



OPEN COUNCIL WORK SESSION

MUNICIPAL CENTER LOBBY CONFERENCE ROOM

1616 HUMBOLDT AVENUE, WEST ST. PAUL, MN 55118

MONDAY, MARCH 9, 2020

5:00 P.M.

1. Roll Call
2. Review and Approve the OCWS Agenda
3. Review the Regular Meeting Consent Agenda
4. Agenda Item(s)
 - A. Prevailing Wage Ordinance Review

Documents:

[COUNCIL REPORT - PREVAILING WAGE ORDINANCE.PDF](#)

[MEMO - PREVAILING WAGE LAW LGM - 1-29-07.PDF](#)

[MEMO - PREVAILING WAGE ORDINANCE LGM UPDATED 3-3-20.PDF](#)

[PREVAILING WAGE ORDINANCE - WEST ST PAUL.PDF](#)

5. Adjourn

If you need an accommodation to participate in the meeting, please contact the ADA Coordinator at 651-552-4108 or email ADA@wspmn.gov at least 5 business days prior to the meeting
www.wspmn.gov EOE/AA

To: **Mayor and City Council**
From: **Ryan Schroeder, City Manager**
Date: **March 9, 2020**

Prevailing Wage Ordinance

BACKGROUND INFORMATION:

In December 2019, during deliberations regarding the Dominion affordable housing project proposed on the former Kmart site it was asked if there was a prevailing wage requirement for the project. At that time, the developers responded that they did not include the costs of a prevailing wage requirement within their project pro forma and such a requirement would likely cause the developer to remove their entitlement request due to the project cost increase they asserted would occur.

The question created a review of projects since the 2007 adoption of the local prevailing wage ordinance, whether similar requirements exist elsewhere, impacts, and thoughts about how best to administer the ordinance.

The WSP ordinance is the only ordinance of this type that currently exists within Dakota County. The County itself has a prevailing wage policy, as does the City of Hastings. However, neither of these policies relate to private development projects. No other city within the County has a prevailing wage policy at all.

The City has been involved in a number of projects for which prevailing wage is a component of the project. With any project including State, Federal, or Metropolitan Council grants there is a prevailing wage requirement. Included have been such as Robert Street reconstruction, the County Wentworth reconstruction, and the Marie/Oakdale trail project. The R2R tunnel, for 2020 construction, also has such a requirement. Council should be apprised that the most significant financial tools for some private development projects, which are housing tax credits and availability of housing revenue bonds do not include a prevailing wage provision.

The City Attorney has provided a compendium, enclosed, of private development projects since ordinance adoption. A few of these projects were recipients of either Federal, State, or Metropolitan Council grants and as such, these projects included a prevailing wage requirement because of that funding. Other projects did not meet threshold requirements. Others appear to have met thresholds but if in fact they paid prevailing wage the City did not monitor nor require ordinance compliance within project approvals and development agreements. As stated within the enclosure the City Attorney has opined that a post agreement compliance requirement would not be timely.

The net of the above is straight forward. The larger policy discussion regards future implications and fiscal impact to City project investments going forward. For instance:

- With TIF developments we must provide a finding that “but for” the investment of future increments the project would not go forward. For the project at hand, it has been suggested that the

project would not generate increments sufficient to cause the project to proceed under a prevailing wage requirement.

- If alternatively, there would be increment capacity to overcome purported cost increases, the result is a generalized property taxpayer impact of the increased subsidy that may be beyond the positive economics created for the public of the project in the first place.
- It is well established that in a redevelopment community the need for investment in projects is significantly greater than is the case in greenfield development. The TIF required for the Dominion project has been suggested to be entirely due to the cost of the real estate versus the valuation of that real estate in the project. In other words, the increment reduces the land cost closer to the economic value of the land. This same requirement does not exist within greenfield development parcels with which most WSP projects compete. This land cost write down is required in this case regardless of the construction cost of the project.
- A future development taken on by a private entity “may” be expansion of the Ice Arena. The project proposers have suggested that they believe they will receive, in part, donated labor. However, under the current ordinance it “may” be the case that their project would be subject to the prevailing wage ordinance.

What we are suggesting by the above is that the current ordinance may be too broad in its effect. Staff would recommend the ordinance be amended in order to provide Council with the opportunity to conduct a case-by-case analysis of application of the ordinance to future individual projects.

Enclosed, please find a memo from the City Attorney regarding development projects since just prior to establishment of the prevailing wage ordinance. Also find a 2007 memo from the City Attorney’s office regarding the ordinance proposal and a copy of the ordinance itself.

FISCAL IMPACT:

		Amount
Fund:		
Department:		
Account:		

STAFF RECOMMENDATION:

Provide Direction

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GILLEN &
MILLER, P.A.**

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◻ALSO ADMITTED IN OKLAHOMA

MEMO

TO: Kori Land
FROM: Darcy Erickson
DATE: January 30, 2007
RE: Prevailing Wage Law

INTRODUCTION

The City Council is considering enacting a prevailing wage ordinance requiring the inclusion of a prevailing wage clause in City construction projects. You requested basic information regarding the prevailing wage law.

ISSUES

1. What prevailing wage legislation exists on the federal and state level?
2. What do the federal and state prevailing wage laws require?
3. What issues could be associated with the City's consideration of implementing a prevailing wage ordinance that would govern its contracts?

SHORT ANSWER

1. The Davis-Bacon Act governs the construction of public buildings or public works when federal funding is received for their construction and the Minnesota Prevailing Wage Law governs construction projects receiving state funding and state funded highway projects.
2. In a nutshell, the Davis-Bacon Act and Minnesota Prevailing Wage Law require that workers employed on projects subject to these laws are paid the prevailing wage for workers in the geographic area in which the project occurs.
3. The City's implementation of a prevailing wage ordinance for City contracts poses

several practical considerations, such as determining the scope of the proposed ordinance and its enforcement.

DISCUSSION

The federal government and Minnesota state government have adopted prevailing wage laws. These laws are intended to prevent local wage standards from being undercut by low bidding contractors using cheap imported (i.e. non-local) labor. A summary of both the federal law (Davis-Bacon Act) and the state law (Minnesota Prevailing Wage Law) follow.

The Davis-Bacon Act

The Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.* requires that all contracts in excess of \$2,000 to which the federal government or the District of Columbia is a party for construction, alteration or repair of public buildings or public works and which require or involve the employment of mechanics or laborers contain a provision stating the minimum wages to be paid to the different classes of mechanics and laborers. 40 U.S.C. § 3142(a). The minimum wage is determined by the U.S. Secretary of the Department of Labor and is the prevailing wage for various classes of mechanics and laborers in the civil subdivision in which the work is being performed. 40 U.S.C. § 3141(b). The Davis-Bacon Act also requires construction contracts for public buildings that involve public funding to contain certain other clauses, such as those concerning the time for payment of wages, computation of wages, and posting of wage scales in conspicuous places at the work site. 40 U.S.C. § 3141(c)(1)-(3). I have attached a copy of the Davis-Bacon Act for your reference.

The Minnesota Prevailing Wage Law

Contracts for State Projects – Non-Highway Projects

Minnesota has a law analogous to the Davis-Bacon Act. Minnesota's law is the Minnesota Prevailing Wage Law (the "MPWL"), Minn. Stat. §§ 177.41 to 177.44, applies to construction, remodeling, or repairing of public buildings or other public work that is financed with state funds. Below is a bullet point list of the requirements of the MPWL as it relates to non-highway construction projects:

- Laborers or mechanics may not and may not be required to work in excess of the prevailing hours of labor unless they are compensated at 1½ times the hourly basic rate of pay.
- A laborer or mechanic may not be paid less than the prevailing wage rate in the same or most similar trade or occupation in the area
- The contract must state the "prevailing wage rate," "prevailing hours of labor" and "hourly basic rates of pay."¹

¹ "Prevailing wage rate," "prevailing hours of labor" and "hourly basic rates of pay" are defined terms. The "prevailing wage rate is defined as the hourly basic rate of pay plus the contribution for other benefits, such as health vacation, and pension benefits paid to the largest number of

- Before the State asks for bids, it determines the prevailing wage rates, prevailing hours of labor and hourly basic rates of pay for all trades and occupations required for the project.
- The Commissioner of the Department of Labor and Industry (DOLI) determines the prevailing wage rates, prevailing hours of labor and hourly basic rates of pay, which must be posted in a conspicuous place for the persons working on the project.
- There is a grievance process for persons aggrieved by the Commissioner's final determinations and may pursue administrative review of the determinations.
- It is a crime (a misdemeanor) for a state officer or employee to fail to execute a contract for a project without complying with the MPWL (maximum fine of \$700 and/or 90 days jail).
- DOLI enforces the MPWL and can demand document inspection to ensure compliance.
- There are exceptions to the MPWL. These exceptions are:
 - Projects for which the estimated total cost is less than \$2,500 and only one trade or occupation is required to complete it;
 - Projects for which the estimated total cost is less than \$25,000 and more than one trade or occupation is required to complete it.
 - The wage rates and hours of employment of laborers and mechanics who process or manufacture materials and products by or for commercial establishments that have a fixed place of business from which they regularly supply processed or manufactured materials or products. However, the MPWL applies to laborers or mechanics who deliver aggregate which is incorporated into the project by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

I have attached a copy of DOLI's prevailing wages for State funded construction projects (non-highway projects).

State Funded Highway Projects

Minn. Stat. § 177.44 deals exclusively with state funded highway projects. The content of this statute is nearly identical to Minn. Stat. § 177.43. However, there are several differences, which are contained in the bullet point list below:

workers engaged in the same class of labor within the area and it may not be less than a reasonable and living wage. "Prevailing hours of labor" is defined as the hours of labor per day and per week worked within the area by a larger number of workers of the same class than are employed within the area for any other number of hours per day and per week and it may not exceed 40 hours per week. "Hourly basic rate" is defined as the hourly wage paid to any employee. See Minn. Stat. § 177.42, Subds. 4-6.

- The DOLI Commissioner conducts an investigation and holds public hearings to define the classes of mechanics and laborers and to determine the hours of labor and wage rates prevailing in all areas of the state for all classes of labor and mechanics commonly employed in highway construction work to determine prevailing hours of labor, prevailing wage rates and hourly basic rates of pay.
- The DOLI Commissioner determines the nature of equipment furnished by truck drivers who own and operate trucks on contract to determine the minimum rates for equipment and establishes by rule minimum rates to be computed into the prevailing wage rate.
- The DOLI Commissioner certifies the prevailing wage rate, prevailing hours of labor and hourly basic rates of pay once a year for all classes of laborers and mechanics commonly employed in highway construction work. The certification must include future rates and hours if they can be determined and the effective dates for those future rates.
- A violation of the law is a misdemeanor, but the maximum penalty is \$300 and/or 90 days jail. There are also penalties for those who try to induce job applicants or employees on projects to forego any of their wages (maximum penalty of \$1,000 and/or 365 days jail) and for employees who knowingly permits contractors to pay them less than prevailing wage or who gives up any part of their wages (maximum penalty of \$40 and/or 30 days jail).
- There “exceptions” to the statute based on the size of the project. However, there is the identical exception for the employment of laborers or mechanics engaged in the process or manufacture of materials or products or the delivery of them by or for commercial establishments with a fixed place of business as recited above and contained in Minn. Stat. § 177.43.
- MnDOT enforces the law. There is a provision requiring county attorney investigation and prosecution upon the request of MnDOT or other complaint.

I have attached a copy of DOLI’s prevailing wages for State funded highway construction projects.

Prevailing Wage Calculation

Apparently, state law requires the wage rate to be based on the actual wage rates paid to the largest number of workers within each labor classification. Calculation is apparently done by looking at the mode or most frequently occurring wage rate. The DOLI brochure that I have attached explains the calculation for prevailing wages. I have also attached a copy of the MPWL for your reference.

Considerations for City Implementation of a Prevailing Wage Ordinance

There are numerous issues that the City will have to consider if it chooses to implement a prevailing wage ordinance. Outlined below are several issues that the City should consider in determining whether to adopt a prevailing wage ordinance:

- Will all City projects be subject to this ordinance or will there be a minimum financial threshold that must be met before the prevailing wage ordinance is applicable? It may be too overwhelming from an administrative perspective to require that all contracts comply with a prevailing wage ordinance.
- Presumably, the ordinance, if enacted, will adopt the MPWL. However, questions exist as to who will administer and enforce the ordinance? The City will want to ensure the contracts it executes contain prevailing wage clauses. If the prevailing wage ordinance is to have any “teeth”, there must be enforcement of the ordinance. There will be costs with the administration and enforcement of the ordinance.

CONCLUSION

Any federally funded City building construction project will be governed by the Davis-Bacon Act and construction projects that the State of Minnesota funds will be subject to the MPWL. The City could pass an ordinance requiring compliance with the MPWL but there are several large issues that must be resolved in deciding to do so.

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MEMO

TO: Ryan Schroeder, West St. Paul City Manager
FROM: Kori Land, City Attorney
DATE: March 3, 2020
RE: Prevailing Wage Ordinance

City Code Section 33.03, the Prevailing Wage Ordinance, was adopted in 2007.¹ It requires that when the City or EDA provides certain types of financial assistance, a developer must pay prevailing wages when constructing that project. With a few exceptions, the types of financial assistance must be \$50,000 or more and be in the form of one of the following:

- (1) Grants;
- (2) Tax increment financing;
- (3) Revenue bonds or general obligation bonds;
- (4) Loans; or
- (5) Business subsidies.

Below is a history of projects approved from 2005-present:

1. Target²

Project: Demolition of existing Target building and construction of 175,000 sq. ft. new Target store
Year of assistance: 2005
Type of assistance: TIF
Amount of assistance: \$731,000

¹ See attached research memo and current ordinance.

² Agreement predates ordinance but TIF payments did not begin until Aug. 2007.

2. Lowes³

Project: Construction of new 150,000 sq. ft. retail store
Year of assistance: 2006
Type of assistance: TIF
Amount of assistance: \$400,000

3. Dakota County CDA – North Block

Project: Demolition assistance
Year of assistance: 2009
Type of assistance: Cash reimbursement for demolition of existing buildings
Amount of assistance: \$60,000
Note: No mention of prevailing wages and project is complete

4. United Growth – Panera Building

Project: Demolition of Pizza Hut and relocation of sewer drain
Year of assistance: 2009
Type of assistance: Cash reimbursement
Amount of assistance: \$45,000
Note: Under \$50,000 threshold so did not trigger Prevailing Wage Ord.

5. LA Fitness

Project: Demolition of Bowling Alley and construction of LA Fitness and commercial building
Year of assistance: 2013
Type of assistance: Loan
Amount of assistance: \$52,500
Note: No mention of prevailing wages and project is complete

6. 5-8 Club

Project: Rehabilitation of former restaurant
Year of assistance: 2013
Type of assistance: Business Subsidy
Amount of assistance: \$25,000
Note: Under \$50,000 threshold so did not trigger Prevailing Wage Ord.

7. Tapemark

Project: Purchase of equipment
Year of assistance: 2015
Type of assistance: MIF Loan

³ Agreement predates ordinance but TIF payments did not begin until Feb. 2009.

Amount of assistance: \$500,000

Note: State assistance so prevailing wages were already required

8. Burnett Building

Project: Demolition of Burnett Building

Year of assistance: 2015

Type of assistance: Business Subsidy

Amount of assistance: \$25,000

Note: Under \$50,000 threshold so did not trigger Prevailing Wage Ord.

9. Prime Design

Project: Expansion project, including rehabilitation of 1777 Oakdale Ave

Year of assistance: 2015

Type of assistance: Forgivable loan

Amount of assistance: \$15,000 + \$50,000 (in conjunction with \$500,000 MIF Grant)

Note: State Grants involved so agreement included provision requiring compliance with Prevailing Wage Ord.

10. Rooftop 252

Project: Demolition of Southview Athletic Club and construction of 3-story market rate apartment building

Year of assistance: 2016

Type of assistance: Forgivable loan (demolition assistance)

Amount of assistance: Not to exceed \$55,000

Note: No mention of prevailing wages and project is complete

11. HyVee

Project: Construction of grocery store

Year project was approved: 2018

Type of assistance: Cash upon completion of certain stages of the development

Amount of assistance: \$1,585,000

Note: Development Agreement fully executed. No mention of prevailing wages but cannot reopen the contract without giving additional consideration

12. DARTS

Project: Real Estate Equities Senior Housing

Year: 2018

Type of assistance: TIF Note

Amount of assistance: \$1,622,000

Note: No mention of prevailing wages but project is under construction and nearly complete

13. Town Center I

Project: Demolition and construction of 115-unit apartment building and retail/office building (Town Center I)

Year: Preliminary Development Agreement 2019

Type of assistance: Possible TIF

Amount of assistance: TBD

Note: No mention of prevailing wages and requirement may trigger request for additional financial assistance

14. Oppidan I

Project: 153-unit apartment building on portion of former Thompson Oaks Golf Course

Year project was approved: 2019

Type of assistance: Tax abatement, land purchase price reduction

Amount of assistance: not to exceed \$350,000

Note: Development Agreement fully executed. No mention of prevailing wages but cannot reopen the contract without giving additional consideration

15. Port of Beirut

Project: Interior and exterior upgrades to an existing restaurant

Year: 2019

Type of assistance: Business subsidy

Amount of assistance: \$25,000

Note: Under \$50,000 threshold so did not trigger Prevailing Wage Ord.

16. Oppidan II

Project: Up to 64 townhome development on portion of Thompson Oaks Golf Course

Year project was approved: Preliminary Development Agreement signed 2019

Type of assistance: Unknown – EDA agreed to reimburse developer for all costs related to wetland project.

Amount of assistance: TBD

Note: No mention of prevailing wages

17. Dominion

Project: 137-unit affordable non-age restricted apartment building and 232-unit affordable Senior apartment building at site of former Kmart/Signal Hills

Year project was approved: Under consideration in 2020

Type of assistance: TIF

Amount of assistance: \$3,640,000

Note: If prevailing wage ordinance is applied, it would increase the amount of the TIF request, which the project may not be able to support

§ 33.03 PREVAILING WAGE RATES FOR FINANCIALLY PUBLICLY ASSISTED PROJECTS.

(A) *Purpose.* It is in the public interest that developments and buildings constructed with financial assistance from the city be constructed and maintained by the best means and highest quality of labor reasonably available and that persons working on the buildings and developments be compensated according to the real value of the services they perform and that wages of laborers, workers and mechanics on developments and buildings financially assisted by city funds be comparable to wages paid for similar work in the community as a whole.

(B) *Definition.* **FINANCIALLY-ASSISTED PROJECT** means any private development or redevelopment involving either the construction of new buildings or the remodeling, reconstructing or expanding of existing buildings under the following conditions: the city or EDA provides direct financial assistance to the development by any of the following means:

- (1) Grants;
- (2) Tax increment financing;
- (3) Revenue bonds or general obligation bonds;
- (4) Loans; or
- (5) Business subsidies.

(C) *Contractor requirement for payment of prevailing wage rate.* For any financially-assisted project, the developer shall require the following:

(1) The contractor and any subcontractor, agent and other person doing or contracting to do all or a part of the work on the project must pay at least the prevailing wage rate to all laborers and mechanics employed directly on the project work site; and

(2) Upon request of the city, the contractor and any subcontractor, agent and other person doing or contracting to do all or a part of the work of the project shall within five working days supply the city with a copy of payrolls showing wages paid, and a wage compliance statement with respect to wages paid each of its mechanics and laborers employed directly on the project work site. In the event such statements are not provided or in the event the statements disclose that the required prevailing wage is not being paid, then the city shall have the right to either withhold payments to the developer for those periods of noncompliance or consider the developer in default and proceed with its legal remedies. Any withheld payments shall be equal to the difference between the wages paid and the prevailing wage rate for the period of noncompliance. During the course of and upon completion of the contract work, the city shall have the right to require an audit of the contractor's books to determine compliance or noncompliance. Each contractor and subcontractor shall retain copies of the weekly payrolls for a period not less than one year after completing of the work.

(D) *Exceptions.*

(1) The requirements set forth in division (C) above do not apply to wage rates of laborers or mechanics who process or manufacture materials or products or to the delivery of materials or products by or for commercial establishments that have a fixed place of business from which they regularly supply processed or manufactured materials or products; provided, however, the requirements set forth in division (C) above do apply to laborers or mechanics who deliver material by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

(2) The requirements set forth in division (C) above do not apply to financially-assisted projects that involve the housing replacement program or that involve projects in which the financial assistance is less than \$50,000.

(2001 Code, § 330)