



**DATE:** October 7, 2014

**CATEGORY:** Public Hearing

**DEPT.:** City Attorney's Office and Finance and Administrative Services

**TITLE:** **Introduce an Ordinance Adding Chapter 42, Article I to the Mountain View City Code to Require Payment of Prevailing Wages for Locally Funded Public Works Projects**

### **RECOMMENDATION**

1. Introduce an Ordinance Adding Chapter 42, Article I to the Mountain View City Code to Require Payment of Prevailing Wages for Locally Funded Public Works Projects (Attachment 1 to the Council report), to be read in title only, further reading waived, and set a second reading for October 28, 2014.
2. Transfer and appropriate \$40,000 from the General Fund Reserve to the Finance and Administrative Services Department to fund administrative expenses to implement prevailing wages for the duration of Fiscal Year 2014-15. (Five votes required)

### **BACKGROUND**

The California Constitution gives cities the power to become charter cities. Cities that have not adopted a charter remain general law cities. General law cities already are required to follow State law and pay prevailing wages for public works projects. Charter cities have special governing powers through "charters" that have been approved by voters. There are 482 incorporated cities in California. Of these, 361 or roughly 75 percent are general law cities, while 121 or roughly 25 percent are charter cities. Of the 121 charter cities, 70 have previously committed to paying prevailing wages in accordance with State law in a practice similar to general law cities. California Senate Bill No. 7 (SB 7) provides criteria for the remaining 51 charter cities for receiving or using State funding or financial assistance for a construction project.

SB 7 authorizes a charter city to receive or use State funding or financial assistance only if the city has a local prevailing wage ordinance, applicable to all of its public works contracts, which includes requirements equal to or greater than the State's prevailing wage requirements. SB 7 excludes contracts for projects of \$25,000 or less for

construction work, or projects of \$15,000 or less for alteration, demolition, repair, or maintenance work.

The definition of “public works” projects is found in the California Labor Code (Sections 1720 and 1771). The California Labor Code defines the following to be public works projects: construction (includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work), alteration, demolition, installation, repair, or maintenance work.

SB 7 does not restrict a charter city from receiving or using State funding or financial assistance awarded to a city prior to January 1, 2015, or from receiving or using State funding or financial assistance to complete a contract awarded prior to January 1, 2015. Further, a charter city would not be disqualified from receiving or using State funding or financial assistance for construction projects based on the city’s failure to require prevailing wages on a contract advertised for bid or awarded prior to January 1, 2015. The practical result of SB 7 requires charter cities who wish to continue receiving State funding or financial assistance on construction projects as defined, to adopt an SB 7-compliant ordinance by January 1, 2015.

The City of Mountain View is a charter city. In 2000, the City Council approved a policy directing the payment of prevailing wages for capital improvement projects, and reaffirmed the policy in 2005. However, the policy was not adopted by ordinance, nor does the policy apply to all types of public works projects covered by SB 7 as it excludes alteration, demolition, repair, or maintenance work. Therefore, the City’s existing prevailing wage policy does not comply with SB 7’s requirement mandating prevailing wage for all public works contracts as defined in the law.

In February 2014, six California charter cities (El Centro, Carlsbad, El Cajon, Fresno, Oceanside, and Vista), in the case *City of El Centro, et al. v. Lanier, et al.*, challenged SB 7 by filing a lawsuit against the State in San Diego County Superior Court. The suit argued the law violates the constitutional rights of charter cities and is inconsistent with the California Supreme Court’s ruling in the 2012 *State Building and Construction Trades Council v. City of Vista* case. Numerous other charter cities and the League of California Cities filed amicus curiae briefs in support of the plaintiff charter cities.

On September 2, 2014, the Court in *El Centro* issued a final ruling upholding the constitutionality of SB 7, concluding there was no conflict between SB 7 and charter provisions or ordinances that allow a charter city to not require contractors to pay prevailing wages on projects solely funded with local funds. The six charter city plaintiffs are currently reviewing their options with legal counsel and may be considering an appeal. Any appeal would need to be filed by mid-October 2014, but

would not be decided upon until well after the January 1, 2015 deadline for charter cities to have an SB 7-compliant ordinance in place. Therefore, staff recommends the City adopt an SB 7-compliant ordinance which contains a sunset clause. If the SB 7 legislation is found invalid by the courts, the ordinance immediately becomes void and has no further force or effect. To have an ordinance effective by the deadline of January 1, 2015, the ordinance must be adopted (second reading) by the October 28, 2014 Regular Council meeting. However, the effective date of the ordinance will be designated as December 31, 2014, instead of 30 days after adoption, for ease of administration.

### ANALYSIS

The City's current policy requires the payment of prevailing wages for capital improvement projects, but does not include alteration, demolition, repair, or maintenance work. In Fiscal Year 2013-14, 56 contracts valued at \$5.1 million in the categories of applicable maintenance, repair, alteration, and demolition would have been subject to the expanded requirement to pay prevailing wages. Examples of contracts that will be covered under SB 7 that are currently exempted from the City's policy on prevailing wages are: landscape maintenance; carpenter; elevator maintenance; painter; electrician; light fixture maintenance; street sweeper; laborer; plumber; heating, ventilation, and air conditioning (HVAC); and roofing, along with other maintenance, alteration, demolition, and other repair work classifications.

SB 7 prevailing wage requirements will expand the City's current prevailing wage policy and could significantly impact the City's staff resources. Staff will be required to provide vendors information on the prevailing wage requirements and modify bidding documents to reflect the requirement for prevailing wages. Additionally, SB 7 will increase the City's labor compliance monitoring responsibilities and associated administrative costs. These responsibilities include, but are not limited to, reviewing certified payroll reports, identifying miscalculations and violations, requesting corrections, and interacting with the State's Department of Industrial Relations (DIR).

Some of the labor compliance requirements of SB 7 for the City may transfer to the State under separate new legislation, California Senate Bill No. 854 (SB 854). SB 854 was signed into law on June 20, 2014, became effective immediately, and made several significant changes to laws pertaining to the administration and enforcement of prevailing wage requirements by the DIR. Among other things, SB 854 established a new public works contractor registration program to replace prior Compliance Monitoring Unit (CMU) and Labor Compliance Program (LCP) requirements for bond-funded and other specified public works projects. While some requirements of monitoring and administration of prevailing wage contracts may transfer to the State

monitoring office with a phase-in approach starting April 2015, there are additional requirements for City staff implemented as of June 20, 2014 which are impacting existing staffing resources. Specifically, the educational outreach to the City's vendors of the requirements of SB 854 in addition to SB 7 requirements, and the requirement for the City to submit a contract award notice (PWC-100) with the State's DIR for all public works projects.

In reaching out to neighboring cities, it appears that many other agencies accomplish the monitoring through the project managers of the public works projects. Current staff resources are insufficient to provide the monitoring that will be necessary. The estimated impact of administering the additional public works contracts under SB 7 is 0.50 FTE of an Administrative Analyst I/II, but there are many unknowns. Instead of hiring additional ongoing staff at this time, the request for \$40,000 is to provide temporary administrative support for SB 7 and SB 854 compliance for the remainder of the fiscal year while staff assesses the impact and long-term needs.

Although the SB 7 legislation references an ordinance must be adopted to comply with SB 7, staff has recently learned that many other charter cities have provided a Council-authorized letter from the City Manager pledging compliance with SB 7. The DIR is interested in good-faith compliance by charter cities and, therefore, has indicated it would accept compliance letters in lieu of ordinances, and has to date accepted a number of such letters in lieu of ordinances from charter cities. Although the DIR is accepting compliance letters, staff recommends adopting the ordinance to comply with SB 7. The ordinance includes a sunset clause if SB 7 is later found invalid by the courts.

### **FISCAL IMPACT**

In addition to the cost for administering the new requirements, there is likely to be an additional fiscal impact to the cost of the City's future contracts due to the expanded application of prevailing wages from the City's current practice for payment of prevailing wages on capital improvement projects only.

The total fiscal impact of SB 7 to the City is currently unknown. To what extent there will be an increase in contracting cost is difficult to estimate. The degree to which labor cost increases impact the total cost of a project depends on a number of factors, often varies, and is difficult to accurately estimate. Proponents of the prevailing wage requirement believe the impact is small or negligible while some researchers have found prevailing wages can increase total project costs, thereby reducing the number of projects that can be implemented.

An example of the research conducted by staff on the potential cost impact of applying prevailing wages to contracts to an agency includes the following:

1. City of San Diego Office of the Independent Budget Analyst issued a report dated June 13, 2013 which estimated prevailing wage requirements would increase the cost of projects by 5 percent to 10 percent.
2. Economic Policy Brief: *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* was prepared by the Working Partnerships USA with funding from various construction trade unions dated April 25, 2011. The study concludes many social and regional benefits are derived from public prevailing wage policies. The absence of prevailing wage policies decreases the number of skilled workers on a public project, increases unemployment, and contributes to a higher cost of public assistance. The cost of public assistance provided by public agencies decreases as workers earn a wage that can support their family and provide medical benefits.
3. Economic Policy Institute: *Prevailing Wages and Government Contracting Cost*. The Economic Policy Institute is a nonprofit, nonpartisan organization. The briefing paper dated July 8, 2008 summarizes the following:

A growing body of economic analysis finds prevailing wage regulations do not inflate the costs of government construction contracts. A simple premise underlies the hypothesis that prevailing wages raise costs: the laws result in higher wage costs for contractors, and contractors pass these costs on to the government. Although this seems like a plausible outcome, there are many reasons why the costs to the government might be the same regardless of the wage differences. For example:

- Contractors might pay the wages required under prevailing wage laws even if the law does not require it.
- Many studies cited various cost impacts due to the requirement of prevailing wages. The highest cost impact cited was by The Center for Government Research (CGR) in 2008. The CGR estimated that prevailing wage laws increase total construction contract costs by 36 percent in New York State's metropolitan regions. CGR arrived at this estimate by comparing prevailing wage rates with the market rates of construction occupations.

Prevailing wages are already paid by the City for construction projects administered through the Public Works Department. Therefore, no new impact will be seen for Public Works construction projects. The increased cost, if any, for prevailing wage

requirements will apply to maintenance, repair, alteration, and related projects which currently exclude the payment of prevailing wage. These types of projects are administered through the Purchasing Section in the Finance and Administrative Services Department. Purchasing staff reviewed 56 contracts valued at \$5.1 million in the categories of maintenance, repair, alteration, and demolition to provide an estimate of the potential cost impact of prevailing wages. Using a combination of the research study findings, staff believes cost increases could range from no cost increase to a 15 percent cost increase, which would have been approximately \$760,000 in Fiscal Year 2013-14.

At this time, staff is not requesting any budgetary increase other than the cost associated with temporary administration costs. Staff proposes monitoring the fiscal impact, if any, on the contracting budgetary impact to the City and returning to Council with a request for supplemental funding as needed with development of the Fiscal Year 2015-16 Budget.

The City has received a total of \$2.7 million in State funds for capital improvement projects since Fiscal Year 2011-12, ranging between \$100,000 to \$1.2 million in a fiscal year. SB 7 requires the DIR to maintain a list of charter cities that may receive and use State funding or financial assistance for their construction projects. In order to be listed on the DIR's listing to be eligible for State funds, the City is required to have a local prevailing wage ordinance, applicable to all of its public works contracts, which includes requirements equal to or greater than the State's prevailing wage requirements.

## CONCLUSION

With the passage of SB 7, the City of Mountain View, as a charter city, is required to adopt a prevailing wage ordinance effective January 1, 2015, applicable to all public works contracts, or potentially lose State funding. The City has received State funding of \$2.7 million since Fiscal Year 2011-12. The City currently has a policy that requires prevailing wage on all public works construction capital improvement projects. The expansion of prevailing wage to all public works projects (as defined by the California Labor Code) will require additional staff resources to comply with the requirements. It is unknown precisely what the fiscal impact of implementing prevailing wage on all public works projects will be, but it is estimated the cost could range from no cost to approximately \$760,000 based on a 15 percent increase on the \$5.1 million of projects during Fiscal Year 2013-14 identified that would have been subject to prevailing wage. There will also be additional administrative/monitoring costs.

**ALTERNATIVES**

1. Do not pass a local prevailing wage ordinance applicable to all of its public works contracts which include requirements equal to or greater than the State's prevailing wage requirements. As a result of this action, the City may not receive or use State funding or financial assistance.
2. Submit a letter in lieu of an ordinance.
3. Provide other direction.

**PUBLIC NOTICING** – Agenda posting.

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Attachment: 1. Ordinance