



CHARTER COMMITTEE AGENDA REPORT

MEETING DATE: SEPTEMBER 11, 2013

ITEM NUMBER: _____

SUBJECT: PREVAILING WAGES

DATE: SEPTEMBER 4, 2013

FROM: KIMBERLY HALL BARLOW & YOLANDA SUMMERHILL

PRESENTATION BY: YOLANDA SUMMERHILL

FOR FURTHER INFORMATION CONTACT: Brenda Green (714) 754-5221

RECOMMENDATION:

That the Charter Committee review the provisions set forth below from various cities governing prevailing wages for consideration and discussion at its meeting.

BACKGROUND:

At the August 28, 2013 meeting, the Charter Committee expressed an interest in including a provision in the proposed Costa Mesa Charter governing prevailing wages. Staff is submitting several provisions governing prevailing wages for the Charter Committee's consideration.

ANALYSIS:

The charter provisions governing prevailing wages for the Cities of Huntington Beach, Irvine, Newport Beach and a number of other cities are set forth below. Additionally, below these cities' provisions, Staff is providing some additional alternatives that the Charter Committee may want to consider.

Newport Beach	The City of Newport Beach exempts locally funded public works projects from prevailing wage, unless: (1) prevailing wage is compelled by the terms of a federal or state grant or is otherwise funded from a source that requires prevailing wage; (2) the public work is a matter of statewide concern; or (3) the payment of prevailing wage is separately authorized by the City Council, because the project is of a complexity and nature that the public interest would be served by requiring prevailing wage. Resolution 2013-6 adopted on January 22, 2013.
Huntington Beach	Huntington Beach does not include a provision in its charter governing prevailing wages.
Irvine	Prevailing wages and benefits. A. Contracts for public works projects, as defined in section 1720 et seq. of the California Labor Code, that are undertaken or contracted for directly by the City, including without limitation contracts for development of the Orange County Great Park, and that are within the realm of the City's municipal affairs, shall be subject to prevailing wage law (Labor Code § 1770 et seq.), except as

	<p>specified in subdivision (b) herein. Any notice inviting bids for such public works projects shall include notification of the provisions of this section.</p> <p>B. The provisions of subdivision (a) herein shall not apply to any public works project or public improvement that is privately-funded in its entirety, is privately-built in its entirety, and will be dedicated to the City upon completion unless the project or improvement is considered to be of statewide concern.*</p> <p>*Section 2 of Ordinance 11-02 states this ordinance shall apply only to new projects undertaken by or contracted for by the City on and after July 1, 2011. This ordinance shall not apply to the amendment, renewal or extension of existing maintenance contracts that were originally executed prior to July 1, 2011. Nor shall this ordinance apply to projects that were required or authorized pursuant to development agreements or other agreements conferring vested rights that were executed prior to July 1, 2011.</p> <p>Irvine Municipal Code Section 6-10-216.</p>
Carlsbad	<p>City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the award and performance of contracts, including contracts for the construction of public improvements, including, but not limited to, compensation paid for performance of such work.</p> <p>Carlsbad Charter Section 404.</p>
Buena Park	<p>The provisions of California Labor Code Section 1770 et. Seq. regarding prevailing wages on public works and related regulations, as now existing and as may be amended, are accepted and made applicable to the City; its departments, boards, officers, agents and employees.</p>
Other Alternatives	<p>City Council may decide whether to pay prevailing wages on a case-by-case basis.</p> <p>City may require prevailing wages for particular types of projects.</p>

DISTRIBUTION:

ATTACHMENTS: None.

CITY OF COSTA MESA

Department of Public Services/Administration

INTER OFFICE MEMORANDUM

TO: Honorable Charter Committee Members
FROM: Ernesto Munoz, Public Services Director
DATE: September 9, 2013
SUBJECT: APPLICABILITY OF PREVAILING WAGES FOR CITY PROJECTS

As requested by the Charter Committee, we are providing general information relative to potential impacts charter language could have on Capital Improvements in the City, using the currently adopted Capital Improvement Program as an example.

As a General Law City, Costa Mesa is required to pay prevailing wages for Public Works projects in excess of \$1,000. However, under Article XI, Section 5 of the California Constitution, a "chartered city" may exempt public works projects which are completely within the realm of the chartered city's "municipal affairs," from the requirement of prevailing wage laws. Any public works project also involving state funds would be subject to state prevailing wage requirements since they are not entirely within the realm of municipal affairs. Public works projects involving federal funds are subject to federal Davis-Bacon Act prevailing wage rules.

The courts have identified the following three (3) factors in evaluating whether a particular public works project is a "municipal affair" or a matter of statewide concern:

1. The extent, if any, of extra-municipal control over the project;
2. The source and control of the funds used to finance the project; and
3. The nature and purpose of the project.

Approved Capital Improvement Projects (CIP)

Last June, the Costa Mesa City Council approved an \$18 million CIP budget that included thirty-one projects; Attachment A illustrates those projects by program, funding source, and budget allocation. The City of Costa Mesa utilizes several funding sources to implement the CIP. Some funding sources such as competitive state and federal grants require payment of prevailing wages.

Other sources are discretionary/local funds and do not require prevailing wages for chartered cities, such as AQMD, Drainage Fees, Gas Tax, Park Development, Traffic Impact Fees, and Measure M Funds. Only projects funded entirely by local funds are eligible for non-prevailing wages under a Charter government.

In the approved 2013-14 CIP Budget, a total of nineteen projects are funded by local funds as defined above, and total \$14.8 million. A number of projects are funded with state and federal grants captured by staff to reduce the impact to the City's General Fund. Any project, even partially-funded by state or federal grants, must comply with the prevailing wage requirements.

The local funds allocated for the 2013-14 CIP Budget are as follows:

Gas Tax	\$3,250,000
Park Development	\$475,000
Drainage	\$500,000
Capital Improvement	\$3,935,000
Measure M	\$6,671,600

Pending Legislation

Staff is aware of the California Senate Bill, SB 7, the act to add Section 1782 to the Labor Code relating to public works. This bill would prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with prevailing wage provisions on any public works contract. The bill would, except as specified, prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has awarded, within the current or prior two years, a public works contract without requiring the contractor to comply with all of the provisions of the current law governing prevailing wage requirements.

Attachment: [A. 2013-14 Capital Improvement Projects](#)

- c City Council
 - Tom Hatch, Chief Executive Officer
 - Rick Francis, Assistant Chief Executive Officer