

Meeting Date: 3/29/2016

Report Type: Consent

Report ID: 2016-00351

Title: Ordinance Amending Sacramento City Code Section 3.60.190, Relating to Apprentices (Passed for Publication 03/22/2016; Published 03/25/2016)

Location: Citywide

Recommendation: Pass an Ordinance amending section 3.60.190 of the Sacramento City Code, relating to apprentices.

Contact: Sheri Smith, Program Specialist, (916) 808-7204; Mark Griffin, Special Districts Manager, (916) 808-8788, Department of Finance

Presenter: None

Department: Finance

Division: Public Improvement Finance

Dept ID: 06001321

Attachments:

- 1-Description/Analysis
- 2-Ordinance Clean
- 3-Ordinance Redline

City Attorney Review

Approved as to Form
Joseph Cerullo
3/16/2016 4:39:06 PM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 3/11/2016 1:41:48 PM

Description/Analysis

Issue Detail: On October 13, 2013, Governor Brown approved SB 7, which provides that charter cities must follow the state's prevailing-wage requirements when awarding construction contracts after January 1, 2015, to remain eligible for state funding. At the time, the City Code required payment of prevailing wages but, unlike state law, did not require the hiring of apprentices. On November 25, 2014, therefore, the City Council adopted Ordinance No. 2014-0035, amending City Code sections 3.60.180 and 3.60.190 to make the City's requirements for the payment of prevailing wages *and* the hiring of apprentices consistent with the state's prevailing-wage law. The ordinance became effective on December 25, 2014.

The amendment of the City Code put in doubt the ability of at least one developer to use certain public-financing tools, such as community facilities districts, to finance the construction of public improvements within its private development project. The doubt arose because some of the developer's contracts for construction of the public improvements were awarded before the amendment's effective date and thus, in compliance with the City Code as it then read, did not require the hiring of apprentices in ratios that conformed to state law. Neither City staff nor, presumably, the City Council intended by amending the City Code to disable the developer from availing itself of public financing. Accordingly, the attached ordinance further amends City Code section 3.60.190 to make clear that the requirements pertaining to the hiring of apprentices do not apply to construction contracts awarded before December 25, 2014. It further establishes that public improvements constructed under contracts awarded before December 25, 2014—i.e., when the hiring of apprentices wasn't required—will nevertheless be eligible for public financing if all other requirements have been met.

Policy Considerations: The proposed amendment clarifies which contracts are subject to the apprentice-hiring requirement while still conforming to the requirements of SB7. The amendment is similar in effect and purpose to SB 7 itself, which provides that a charter city will not be disqualified from receiving state funding because it failed to require payment of prevailing wages and the hiring of apprentices in contracts awarded or put out to bid before January 1, 2015. (California Labor Code § 1720(f)(2).)

Environmental Considerations: Adoption of the ordinance is not a "project" subject to the California Environmental Quality Act because the action is an administrative activity and does not have the potential to cause a significant effect on the environment. (14 Cal. Code Regs. §§ 15061(b)(3) & 15378(b)(2).) Projects covered by amended City Code section 3.60.190 will be subject to separate environmental review.

Commission/Committee Action: The City Manager deems this ordinance to be urgent because City Code section 3.60.190, as it is currently written, has an immediate and detrimental impact on the financing of the McKinley Village development project. So the Law and Leg Committee's review of the ordinance before City Council action is not required (Council Rules of Procedure, rule 13.B.2.b.(i)).

Rationale for Recommendation: Public improvements within private development projects might be rendered ineligible for public financing by City Code section 3.60.190

as it now reads even though the contracts were lawful when awarded. Adoption of the ordinance will make clear that these public improvements remain eligible for public financing.

Financial Considerations: The proposed amendment does not change the City's compliance with SB7 and therefore has no impact on the City's eligibility for future state funding.

Local Business Enterprise (LBE): Not applicable.

ORDINANCE NO. 2016-_____

Adopted by the Sacramento City Council
_____, 2016

AN ORDINANCE AMENDING SECTION 3.60.190 OF THE SACRAMENTO CITY CODE, RELATING TO THE HIRING OF APPRENTICES BY CONTRACTORS ON PUBLIC-WORKS PROJECTS

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

SECTION 1.

Legislative Findings and Intent

- A. California's prevailing-wage law, California Labor Code sections 1720 through 1861, requires that contractors on public-works projects (1) pay their workers the general prevailing-wage rates for work of a similar character in the locality where the work is performed; (2) comply with limitations on hours worked; and (3) hire apprentices from state-approved apprenticeship programs and pay them prevailing wages.
- B. The California Constitution exempts charter cities from requiring their contractors on locally funded public-works projects to comply with the state's prevailing-wage law. Despite this exemption, Sacramento City Code section 3.60.180 has long required the City's contractors to pay prevailing wages and comply with limitations on hours worked. But until 2014, the City, consistent with its charter authority, did not require its contractors to hire apprentices. Instead, Sacramento City Code section 3.60.190 *allowed* the City's contractors to employ apprentices so long as the apprentices were paid the applicable prevailing wage.
- C. Following the Supreme Court's 2009 decision in *State Building & Construction Trades Council of California v. City of Vista*, which reaffirmed the constitutional principle that charter cities need not comply with the prevailing-wage law on locally funded projects, the Legislature enacted and the Governor signed Senate Bill No. 7, which added section 1782 to the California Labor Code (Statutes of 2013, chapter 794, section 2). Section 1782 provides an economic incentive for charter cities to comply with the prevailing-wage law by making state funding of a charter city's construction projects contingent on the city's having an ordinance that requires compliance.
- D. In response to Senate Bill No. 7, the City Council amended Sacramento City Code sections 3.60.180 and 3.60.190, effective December 25, 2014. As amended, section 3.60.190 requires that all contractors and subcontractors comply with sections 1777.5, 1777.6, and 1777.7 of the California Labor Code governing the employment of apprentices.

- E. From time to time, the City forms a community facilities district, or CFD, to help a subdivision developer finance the cost of constructing public improvements. When, as is usually the case, an improvement so financed is completed after the CFD is formed, it must be “constructed as if it had been constructed under [the City’s] direction and supervision.” (California Government Code section 53313.5). An improvement qualifies as constructed under the City’s direction and supervision only if the developer’s contractors have complied with Sacramento City Code sections 3.60.180 and 3.60.190.
- F. Before amended section 3.60.190 took effect, at least one subdivision developer within the City had awarded construction contracts that require the payment of prevailing wages but do not require the hiring of apprentices in compliance with Labor Code section 1777.5. Then, after the amendment took effect, the developer asked the City to form a CFD to help finance the improvements, and it also entered into additional construction contracts for public improvements within the same subdivision. Those additional contracts comply with amended section 3.60.190 by requiring the hiring of apprentices.
- G. If any public improvements within a subdivision receive public funds, then all of the public improvements must be constructed in compliance with the prevailing-wage law. So all of a subdivision developer’s contracts for the construction of public improvements must require not just the payment of prevailing wages but also the hiring of apprentices, or no CFD financing will be allowed. Although that makes sense when the law remains stable, it leads to an unfair outcome when the law changes while a subdivision developer is contracting for construction of public improvements. For example, the subdivision developer described in paragraph F would be denied access to CFD financing even though each of the construction contracts for public improvements complied with Sacramento City Code sections 3.60.180 and 3.60.190 when awarded.
- H. Nothing in Senate Bill No. 7 requires that unfair outcome. Nor did the City Council intend to cause such unfairness when it amended section 3.60.190 in response to Senate Bill No. 7. Accordingly, the City Council finds (1) that a further amendment of section 3.60.190 is needed to make clear that a subdivision developer’s construction contracts for public improvements remain exempt from compliance with California Labor Code section 1777.5 if the contracts were either advertised for bid or awarded before December 25, 2014, the date amended section 3.60.190 took effect; and (2) that if some contracts or subcontracts for public improvements within a subdivision are exempt but others are not, and if the non-exempt contracts and subcontracts require compliance with the prevailing-wage law in accordance with sections 3.60.180 and 3.60.190, as amended, then all of the public improvements constructed under the exempt and non-exempt contracts and subcontracts should be eligible for funding through a CFD.

SECTION 2.

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

3.60.190 Apprentices.

- A. All contractors and subcontractors shall comply with sections 1777.5, 1777.6, and 1777.7 of the California Labor Code governing the employment of apprentices. This subsection does not apply to construction contracts and subcontracts that are advertised for bid or awarded before December 25, 2014, including but not limited to contracts and subcontracts for the construction of public improvements that are to be funded in whole or part through a community facilities district.
- B. 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 is responsible for complying with these provisions for all apprenticeable occupations.
- C. If a contractor or subcontractor fails to comply with this section, the city may report the contractor or subcontractor to the Department of Industrial Relations and the California Apprenticeship Council for action as necessary under section 1777.7 of the California Labor Code.
- D. All public improvements within a private development project that are constructed in compliance with this section and section 3.60.180 are eligible for public funding, including but not limited to funding through a community facilities district, so long as all other relevant requirements have been satisfied or waived in accordance with law.

ORDINANCE NO. 2016-_____

Adopted by the Sacramento City Council
_____, 2016

AN ORDINANCE AMENDING SECTION 3.60.190 OF THE SACRAMENTO CITY CODE, RELATING TO THE HIRING OF APPRENTICES BY CONTRACTORS ON PUBLIC-WORKS PROJECTS

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

SECTION 1.

Legislative Findings and Intent

- A. California's prevailing-wage law, California Labor Code sections 1720 through 1861, requires that contractors on public-works projects (1) pay their workers the general prevailing-wage rates for work of a similar character in the locality where the work is performed; (2) comply with limitations on hours worked; and (3) hire apprentices from state-approved apprenticeship programs and pay them prevailing wages.
- B. The California Constitution exempts charter cities from requiring their contractors on locally funded public-works projects to comply with the state's prevailing-wage law. Despite this exemption, Sacramento City Code section 3.60.180 has long required the City's contractors to pay prevailing wages and comply with limitations on hours worked. But until 2014, the City, consistent with its charter authority, did not require its contractors to hire apprentices. Instead, Sacramento City Code section 3.60.190 *allowed* the City's contractors to employ apprentices so long as the apprentices were paid the applicable prevailing wage.
- C. Following the Supreme Court's 2009 decision in *State Building & Construction Trades Council of California v. City of Vista*, which reaffirmed the constitutional principle that charter cities need not comply with the prevailing-wage law on locally funded projects, the Legislature enacted and the Governor signed Senate Bill No. 7, which added section 1782 to the California Labor Code (Statutes of 2013, chapter 794, section 2). Section 1782 provides an economic incentive for charter cities to comply with the prevailing-wage law by making state funding of a charter city's construction projects contingent on the city's having an ordinance that requires compliance.
- D. In response to Senate Bill No. 7, the City Council amended Sacramento City Code sections 3.60.180 and 3.60.190, effective December 25, 2014. As amended, section 3.60.190 requires that all contractors and subcontractors comply with sections 1777.5, 1777.6, and 1777.7 of the California Labor Code governing the employment of apprentices.

- E. From time to time, the City forms a community facilities district, or CFD, to help a subdivision developer finance the cost of constructing public improvements. When, as is usually the case, an improvement so financed is completed after the CFD is formed, it must be “constructed as if it had been constructed under [the City’s] direction and supervision.” (California Government Code section 53313.5). An improvement qualifies as constructed under the City’s direction and supervision only if the developer’s contractors have complied with Sacramento City Code sections 3.60.180 and 3.60.190.
- F. Before amended section 3.60.190 took effect, at least one subdivision developer within the City had awarded construction contracts that require the payment of prevailing wages but do not require the hiring of apprentices in compliance with Labor Code section 1777.5. Then, after the amendment took effect, the developer asked the City to form a CFD to help finance the improvements, and it also entered into additional construction contracts for public improvements within the same subdivision. Those additional contracts comply with amended section 3.60.190 by requiring the hiring of apprentices.
- G. If any public improvements within a subdivision receive public funds, then all of the public improvements must be constructed in compliance with the prevailing-wage law. So all of a subdivision developer’s contracts for the construction of public improvements must require not just the payment of prevailing wages but also the hiring of apprentices, or no CFD financing will be allowed. Although that makes sense when the law remains stable, it leads to an unfair outcome when the law changes while a subdivision developer is contracting for construction of public improvements. For example, the subdivision developer described in paragraph F would be denied access to CFD financing even though each of the construction contracts for public improvements complied with Sacramento City Code sections 3.60.180 and 3.60.190 when awarded.
- H. Nothing in Senate Bill No. 7 requires that unfair outcome. Nor did the City Council intend to cause such unfairness when it amended section 3.60.190 in response to Senate Bill No. 7. Accordingly, the City Council finds (1) that a further amendment of section 3.60.190 is needed to make clear that a subdivision developer’s construction contracts for public improvements remain exempt from compliance with California Labor Code section 1777.5 if the contracts were either advertised for bid or awarded before December 25, 2014, the date amended section 3.60.190 took effect; and (2) that if some contracts or subcontracts for public improvements within a subdivision are exempt but others are not, and if the non-exempt contracts and subcontracts require compliance with the prevailing-wage law in accordance with sections 3.60.180 and 3.60.190, as amended, then all of the public improvements constructed under the exempt and non-exempt contracts and subcontracts should be eligible for funding through a CFD.

SECTION 2.

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

3.60.190 Apprentices.

- A. All contractors and subcontractors shall comply with ~~Section sections~~ 1777.5, ~~1777.6, and 1777.7 et seq.~~, of the California Labor Code governing the employment of apprentices. This subsection does not apply to construction contracts and subcontracts that are advertised for bid or awarded before December 25, 2014, including but not limited to contracts and subcontracts for the construction of public improvements that are to be funded in whole or part through a community facilities district.
- B. 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~~ is responsible for complying with these provisions for all apprenticeable occupations.
- C. ~~In the event that~~ If 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~~ Department of ~~i~~Industrial ~~R~~elations and the California Apprenticeship Council for action as necessary under ~~Section~~ section 1777.7 of the California Labor Code.
- D. All public improvements within a private development project that are constructed in compliance with this section and section 3.60.180 are eligible for public funding, including but not limited to funding through a community facilities district, so long as all other relevant requirements have been satisfied or waived in accordance with law.