Meeting Date: **11/18/2014**

Report Type: Consent

Report ID: 2014-00852

City of SACRAMENTO 04

City Council Report
915 I Street, 1st Floor
www.CityofSacramento.org

Title: (Pass for Publication) Ordinance Amending Sections 3.60.180 and 3.60.190 of the Sacramento City Code, Relating to the Payment of Prevailing Wages and Apprentices

Location: Citywide

Recommendation: 1) Review an Ordinance amending sections 3.60.180 and 3.60.190 of the Sacramento City Code, relating to the payment of prevailing wages and apprentices; and 2) pass for publication the ordinance title as required by Sacramento City Charter section 32(c), to be considered on November 25, 2014.

Contact: Craig Lymus, Procurement Manager, (916) 808-5624, Department of Finance

Presenter: None

Department: Finance

Division: Citywide Procurement

Dept ID: 06001521

Attachments:

1-Description/Analysis

2-Background

3-Ordinance (Clean)

4-Ordinance (Redline)

City Attorney Review

Approved as to Form
Kourtney Burdick
11/13/2014 9:26:14 AM

Approvals/Acknowledgements

Department Director or Designee: Dennis Kauffman - 11/12/2014 3:53:03 PM

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Description/Analysis

Issue Detail: On October 6, 2014, the City received a letter from the California Department of Industrial Relations requesting confirmation that the City is in compliance with, among other things, Senate Bill 7, related to the payment of prevailing wages on public works projects. In sum, SB 7 disqualifies a charter city from receiving state funds for any construction project if the city does not comply with state prevailing-wage law—a law from which charter cities, such as Sacramento, are otherwise generally exempt.

The City currently requires the payment of prevailing wages for public projects as defined by the City Code, but there are some differences between the City Code and state law. The City Manager has directed staff to update City Code 3.60.180 to make the City's requirements for the payment of prevailing wages consistent with state prevailing-wage law.

Failure to amend the City Code provisions governing prevailing wage will result in the City being barred from receiving state funding for two years from the execution date of the last non-compliant contract. If the City decides to follow its own prevailing-wage law in the future, it can opt out of the state system and risk forfeiting state funding. But at this point in time, staff is recommending amending the City Code to maintain the city's options moving forward.

Policy Considerations: The recommendations in this report will lower the City's contract threshold for the payment of prevailing wages as well as expand the universe of the type of work that is subject to prevailing wages. Under the City Code, prevailing wages are required for all "public projects" in excess of $25,000. In contrast, state law (including regulations of the Department of Industrial Relations) requires prevailing wages for "construction" in excess of $25,000 and "alteration, demolition, repair, and maintenance work" in excess of $15,000. In addition, state law mandates the payment of prevailing wages for maintenance and repair work related to street, sewer, or water work and certain other services (such as landscape maintenance) that the City currently views as nonprofessional services and are exempt from prevailing-wage requirements under the City Code.

The proposed amendment does not alter the City's definition of "public project" for purposes of competitive bidding. The definition of "public project" under the City Code comes from the City Charter and cannot be amended without a vote of the electorate. The proposed prevailing wage amendment only alters the definition of work subject to prevailing wage.

Economic Impacts: Not Applicable.

Environmental Considerations:

> **California Environmental Quality Act (CEQA):** This report concerns administrative activities that will not have a significant effect on the environment, and does not constitute a "project" as defined by the CEQA Sections 15061(b)(3), and 15378(b)(2).

Sustainability: None.

Commission/Committee Action: None.

Rationale for Recommendation: Amending the City Code as proposed will ensure the City remains eligible for state construction funding. The proposed amendment of Chapter 3.60.180 of the Sacramento City Code will bring the City's prevailing-wage law in line with state law.

Financial Considerations: City staff is analyzing the cost implications of the proposed code amendments. Initial estimates suggest that the costs of City construction projects could increase by approximately 30% due to the increase in prevailing wages. The expected cost increase, however, is insignificant compared to the potential revenue loss associated with not amending the City Code. The City received state funding for construction projects, including federal funding passed through the state, totaling nearly $84 million and $50 million in fiscal years 2012/13 and 2013/14 respectively. Forfeiting state funding for construction projects is not a financially practical option.

Local Business Enterprise (LBE): No goods or services are being purchased as a result of this report.

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Background

On October 13, 2013, Governor Brown signed SB 7, which disqualifies a charter city from receiving state funds for any construction project if the city does not comply with state prevailing-wage law—a law from which charter cities are otherwise generally exempt.

On October 6, 2014, the City received a letter from the California Department of Industrial Relations requesting assurances from the City that it is in compliance with Senate Bills 829, 922, and 7.

On October 15, 2014, the City responded to the Department of Industrial relations asserting its compliance with SB 829 and SB 922 (related to project labor agreements). With respect to SB 7, the city noted that it "requires the payment of prevailing wages for all public projects meeting certain conditions" and that the City was "currently reviewing these provisions to determine if SB 7 necessitates any amendments."

State law requires the payment of prevailing wages for all "public works" of $1,000 or less. If, however, the awarding body has an approved labor compliance program, higher thresholds apply depending upon the type of public work: prevailing wages are required for (1) construction work in excess of $25,000; and (2) alteration, demolition, repair, and maintenance work in excess of $15,000. The requirement to pay prevailing wages only applies to work performed under contract and does not apply to work carried out by a public agency with its own forces.

SB 7 attempts to encourage charter cities to follow state prevailing wage law by preventing them from receiving state funding for construction projects if they have either (1) a charter provision or ordinance that authorizes a contractor to not comply with the state's prevailing wage law; or (2) awarded, within the prior two years, a public works contract without requiring the contractor to comply with state prevailing wage law. The bill also states that a "charter city is not disqualified from receiving or using state funding or financial assistance for its construction projects if the charter city has 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 imposed by the provisions of state prevailing wage law.

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ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING
SECTIONS 3.60.180 AND 3.60.190 OF THE SACRAMENTO CITY CODE,
RELATING TO THE PAYMENT OF PREVAILING WAGES AND APPRENTICES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 3.60.180 of the Sacramento City Code is amended to read as follows:

3.60.180 Payment of prevailing rate of wages—Maximum hours of labor—Penalties.

Every contract for any construction project, as defined in Section 1782 of the California Labor Code, to be performed within the state at the expense of the city, or paid out of city moneys, whether such work be done directly under contract award, or indirectly by or under subcontract, subpartnership, day labor, station work, piece work, or by any other arrangement whatsoever, must provide, in addition to other provisions required by law, that any person performing labor in the state in execution of such contracts, subcontract, subpartnership, day labor, station labor, piece work or any other arrangement shall be paid not less than the general prevailing rate of wages in private employment for similar work in the city; provided, however, that the foregoing provisions as to payment of the general prevailing rate of wages shall not apply to: (a) contracts for any construction project originally awarded or executed in an amount of twenty-five thousand dollars ($25,000.00) or less; (b) contracts for any alteration, demolition, repair, or maintenance work originally awarded or executed in an amount of fifteen thousand dollars ($15,000) or less; (c) materials for which no manufacturing plant exists in the city; or (d) standard materials or commodities carried in stock by dealers or manufacturers generally.

The general prevailing rate of wages shall be the general prevailing rate of wages for the area in which the city is located as determined by the director of the department of industrial relations pursuant to Labor Code Section 1773. Every contract for which the payment of the general prevailing rate of wages is required shall provide that the determination of the director of the department of industrial relations in force at the time the notice to bidders is published with respect to the general prevailing rate of wages in private employment in the city for similar work shall be binding upon the parties any contract awarded as a result of such notice. If any worker is paid less than the general prevailing rate of wages for the work or craft in which the worker is employed by the contractor or any subcontractor for any work done under the

contract, the city may withhold contract payments equal to the amount of underpayment. In addition, the contractor shall forfeit as a penalty to the city not more than fifty dollars ($50.00) for each calendar day, or portion thereof, for each worker paid less than the general prevailing rate of wages, as determined by the director of the department of industrial relations, for the work or craft in which the worker is employed by the contractor or any subcontractor for any work done under the contract, and every contract shall have inserted therein a clause to that effect.

In the performance of the contract, eight hours shall be the maximum hours of labor on any calendar day, and forty (40) hours shall be the maximum hours of labor during any one calendar week. Work performed by employees of contractors in excess of eight hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. The contractor shall as a penalty forfeit twenty-five dollars ($25.00) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of this section.

To the extent that there is insufficient money due a contractor to cover all penalties forfeited and amounts due in accordance with this section, and in all cases where the contract does not provide for a money payment by the city to the contractor, the city shall provide notice of the violation to the director of industrial relations, division of labor standards enforcement, for commencement an enforcement action pursuant to California Labor Code, Section 1775.

Out of any money withheld or recovered, pursuant to this section, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both to pay each worker in full, the money shall be prorated among all workers. At the expiration of ninety (90) days after the completion of the contract and the formal acceptance of the project, all penalties or forfeitures withheld or recovered pursuant to this section shall be deposited in the city's general fund.

Every contractor or subcontractor, or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest who is found by the city manager to be in willful violation of the provisions of this chapter with intent to defraud shall be ineligible to bid on or receive a contract paid out of moneys deposited in the city's treasury for a period of not more than five years from the date such determination is made by the city manager.

The specifications for any contract that requires the payment of the general prevailing rate of wages under this section shall include a statement that a copy of the current director of industrial relations prevailing wage determination is on file in the city clerk's office, and will be made available to any interested party on request.

Every contract falling under the terms of this section shall contain a provision that requires the contractor to insert into every subcontract or subagreement entered into, provisions identical with the provisions set forth in the contract pursuant to this chapter regarding compliance with the requirements for wage rates, hours of labor, and requirements for the employment of apprentices. The stipulations shall fix the responsibility of compliance with Sections 3.60.180 and 3.60.190 of this chapter with the prime contractor.

SECTION 2.

Section 3.60.190 of the Sacramento City Code is amended to read as follows:

3.60.190 Apprentices.

All contractors and subcontractors shall comply with Section 1777.5 et seq., of the California Labor Code governing the employment of apprentices. Contractors and subcontractors shall not discriminate among otherwise qualified employees as apprentices on the ground of age, ancestry, color, disability, genetic information, gender (including gender identity and gender expression), marital status, medical condition, national origin, race, religion, sex, or sexual orientation. The prime contractor shall be responsible for complying with these provisions for all apprenticeable occupations.

In the event that a contractor or subcontractor who chooses to employ apprentices fails to comply with the provisions of this section, the city may report the contractor or subcontractor to the director of industrial relations and the California Apprenticeship Council for action as necessary under Section 1777.7 of the California Labor Code.

Adopted by the City of Sacramento City Council on _____ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

_____

MAYOR

Attest:

_____
City Clerk

Passed for Publication:
Published:
Effective:

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ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING
SECTIONS 3.60.180 AND 3.60.190 OF THE SACRAMENTO CITY CODE,
RELATING TO THE PAYMENT OF PREVAILING WAGES AND APPRENTICES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 3.60.180 of the Sacramento City Code is amended to read as follows:

3.60.180 Payment of prevailing rate of wages—Maximum hours of labor—Penalties.

Every contract for any construction project, as defined in Section 1782 of the California Labor Code, ~~public project~~ to be performed within the state at the expense of the city, or paid out of city moneys, whether such work be done directly under contract award, or indirectly by or under subcontract, subpartnership, day labor, station work, piece work, or by any other arrangement whatsoever, must provide, in addition to other provisions required by law, that any person performing labor in the state in execution of such contracts, subcontract, subpartnership, day labor, station labor, piece work or any other arrangement shall be paid not less than the general prevailing rate of wages in private employment for similar work in the city; provided, however, that the foregoing provisions as to payment of the general prevailing rate of wages shall not apply to: (a) contracts for any ~~public~~ construction project originally awarded or executed in an amount of twenty-five thousand dollars ($25,000.00) or less; (b) contracts for any alteration, demolition, repair, or maintenance work originally awarded or executed in an amount of fifteen thousand dollars ($15,000) or less; (c) ~~or to~~ materials for which no manufacturing plant exists in the city; ~~,~~ or (d) ~~or to~~ standard materials or commodities carried in stock by dealers or manufacturers generally.

The general prevailing rate of wages ~~required in contracts for public projects~~ shall be the general prevailing rate of wages for the area in which the city is located as determined by the director of the department of industrial relations pursuant to Labor Code Section 1773. Every contract for which the payment of the general prevailing rate of wages is required shall provide that the determination of the director of the department of industrial relations in force at the time the notice to bidders is published with respect to the general prevailing rate of wages in private employment in the city for similar work shall be binding upon the parties any contract awarded as a result of such notice. If any worker is paid less than the general prevailing rate of wages for the work or craft in which the worker is employed by the contractor or any

subcontractor for any work done under the contract, the city may withhold contract payments equal to the amount of underpayment. In addition, the contractor shall forfeit as a penalty to the city not more than fifty dollars ($50.00) for each calendar day, or portion thereof, for each worker paid less than the general prevailing rate of wages, as determined by the director of the department of industrial relations, for the work or craft in which the worker is employed by the contractor or any subcontractor for any work done under the contract, and every contract shall have inserted therein a clause to that effect.

In the performance of the contract, eight hours shall be the maximum hours of labor on any calendar day, and forty (40) hours shall be the maximum hours of labor during any one calendar week. Work performed by employees of contractors in excess of eight hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. The contractor shall as a penalty forfeit twenty-five dollars ($25.00) for each worker employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of this section.

To the extent that there is insufficient money due a contractor to cover all penalties forfeited and amounts due in accordance with this section, and in all cases where the contract does not provide for a money payment by the city to the contractor, the city shall provide notice of the violation to the director of industrial relations, division of labor standards enforcement, for commencement an enforcement action pursuant to California Labor Code, Section 1775.

Out of any money withheld or recovered, pursuant to this section, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both to pay each worker in full, the money shall be prorated among all workers. At the expiration of ninety (90) days after the completion of the contract and the formal acceptance of the project, all penalties or forfeitures withheld or recovered pursuant to this section shall be deposited in the city's general fund.

Every contractor or subcontractor, or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest who is found by the city manager to be in willful violation of the provisions of this chapter with intent to defraud shall be ineligible to bid on or receive a contract paid out of moneys deposited in the city's treasury for a period of not more than five years from the date such determination is made by the city manager.

The specifications for~~officer, board, commission or council authorized to let~~ any contract that requires the payment of the general prevailing rate of wages under this section ~~for any public project to be performed for the city shall include in the specifications setting forth the terms of performance of the contract~~ shall include a statement that a copy of the current

director of industrial relations prevailing wage determination is on file in the city clerk's office, and will be made available to any interested party on request.

Every contract falling under the terms of this section shall contain a provision that requires the contractor to insert into every subcontract or subagreement entered into, provisions identical with the provisions set forth in the contract pursuant to this chapter regarding compliance with the requirements for wage rates, hours of labor, and requirements for the employment of apprentices. The stipulations shall fix the responsibility of compliance with Sections 3.60.180 and 3.60.190 of this chapter with the prime contractor.

SECTION 2.

Section 3.60.190 of the Sacramento City Code is amended to read as follows:

3.60.190 Apprentices.

~~Nothing in this chapter shall prevent the employment of properly registered apprentices upon public projects whether such work be done directly under contract award, or indirectly by or under subcontract, partnership, day labor, station work, piece work, or by any other arrangement whatsoever. Every such apprentice shall be paid the applicable apprentice prevailing per diem wage rate according to an apprentice wage progression schedule available from department of apprenticeship standards (DAS). Apprentices employed, can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Only apprentices who are in training under apprenticeship standards and who have written apprentice agreements may be employed on public projects in apprenticeable occupations.~~

All contractors ~~or~~ and subcontractors ~~who choose to employ apprentices~~ shall comply with Section 1777.5 et seq., of the California Labor Code governing the employment of apprentices~~, as those provisions now exist or are hereafter amended or renumbered~~. Contractors and subcontractors shall not discriminate among otherwise qualified employees as apprentices on the ground of age, ancestry, color, disability, genetic information, gender (including gender identity and gender expression), marital status, medical condition, national origin, race, religion, sex, or sexual orientation. The prime contractor shall be responsible for complying with these provisions for all apprenticeable occupations.

In the event that a contractor or subcontractor who chooses to employ apprentices fails to comply with the provisions of this section, the city may report the contractor or subcontractor to the director of industrial relations and the California Apprenticeship Council for action as necessary under Section 1777.7 of the California Labor Code~~, as that provision now exists or is hereafter amended or renumbered~~.

Adopted by the City of Sacramento City Council on _____ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

_____
MAYOR

Attest:

_____
City Clerk

Passed for Publication:
Published:
Effective: