered Employer fails to request review within thirty (30) days as provided in this paragraph, or the hearing officer affirms such finding after a review.

(E) Any Covered Employer who is aggrieved by a non-final decision of

the hearing officer in Subsection D above may seek judicial review by way of special action or other available remedy in Superior Court.

(F) A violation by a subcontractor of a Covered Employer shall be deemed a violation by the Covered Employer.

**Sec. 43-55. Sanctions.**

(A) In the event the City Engineer or hearing officer determines that a Covered Employer has failed to comply for more than sixty (60) days after a notice of corrective action has become final, or in the event the hearing officer determines that any portion of a Covered Employer's dispute of a finding of noncompliance is frivolous or was brought for the purpose of delaying compliance, the City Engineer shall order any or all of the following penalties: (1) wage restitution for the affected employee(s); (2) liquidated damages in the amount of three (3) times the wages owed; (3) a directive to the applicable City department to withhold any payments due the Covered Employer, and to apply such payments to the payment of fines or the restitution of wages; or (4) rescission of the City Construction Contract in violation.

(B) In the event that the City Engineer or hearing officer determines that a Covered Employer has willfully or more than twice in a three-year period failed to comply with this Article, the City Engineer or hearing officer, in addition to the sanctions that may be imposed pursuant to subsection A above, may (1) order debarment of the contractor pursuant to Section 43-28 of the Phoenix City Code; and (2) in the case of a project receiving a city subsidy, order the payment of a fine in the amount of no less than 3% of the total cost of construction.



**Sec. 43-56. Regulation.**

The City Engineer may issue regulations to implement the provisions of this Article.

**Sec. 43-57. Exclusions.**

The provisions of this Article do not apply to City Construction Contracts:

1. valued at less than \$4,000,000;
2. subject to Federal prevailing wage law;
3. solicited before July 1, 2024, including any renewals; or
4. excluded from the City of Phoenix Procurement Code.

In addition, none of the provisions of this Article apply to any of the following:

5. Procurements for any projects funded in whole or in part by the proposed 2023 General Obligation Bond Program.

6. Any Job Order Contracts (JOCs).

7. Any Affordable Housing construction project.

8. Any solicitation where a City Construction Contract is being re-advertised because the initial solicitation received less than three (3) responsive qualifying bids.

9. Public infrastructure reimbursement agreements between the City and private developers.

10. Construction by private developers of improvements that are, or are intended to be, constructed in City rights-of-way or on other property dedicated, or intended to be dedicated, to the City.

SECTION 2. That the provisions of this Ordinance are severable, and if any provision of this Ordinance or any application thereof is held invalid, that invalidity

shall not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application.

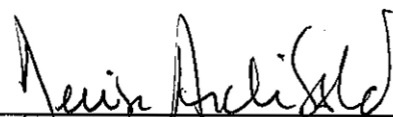
SECTION 3. That this Ordinance shall become effective on July 1, 2024.

PASSED by the City Council of the City of Phoenix this 9<sup>th</sup> day of January, 2024.

  
MAYOR


1/16/2024  
Date

ATTEST:


  
Denise Archibald, City Clerk



APPROVED AS TO FORM:  
Julie M. Kriegh, City Attorney

By:   
Deryck Lavelle (Jan 8, 2024 12:56 MST)  
Chief Assistant City Attorney

REVIEWED BY:

  
Jeffrey Barton, City Manager

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