



# Agenda

## City Council Policy Session

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Tuesday, January 9, 2024

2:30 PM

phoenix.gov

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**\*\*\*REVISED JAN. 8, 2024\*\*\***

**Item Revised: 1**

### OPTIONS TO ACCESS THIS MEETING

#### Virtual Request to speak at a meeting:

- **Register online** by visiting the City Council Meetings page on phoenix.gov at least 2 hours prior to the start of this meeting. Then, click on this link at the time of the meeting and join the Webex to speak: <https://phoenixcitycouncil.webex.com/phoenixcitycouncil/onstage/g.php?MTID=e8cbdbd1ad1f5a2ab479518118d803848>

- **Register via telephone** at 602-262-6001 at least 2 hours prior to the start of this meeting, noting the item number. Then, use the Call-in phone number and Meeting ID listed below at the time of the meeting to call-in and speak.

#### In-Person Requests to speak at a meeting:

- Register in person at a kiosk located at the City Council Chambers, 200 W. Jefferson St., Phoenix, Arizona, 85003. Arrive 1 hour prior to the start of this meeting. Depending on seating availability, residents will attend and speak from the Upper Chambers, Lower Chambers or City Hall location.

- Individuals should arrive early, 1 hour prior to the start of the meeting to submit an in-person request to speak before the item is called. After the item is called, requests to speak for that item will not be accepted.

#### At the time of the meeting:

- **Watch** the meeting live streamed on phoenix.gov or Phoenix Channel 11 on Cox Cable, or using the Webex link provided above.

- **Call-in** to listen to the meeting. Dial 602-666-0783 and Enter Meeting ID 2550 296 6728# (for English) or 2555 465 3829# (for Spanish). Press # again when prompted for attendee ID.

- **Watch** the meeting in-person from the Upper Chambers, Lower Chambers or City Hall depending on seating availability.

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- Members of the public may attend this meeting in person. Physical access to the meeting location will be available starting 1 hour prior to the meeting.

**Para nuestros residentes de habla hispana:**

- **Para registrarse para hablar en español**, llame al 602-262-6001 **al menos 2 horas antes del inicio de esta reunión** e indique el número del tema. El día de la reunión, llame al 602-666-0783 e ingrese el número de identificación de la reunión 2555 465 3829#. El intérprete le indicará cuando sea su turno de hablar.

- **Para solamente escuchar la reunión en español**, llame a este mismo número el día de la reunión (602-666-0783; ingrese el número de identificación de la reunión 2555 465 3829#). Se proporciona interpretación simultánea para nuestros residentes durante todas las reuniones.

- **Para asistir a la reunión en persona**, vaya a las Cámaras del Concejo Municipal de Phoenix ubicadas en 200 W. Jefferson Street, Phoenix, AZ 85003. Llegue 1 hora antes del comienzo de la reunión. Si desea hablar, regístrese electrónicamente en uno de los quioscos, antes de que comience el tema. Una vez que se comience a discutir el tema, no se aceptarán nuevas solicitudes para hablar. Dependiendo de cuantos asientos haya disponibles, usted podría ser sentado en la parte superior de las cámaras, en el piso de abajo de las cámaras, o en el edificio municipal.

Miembros del público pueden asistir a esta reunión en persona. El acceso físico al lugar de la reunión estará disponible comenzando una hora antes de la reunión.

**CALL TO ORDER****COUNCIL INFORMATION AND FOLLOW-UP REQUESTS**

This item is scheduled to give City Council members an opportunity to publicly request information or follow up on issues of interest to the community. If the information is available, staff will immediately provide it to the City Council member. No decisions will be made or action taken.

**CONSENT ACTION**

This item is scheduled to allow the City Council to act on the Mayor's recommendations on the Consent Agenda. There is no Consent Agenda for this meeting.

**CALL FOR AN EXECUTIVE SESSION**

A vote may be held to call an Executive Session for a future date.

**REPORTS AND BUDGET UPDATES BY THE CITY MANAGER**

This item is scheduled to allow the City Manager to provide brief informational reports on topics of interest to the City Council. The City Council may discuss these reports but no action will be taken.

**ORDINANCES, RESOLUTIONS, AND FORMAL ACTION (ITEM 1)**

Roll Call and City Clerk Reads 24-Hour Paragraph

**\*1 Prevailing Wage (Ordinance G-7217) \*\*\*REVISED\*\*\***

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This item provides information and background regarding prevailing wage ordinances, provides a draft prevailing wage ordinance for City Council consideration, and requests approval for additional City staff and related equipment necessary, if a prevailing wage ordinance is adopted.

**THIS ITEM IS FOR DISCUSSION AND POSSIBLE ACTION.**

**Responsible Department**

This item is submitted by City Manager Jeffrey Barton, the Budget and Research Department, and the City Engineer's Office.

**ADJOURN**



**\*\*\*ITEM REVISED (SEE ATTACHED MEMO)\*\*\* Prevailing Wage (Ordinance G-7217)**

This item provides information and background regarding prevailing wage ordinances, provides a draft prevailing wage ordinance for City Council consideration, and requests approval for additional City staff and related equipment necessary, if a prevailing wage ordinance is adopted.

**THIS ITEM IS FOR DISCUSSION AND POSSIBLE ACTION.**

**Summary**

On March 22, 2023, by a vote of 5-4, the Phoenix City Council passed a prevailing wage ordinance. This ordinance was subsequently repealed by City Council action on April 19, 2023. The Council also authorized use of the eight-hour rule to research the legality of a prevailing wage ordinance. Council directed staff to draft an ordinance that:

1. Has had legal review.
2. Incorporated stakeholder input.
3. Included a phased approach to limit negative impact on the Fiscal Year (FY) 2023-24 operating budget, FY 2023-24 capital budget, and planned 2023 General Obligation Bond Program.
4. Could be considered by the end of the calendar year.

The attached report (**Attachment A**) updates Council on action taken by staff subsequent to the April 19, 2023, Council meeting, and provides a modified prevailing wage ordinance for City Council consideration.

**Responsible Department**

This item is submitted by City Manager Jeffrey Barton, the Budget and Research Department, and the City Engineer's Office.



## City of Phoenix

### CITY MANAGER'S OFFICE REPORT

DATE ISSUED  
11/30/2023

TO:

Mayor and Council

FROM:

Jeff Barton, City Manager

SUBJECT

Draft Prevailing Wage Ordinance

This report provides information and background regarding prevailing wage ordinances, provides a draft prevailing wage ordinance for City Council consideration, and requests approval for additional city staff and related equipment necessary if a prevailing wage ordinance is adopted.

### Summary

On March 22, 2023, by a vote of 5-4, the Phoenix City Council passed a prevailing wage ordinance. This ordinance was subsequently repealed by Council action on April 19, 2023, with Council authorizing use of the eight-hour rule to research the ordinance's legality. Council directed staff to draft an ordinance that:

- 1) Might better withstand a legal challenge.
- 2) Incorporates stakeholder input.
- 3) Is phased to limit negative impact on the proposed 2023-24 operating budget, 2023-24 capital budget, and planned 2023 General Obligation Bond Program.
- 4) Could be considered by the end of the calendar year.

This report updates Council on action taken by staff subsequent to the April 19, 2023, Council meeting, and provides a modified prevailing wage ordinance for City Council consideration.

### Background

Prevailing wage refers to a minimum wage by trade, that must be paid to workers to ensure workers' wages are consistent with local standards for a given type of work. Federally funded construction projects are subject to prevailing wage requirements under the Davis-Bacon Act, which additionally mandates certain compliance reporting. A wage determination under the Davis-Bacon Act specifies the set of wage rates, fringe benefit rates, and work rules that the U.S.

Department of Labor has ruled to be prevailing for a given labor category in a given locality. Wage determinations are based on market surveys. The last survey in Phoenix's market was conducted in 2008 for roadway construction trades, and in 2012 for building construction trades. Prevailing wage regulations typically only apply to physical labor, and the Department of Labor's wage determinations provide a standard reference point of prevailing wage for construction trades – carpenters, equipment operators, and plumbers, for example. Trades such as engineers and architects that may perform technical or managerial functions on construction projects are generally not covered by prevailing wages. The Davis-Bacon Act was intended to prevent federal and federally assisted construction (where contracts are often awarded to the lowest-priced qualified bidder) from depressing local wage standards.

Several states and cities outside of Arizona have state/city-specific laws similar in nature to the Davis-Bacon Act but applying to state/city-funded construction projects, with varying scopes, wage determination methods, and requirements.

Prevailing wage ordinances are a hotly debated topic with varying viewpoints from labor and contractors regarding the intended, perceived, and actual impact of such ordinances. From the labor perspective, prevailing wage ordinances ensure fair pay, benefits, and safer working conditions to employees. Labor contends that increased pay and benefits for employees enhance the overall economy and provide for a happier workforce. They further argue that any increased costs for labor on individual construction projects are oftentimes offset with reduced time on the job as worker productivity, safety and job waste greatly improve. On the other side of the debate, employers and contractors argue that such ordinances increase construction project costs between six and 30 percent and require additional layers of administrative burden to ensure full compliance, particularly impacting small and minority-owned businesses that typically perform work as subcontractors. In the current labor environment, contractors assert that workers are already paid at or above prevailing wage rates, making a local prevailing wage ordinance unnecessary.

Countless studies have been conducted over the years and much of the data has been determined to be flawed or inconclusive at best. Many of the earlier studies also contained clear bias on behalf of both labor and industry. This bias was largely dependent on who commissioned and/or paid for the study. However, recent evidence from municipalities across the country does seem to show, at least anecdotally, that there is a correlation between prevailing wage ordinances and increased costs. It is important to note that many of these same studies also recognize the positive impact such ordinances have on workers and the overall economy.

Here is a summary of a few recent independent and municipal studies regarding the impact of prevailing wage and Davis-Bacon impact on the economy and construction costs:

1) A February 2023 study conducted on the impact of Montana's prevailing wage laws by the Illinois Economic Policy Institute found that the law "keeps construction costs stable and supported local contractors; ensures that the next generation of workers is trained for in-demand careers, which combats labor shortages and protects worksite safety; and promotes labor market competitiveness." The study also found that Montana's prevailing wage law "increases construction worker incomes by eight percent and expands employer-provided health insurance coverage for construction workers by eight percent." The study contends that increases in labor costs are beneficial to the overall economy and that these increases can be generally offset through savings elsewhere on large construction projects.

2) According to Nooshin Mahalia of the Economic Policy Institute "even if prevailing wage laws do force wages to rise, that increase doesn't have much effect on the total cost of a project. On average, 25 percent of a project's cost will go to laborers, including payroll taxes (which necessarily increase the more you pay your workers) and benefits. Increasing wages by as much as 10 percent would only increase the total of a contract by around 2.5 percent."

3) The Congressional Budget Office (CBO) periodically issues a compendium of policy options (called Options for Reducing the Deficit) covering a broad range of issues. In the Options for Reducing the Deficit, 2023-2032 Volume II: Smaller Reductions Report, CBO determines that "repealing Davis-Bacon would save the federal government \$24.3 billion".

4) According to a May 2022 report by the Beacon Hill Institute, "the 91-year-old Davis-Bacon Act adds at least 7.2 percent to the cost of federal and federally assisted construction projects and inflates wages by 20.2 percent compared to local market averages."

5) A January 2021 Fiscal Note from the Missouri Committee on Legislative Research Oversight Division determined that a repeal on prevailing wage provisions would reduce construction costs by approximately \$6.3 million.

6) An April 2021 Fiscal Note from the Maryland Department of Legislative Services states, "the total costs of projects required to pay prevailing wages under the bill likely increase by between two and five percent overall, although individual projects may experience greater or lesser increases. These increases do not affect overall State capital funding, which is established annually by the Governor



and General Assembly through the capital budget process. However, it may result in fewer projects being funded each year.”

7) A March 2020 report from the Termer Center for Housing Innovation at the University of California, Berkley found that prevailing wage requirements are associated with higher hard costs and raised the cost per square-foot on affordable housing by approximately \$30 per square-foot. The report did note that “prevailing wage requirements are a policy choice designed to provide public benefit by stabilizing employment and benefits in a high-risk field, those broader benefits would not be captured in an analysis of hard construction data.”

8) A 2015 Fiscal Note from the Legislative Research of Kentucky determined that exempting education buildings and facilities from prevailing wage laws would decrease construction costs on elementary and secondary education projects by 7.6 percent.

9) A 2016 study from the Illinois Economic Policy Institute concluded that, “Even after accounting for all other factors, a strong/average prevailing wage increases a blue-collar construction worker’s earnings by between 15.7% and 17.2% per year.”

10) The University of Kentucky’s Center for Business and Economic Research examined costs of school construction in West Virginia before and after West Virginia repealed its prevailing wage law and determined that costs per square foot were 7.3 percent lower following repeal.

### **Arizona Attorney General Opinion**

On April 17, 2023, Senator Miranda submitted a request to the Arizona Attorney General for an opinion on the legality of the prevailing wage ordinance originally passed by the City Council on March 22.

The Attorney General's Office opined that a city may regulate the minimum wage paid within its geographic boundaries under Arizona Revised Statutes Section 23-364(I) so long as those wages are not less than the statewide minimum wage. This authority includes the ability to require that employees of contractors on local public works projects be paid not less than the prevailing wage. Accordingly, the Attorney General concluded that the City Council’s originally adopted ordinance was not preempted by state law.

## Stakeholder Input

Staff utilized outside counsel with expertise in local prevailing wage laws and mediation services to lead six stakeholder meetings that occurred in August, October, and November 2023. Three meetings were held with representatives of the labor community, and three with representatives of the contractor community.

### Labor representatives asserted:

- 1) A prevailing wage ordinance is necessary to ensure laborers are paid wages approaching livable wages.
- 2) Although a worker may currently be paid at or above the prevailing wage, that is dependent upon the current labor market persisting.
- 3) Certain contractors utilize labor brokers who hire independent contractors (1099 employees) in place of W-2 employees, avoiding payroll recordkeeping and benefits, and potentially committing wage theft, worker misclassification, and tax fraud. This can be prevented by requiring and auditing certified payrolls.
- 4) Skilled labor is diminishing and is critical to the construction of complex projects.
- 5) Skilled labor depends on robust apprenticeship programs that graduate apprentices. In-house apprenticeship programs provided by contractors are not equivalent to state approved apprenticeship programs, and do not have equivalent graduation rates (i.e., apprentices are often paid as apprentices for the duration of their employment, without graduating to earn journeyman rates).
- 6) Non-compliance must result in repercussions, such as suspending a contractor's construction permit until the contractor regains compliance.
- 7) Applying the existing Davis Bacon Act requirements to all City construction projects would meet labor's expectations; new terms do not need to be created.
- 8) The Attorney General's issued opinion is correct, and there is no legal obstacle to the City adopting a prevailing wage ordinance.

### Contractor representatives (excluding one dissenting representative) asserted:

- 1) Contractors pay at or above prevailing wages even without a prevailing wage ordinance and would not be able to attract and retain employees at lower rates.
- 2) Requiring certified payroll submissions for all projects adds unnecessary regulatory burden.
- 3) Additional regulatory burden creates obstacles for small, minority- and women-owned, and disadvantaged businesses.
- 4) Labor broker concerns have been mitigated through standard terms now incorporated in the City's Title 34 solicitations; the contracting community opposes bid and payroll fraud.
- 5) In-house apprenticeship programs provided by contractors meet or exceed state approved apprenticeship programs.

6) A prevailing wage ordinance would increase costs to the City for its own administrative staff.

7) The Attorney General's issued opinion is flawed, has no force of law, adoption of a prevailing wage ordinance is preempted by State Statute, and a prevailing wage ordinance would be found illegal by the courts.

## **Potential Ordinance**

In recognition of impacts to small and disadvantaged businesses, budgetary impacts, and administrative cost, staff recommend prevailing wage requirements be implemented only through a phased approach. Staff would assess impacts to stakeholders as incremental changes are adopted, and report to City Council prior to recommending any expanded program. Additionally, staff recognize that some contractors may choose not to bid on City contracts due to inability to comply with prevailing wage requirements, and this may in individual cases prohibitively limit competition, requiring an exception process.

In an initial phase, staff recommend that prevailing wage requirements:

- 1) Only apply to construction solicitations initiated by the City of Phoenix under Title 34 of the Arizona Revised Statutes.
- 2) Take effect in new construction contracts advertised beginning on July 1, 2024.
- 3) Only apply to solicitations having an engineer's estimate of \$4,000,000 or more.
- 4) Exclude Job Order Contracts.
- 5) Utilize existing wage determinations prepared by the U.S. Department of Labor.
- 6) Only apply to trades that are subject to federal Davis-Bacon Act requirements.
- 7) Exclude procurements for projects funded in whole or part by the City Council and voter approved 2023 General Obligation Bond Program and any Affordable Housing construction project.
- 8) Not apply to solicitations where a contract is being re-advertised due to the initial solicitation receiving less than three responsive qualifying bids.
- 9) Not apply to public infrastructure reimbursement agreements between the City and private developers.
- 10) Not apply to construction by private developers 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.

Staff's recommendation seeks to balance administrative feasibility with impact. The recommended exclusion of Job Order Contracts in an initial phase is critical to internal administrative feasibility and controlling administrative cost. During the period from 1998-99 through 2021-22, nearly 9,000 construction projects (66%) were implemented through Job Order Contracts. These projects are typically small in scope though – the contracts represented only 17% of construction contract

value during that same period. Further the original impetus for federal prevailing wage requirements was a concern that federal Design-Bid-Build (“low bid”) construction methods would depress local wages due to price competition. Unlike low-bid contracts, Job Order Contracts are awarded through a qualifications-based selection process, which includes an evaluation of subcontractor selection plans and reduces the risk of bidders undercutting competition by reducing wages.

Contracts within the scope of this ordinance shall adhere to 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, and observe similar investigative, reporting and enforcement requirements.

## **Budget Impact**

Staff evaluated fiscal years 2024-25 through 2027-28 of the City Council adopted 2023-28 Five-Year Capital Improvement Program to estimate the budgetary impact of a prevailing wage ordinance. This analysis is based on the listed assumptions for a first phase implementation only. Changes to the threshold or scope would invalidate these estimates.

Construction labor costs typically account for 25-35% of capital project costs. For estimating purposes, 25% has been used.

A net labor cost increase assumption of 10% has been used for estimating purposes, accounting for higher wages, partially offset by increased skill and efficiency of more qualified workers.

After isolating CIP components that would likely be impacted by this prevailing wage ordinance, staff have estimated an average annual cost impact to the CIP at \$17.0 million (**Attachment B**). This estimate is highly dependent upon the applied assumptions, and the actual annual impact may vary substantially. Should Council enact a prevailing wage ordinance, it will not be possible to report the true financial impact, as staff would not have a comparison point (i.e., what the project would have cost but for prevailing wage). Staff have reviewed the findings of dozens of academic analyses on prevailing wage impacts, whose conclusions range from no impact, to impacts as high as 37% on total construction contract cost.

Additionally, the City Engineer’s Office has determined that 12 additional positions would be required to support training, auditing, and enforcement of this local prevailing wage ordinance: one Management Assistant II, one Labor Compliance Supervisor, and 10 Labor Compliance Specialists. The estimated annual cost for the positions is approximately \$1.4 million plus one-time equipment costs of

\$110,000. The costs of these positions are not budgeted and would be incorporated into the General Fund Status and allocated to capital projects if the prevailing wage ordinance is approved. Office space for these added staff has not yet been identified, and additional costs are anticipated for re-configurations.

Finally, staff asserts that implementation of a prevailing wage ordinance would likely be challenged through litigation, resulting in additional indeterminate costs.

This financial impact could require a combination of increases to user fees and taxes, or delays or cancellation of scheduled projects.

### **Concurrence/Previous Council Action**

- On March 22, 2023, City Council enacted a prevailing wage ordinance.
- On April 19, 2023, City Council repealed the enacted prevailing wage ordinance, and authorized the use of the eight-hour rule for staff research pursuant to Rule 15 of the Rules of Council Proceedings.

### **Responsible Department**

This item is submitted by City Manager Jeffrey Barton, the Budget and Research Department, and the City Engineer.

## Attachment B

### Estimated Annual Impact of Local Prevailing Wage Ordinance

Total Adopted CIP 2024-25 through 2027-28	5,633,666,000
less Projects that Do Not Include Construction	- 746,999,000 <sup>1</sup>
less Estimated Amount Already Subject to Davis Bacon	- 1,063,030,000
less Estimated Amount Under \$4,000,000 Threshold	- 1,109,652,000
<hr/> Estimated 4-Year Amount Within Scope	<hr/> 2,713,985,000
 Estimated Average Annual Amount (Above ÷ 4)	 678,496,000
 Estimated Labor Component (Above x 25%)	 169,624,000 <sup>2</sup>
 <b>Estimated Annual Prevailing Wage Impact (Above x 10%)</b>	 <b>16,962,000</b>

<sup>1</sup> Remove projects such as information technology, debt service, land or equipment acquisition, and projects that only involve consultant services.

<sup>2</sup> Assumes 75% of project costs are materials, engineering/architectural services, and other costs not subject to prevailing wage.

**THIS IS A DRAFT COPY ONLY AND IS NOT AN OFFICIAL COPY OF THE FINAL  
ADOPTED ORDINANCE**

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:

**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) 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 9th day of  
January, 2024.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Denise Archibald, City Clerk

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

By:

\_\_\_\_\_  
\_\_\_\_\_

REVIEWED BY:

\_\_\_\_\_  
Jeffrey Barton, City Manager





## City of Phoenix

CITY CLERK DEPT.  
2024 JAN -8 AM 10:17

**To:** Ginger Spencer  
Deputy City Manager

**Date:** 01/08/2024

**From:** Denise Archibald  
City Clerk

A handwritten signature in blue ink, appearing to be 'DA', next to the name Denise Archibald.

**Subject:** REQUEST TO REVISE ITEM 1, PREVAILING WAGE, FROM THE JANUARY 9, 2024 POLICY SESSION AGENDA.

The City Clerk Department requests approval to revise Item 1, Prevailing Wage, on the January 9, 2024 Policy Session Agenda, to include a section for Ordinances, Resolutions, and Formal Action, to add a note for the City Clerk to call Roll Call and read a 24-hour paragraph and to add a number to the draft ordinance. This information was left off in error when the packet was originally posted.

Approved by:

A handwritten signature in black ink, appearing to be 'Ginger Spencer', written over a horizontal line.

Ginger Spencer  
Deputy City Manager

1/8/2024  
Date