

Article XI.
Phoenix Prevailing Wage Ordinance

Sec. 18-500. Purpose.

The purpose of this Article is to regulate the minimum wages and benefits paid to construction workers within the City's geographic boundaries on projects either directly funded or otherwise benefit from direct action by the City for the exclusive benefit of the project. In no circumstances may the wage or benefits paid to such workers be lower than that provided under state or federal law.

Sec. 18-501. Definitions.

In this Article, unless the context otherwise requires:

Covered Employee means every worker, mechanic or other laborer employed by any contractor or subcontractor in the work of drayage or of construction, alteration, improvement, repair, maintenance, or demolition on any city-owned or leased building, on any city-owned land, or on any project that is the recipient of a subsidy pursuant to a contract in excess of \$2000.

Employ shall mean to permit a person to work for wages.

Prevailing wages shall mean, for each class of work covered by this section, but not covered by the Davis-Bacon Act, the rate of pay and the overtime and other benefits granted to such full-time workers in the Phoenix metropolitan area.

Subsidy means either of the following:

- a. The City's contribution of land, money or other direct financial assistance to a project including instances in which the project is financed in whole or in part by the city, or any agency of the city; or
- b. The City's reduction, permanent suspension or exemption of any fee or tax applicable to a single project or multiple projects.

Willfully means representations that are known to be false or representations made with deliberate ignorance or reckless disregard for their truth or falsity.

Sec. 18-502. Payment of Prevailing Wages.

A. *Minimum Wages and Benefits.*

1. Every Covered Employee employed by any contractor or subcontractor, pursuant to a contract in excess of \$2000, by or on behalf of the city, shall be paid not less than the wages and fringe benefits prevailing for the same class and kind of work in the Phoenix metropolitan area as determined by the Labor Compliance Department, which shall refer to the federal Davis-Bacon Act (40 U.S.C. § 276a to 276a-5) for guidance. Furthermore, every Covered Employee shall not be terminated from employment without cause, that is for failure to meet minimum work requirements or for unsatisfactory work conduct.

2. Every Employer of a Covered Employee shall support the employee benefit of apprenticeship participation as follows:

a. contribute an amount to an apprenticeship program approved by the U.S. Department of Labor equivalent to that provided in the collective bargaining agreement of the labor organization that's collectively bargained for rate prevailed, should the prevailing wage for a particular class of work as determined by the U.S. Department of Labor, or equivalent, be a collectively bargained for wage; and

b. shall employ apprentices from a U.S. Department of Labor approved apprenticeship program for not less than fifteen percent of the labor hours performed on the contract.

3. No contractor or subcontractor shall misclassify any worker as an independent contractor unless the subject work relationship satisfies the Fair Labor Standards Act requirements for the definition of independent contractor.

B. *Posting.*

Employers of Covered Employees shall post notices in the workplace in at least two public locations, including the main entrance to job, in such format specified by the Labor Compliance Department, notifying employees of their rights, including wage rate, under this article. Employers shall provide their business name, address, and telephone number in writing to Covered Employees upon hire.

C. Payrolls.

Employers shall maintain certified payroll records, which shall be in substantially the same form as Wage and Hour Form 347, for a period of four years. Failure to do so shall raise a rebuttable presumption that the employer did not pay the required minimum wage rate and benefits.

Sec. 18-503. Determination of Prevailing Wages.

A. *Declaration of Interest*

The city council 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 laborers, mechanics, and workers which will be required in the performance of work covered by this Article.

B. *Procedure*

1. The city council hereby finds and concludes that the federal government, in implementing the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5), possesses and exercises a superior capability with superior resources to ascertain the basic rate of pay, overtime, and other benefits which accurately represent the current prevailing rate of wages for work covered by that federal law. The Labor Compliance Department shall determine that the prevailing wages applicable to the various classes of laborers, mechanic, and workers covered by this section and the Davis-Bacon Act correspond to the prevailing wage determinations made pursuant to that federal law as the same may be amended. The Department shall keep and maintain copies of prevailing wage determinations made pursuant to the Davis-Bacon Act (40 U.S.C. § 276a to 276a-5) and any amendments to that federal law. The Department shall also keep and maintain such other information as shall come to its attention concerning wages paid in the Phoenix metropolitan area. The provisions of this section shall supersede any differing provisions of that federal law, except when that federal law is applicable independent of this section.

2. The Labor Compliance Department shall determine, after hearing, the prevailing wages for the various classes of laborers, mechanics, and workers which will be required in the performance of work covered by this Article but not be covered by the Davis-Bacon Act, which determinations shall be made at least

annually, and as frequently as may be considered necessary by the Labor Compliance Department in order that the determination which is currently in effect will accurately represent the current prevailing rates of wages.

3. Prior to making such a determination, the Labor Compliance Department shall give reasonable public notice of the time and place of the hearing concerning such proposed determination and shall afford to all interested parties the right to appear before it and to present evidence. The Department shall determine the rates using the same method as used for those classes which are covered by the Davis-Bacon Act. Should this method cause a reduction in compensation of any class of workers, the Department will review the appropriateness of using this methodology and may recommend to city council a different method for establishing prevailing wage rates.

4. If there is insufficient data available in the Phoenix metropolitan area to determine the rate of pay and the overtime and other benefits, or should comparable classes of work not be performed within the Phoenix metropolitan area for each class of work covered by this section and not covered by the Davis-Bacon Act, the Labor Compliance Department shall refer to the Service Contract Labor Act of 1965, as amended (41 U.S.C. § 351 et seq.) to determine the rate of pay and the overtime and other benefits.

5. The Labor Compliance Department shall issue clarifications or interpretations of the prevailing wage, and shall provide the auditor any issued clarification or interpretation. If the auditor does not advise the Labor Compliance Department in writing that it disagrees with any issued clarification or interpretation within 30 days, the clarification/interpretation will be final. If the auditor advises the Labor Compliance Department in writing that it disagrees with the clarification or interpretation, then the auditor and the executive director of Labor Compliance Department must meet to resolve the conflict issue a final agreed upon clarification or interpretation, or may withdraw the clarification or interpretation, as appropriate.

Sec. 18-504. Compliance; corrective action; consequences for noncompliance.

A. *Labor Department Monitoring*

1. Employers of Covered Employees shall provide certified payrolls to the Labor Compliance Department on a biweekly schedule. Such records, with the exception of personal identifying information shall be a public record.

2. All contractors shall weekly report to the Labor Compliance Department all individuals providing labor to the contractors as independent contractors.

3. If the contractor fails to comply with the requirements of this Article and associated contractual requirements, or with the Fair Labor Standards Act requirements of use of independent contractors, the Labor Compliance Department shall address such noncompliance as follows:

a. For the first failure to comply with the requirements of this Article and associated contractual requirements—The contractor shall pay unpaid or underpaid covered employees an amount equal to three times the unpaid wages.

b. For the second failure to comply with the requirements of this Article and associated contractual requirements—The contractor will pay wages in an amount described above and be debarred from responding to solicitations for all City contracts for three years in accordance with Section 43-28.

c. For the third failure to comply with the requirements of this division and associated contractual requirements—The contractor will pay wages in an amount described above and be debarred from responding to solicitations for all City contracts for ten years in accordance with Section 43-28.

B. *Authority of the Labor Compliance Department.*

The Labor Compliance Department is authorized to monitor construction project contracts and contractors for compliance with the requirements of this Article throughout the duration of the construction project. The Labor Compliance Department is authorized to prepare administrative policies and procedures to implement, monitor, and enforce the requirements of this Article.

C. *Compliance with federal and state regulations.*

The provisions of this Article shall be construed according to and in conformity with state, federal, and local laws concerning the solicitation and awarding of contracts. Where a construction project involves the expenditure of state or federal funds, the Labor Compliance Department shall comply with such state or federal law and authorized regulations which are mandatorily applicable, including those which dictate that the provisions of this division may not be required on a particular project.

Sec. 18-505. Mandatory Contract Provisions; Enforcement.

A. *Provisions*

1. Every contract covered by this section must contain a provision requiring the contractor and every subcontractor under such contract to pay every Covered Employee employed under such contract not less than the scale of wages as provided for under this Article.

2. Every contract must further require the contractor and subcontractors to pay all construction workers, mechanics, and other laborers at least once a week the full amounts of wages accrued at the time of payment, computed at wage rates not less than those stated in the specifications.

3. Every contract must further provide that the contractor shall comply with the posting requirements of this Article.

4. Every contract must further provide that certified payrolls required by the Article are public records, but for personal identifying information contained therein.

B. *Enforcement*

1. The contractor must further provide that if the contractor or any subcontractor shall fail to pay such wages as are required by the contract, the contracting department shall not approve a warrant or demand for payment to the contractor until the contractor furnishes the auditor evidence satisfactory to the auditor that such wages so required by the contract have been paid. Nothing herein shall preclude the contracting department from approving a partial warrant or demand for payment to the contractor to the extent the auditor has

been furnished evidence satisfactory to the auditor that one or more subcontractors has paid such wages required by the contract, even if the contractor has not furnished evidence that all of the subcontractors have paid wages as required by the contract. Any contractor or subcontractor may utilize the following procedure in order to satisfy the requirements of this Article.

2. In the event that the contractor takes an adverse employment action against a covered employee within 90 days of making any report to the contractor or to any government official of a violation of this Article or any law applicable to contractors operating within the geographic boundaries of the City, shall be liable for treble the amount of wages lost by the covered employee unless the contractor can show by clear and convincing evidence that the action was not taken in retaliation for actions described in this paragraph.

Sec. 18-506. Private right of action to collect wages or benefits

A. *Civil Action*

1. A covered employee or individual who was formerly a covered employee may bring a civil action for a violation this Article for appropriate injunctive relief, actual damages, or both within three years after the occurrence of the alleged violation. An action commenced pursuant to this section may be brought in Phoenix municipal court. Any contractor or subcontractor who violates this Article is liable to the affected covered employee or employees in the amount of unpaid wages or benefits plus an amount equal to twice the unpaid wages.

2. An action initiated pursuant to this Article may be brought by one or more covered employees or former covered employees on behalf of him or herself or themselves and other employees similarly situated; except that no employee shall be a party to any such action unless he or she consents in writing to become such a party and such consent is filed in the court in which such action is brought.

3. Any person, firm, or corporation found to have Willfully made a false or fraudulent representation in connection with wage obligations owed on a contract shall pay a civil penalty in an amount of no less than \$1000 and not greater than \$3000 per representation. Such penalties shall be recoverable in civil actions filed pursuant to this section.

4. A successful covered employee or former covered employee in a civil law suit brought under this section is entitled to reasonable costs and attorneys' fees.

B. *Limitations*

1. If the court finds that an action brought pursuant to this section was frivolous, the court shall award costs and attorney fees to the defendant in the action.

2. A contractor or subcontractor's responsibility and liability for unpaid or underpaid wages is solely for its own covered employees.

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