



City of La Quinta

CITY / SA / HA / FA MEETING DATE: November 18, 2014

AGENDA CATEGORY:

ITEM TITLE: AMEND SECTION 3.30.050 OF THE MUNICIPAL CODE RELATING TO THE PREVAILING WAGE REQUIREMENT TO ALLOW LA QUINTA TO BE ELIGIBLE FOR STATE FUNDS FOR PUBLIC WORKS PROJECTS

BUSINESS SESSION: 3

CONSENT CALENDAR:

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

- A) Move to take up Ordinance No. ____ by title and number only and waive further reading.
- B) Move to introduce at first reading, Ordinance No. ____ amending Section 3.30.050 of the Municipal Code.

EXECUTIVE SUMMARY:

- The City is a “charter city,” which means its governing system is defined by its own charter document rather than by state, regional or national laws.
- Senate Bill No. 7 (SB7), enacted in 2013, prohibits a charter city from receiving or using state funding or financial assistance for any construction project if, after January 1, 2015, the city has a charter or municipal code provision that authorizes a contractor to not comply with prevailing wage provisions on any public works contracts (Attachment 1).
- The City’s Municipal Code currently contains the provision that authorizes a contractor to waive prevailing wages on public works contracts.
- A group of charter cities filed a lawsuit to invalidate the law because it violates, among other laws, the fundamental principle of local control and the charter cities doctrine of municipal affairs; however, the litigation was unsuccessful at the trial court level, the requested stay was denied, and the matter is now pending in the Court of Appeals.
- Based on a cost-benefit analysis, the financial loss to the City would be greater if it does not comply with SB7; therefore staff recommends amending the municipal

code, which will allow the City to become eligible for state funding on public works projects.

FISCAL IMPACT:

The primary cost impact will be on contracts for maintenance services, which per state requirements are subject to prevailing wages. A majority of the City's infrastructure projects are subject to prevailing wages. The Public Works Department estimates City costs will increase by \$200,000 to \$300,000 annually. If the City did not allow prevailing wages, the City could lose over \$1.0 million in State Gas Tax Street Improvement, Surface Transportation Program, State Transportation Improvement Program and Community Development Block Grant funds.

BACKGROUND/ANALYSIS:

La Quinta Municipal Code §3.30.050, adopted in 1998, states:

"The city shall impose no prevailing wage requirement."

SB7 requires the City and 50 other charter cities to pay prevailing wages on starting January 1, 2015, regardless of the funding source or become ineligible for all state public works project funding.

Since becoming a charter city in 1996, the City has been able to build additional city infrastructure through the costs savings it realized by being exempt from the prevailing wage requirements. Under current Municipal Code provisions, prevailing wages are not a requirement on projects funded entirely out of local funds. However, the City does require payment of prevailing wages on state- or federally-funded contracts because it is typically a condition of such funding.

While the California Supreme Court has held that the Legislature cannot compel charter cities to pay prevailing wages on locally funded projects, SB7 indirectly accomplishes this result by cutting off state construction funding for charter cities that choose to exercise that right. The challenge to SB7 will continue in the Court of Appeal. If an injunction or other legal act preventing the State from enforcing this law is issued, this prevailing wage ordinance will be repealed. In the meantime, the City's amended prevailing wage ordinance must have its second reading and adoption by December 2, 2014 so that it becomes effective by January 1, 2015 to avoid the loss of critical state funding.

If the ordinance is adopted, public works projects advertised for bid, and contracts awarded after January 1, 2015 will include specifications requiring contractor and sub-contractor compliance with the State prevailing wage law.

The additional cost of paying prevailing wages may be somewhat lessened due to the use of higher paid and presumably higher skilled labor. For example, universal application of prevailing wages may increase competition among contractors to drive

down non-labor costs; quality craftsmen may lower the incidents of corrective actions, and; increased labor productivity may result in completion in fewer hours.

Prevailing wage is the rate established by collective bargaining agreements for each individual craft within each locality, and is determined by the State Department of Industrial Relations, based on an annual survey. The prevailing wage package includes pay, health benefits, pension contribution and training.

ALTERNATIVES:

The Council could continue to exempt locally-funded projects from prevailing wage requirements, but this would cause the loss of significant state funds for all public works projects. Amending the prevailing wage ordinance will cause less financial harm to the City than keeping the prevailing wage section as is; therefore, no alternative is recommended.

Report prepared by: Susan Maysels, City Clerk

Report approved for submission by: Frank J. Spevacek, City Manager

Attachment: 1. Text of Senate Bill No. 7

ORDINANCE NO. 52__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA QUINTA, CALIFORNIA, AMENDING SECTION 3.30.050 OF THE MUNICIPAL CODE PERTAINING TO PREVAILING WAGE REQUIREMENTS

WHEREAS, the California Legislature adopted and the Governor signed Senate Bill No. 7 (SB7), adding Section 1782 to the California Labor Code to 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 the state law requirements relating to the payment of prevailing wage on any public works contract; and

WHEREAS, the loss of state funds would result in a significant financial impact that would make it infeasible for the City of La Quinta to undertake certain critical infrastructure improvement projects on which local residents depend.

NOW, THEREFORE, the City Council of the City of La Quinta does ordain as follows:

SECTION 1. Effective January 1, 2015, Section 3.30.050 of Chapter 3.30 (Public Works Contract) of Title 3 (Revenue and Finance) of the La Quinta Municipal Code is hereby amended to read as follows:

Section 3.30.050 Prevailing wage requirement.

- a. This section applies to “public works” as defined in California Labor Code sections 1720 through 1743, as may be amended and including the exceptions set forth therein.
- b. For public works contracts for construction work over \$25,000 and for alterations, demolition, repair or maintenance work over \$15,000, entered into, or extended on or after January 1, 2015, the City shall require compliance with California Labor Code sections 1770 through 1782 as may be amended from time to time.

SECTION 2. EFFECTIVE DATE: This Ordinance shall be in full force and effect on January 1, 2015 or thirty (30) days from the date of adoption, whichever is later.

SECTION 3. POSTING: The City Clerk shall, within 15 days after passage of this Ordinance, cause it to be posted in at least three public places designated by resolution of the City Council, shall certify to the adoption and posting of this Ordinance, and shall cause this Ordinance and its certification, together with proof of posting to be entered into the Book of Ordinances of the City of La Quinta.

PASSED, APPROVED and ADOPTED, at a regular meeting of the La Quinta City Council held this ____ day of December 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DON ADOLPH, Mayor
City of La Quinta, California

ATTEST:

SUSAN MAYSELS, City Clerk
City of La Quinta, California

(CITY SEAL)

APPROVED AS TO FORM:

WILLIAM H. IHRKE, City Attorney
City of La Quinta, California

LABOR CODE, DIVISION 2, PART 7, CHAPTER 1, SECTION 1782

SENATE BILL NO. 7 ADDED OCTOBER 13, 2013

- (a) A charter city shall not receive or use 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 the provisions of this article on any public works contract.
- (b) A charter city shall not receive or use state funding or financial assistance for a construction project if the city has awarded, within the prior two years, a public works contract without requiring the contractor to comply with all of the provisions of this article. This subdivision shall not apply if the charter city's failure to include the prevailing wage or apprenticeship requirement in a particular contract was inadvertent and contrary to a city charter provision or ordinance that otherwise requires compliance with this article.
- (c) A charter city is not disqualified by subdivision (a) from receiving or using state funding or financial assistance for its construction projects if the charter city has a local prevailing wage ordinance for all its public works contracts that includes requirements that in all respects are equal to or greater than the requirements imposed by the provisions of this article and that do not authorize a contractor to not comply with this article.
- (d) For purposes of this section, the following shall apply:
 - (1) A public works contract does not include contracts for projects of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or projects of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work.
 - (2) A charter city includes any agency of a charter city and any entity controlled by a charter city whose contracts would be subject to this article.
 - (3) A "construction project" means a project that involves the award of a public works contract.
 - (4) State funding or financial assistance includes direct state funding, state loans and loan guarantees, state tax credits, and any other type of state financial support for a construction project. State funding or

financial assistance does not include revenues that charter cities are entitled to receive without conditions under the California Constitution.

- (e) The Director of Industrial Relations shall maintain a list of charter cities that may receive and use state funding or financial assistance for their construction projects.

- (f)
 - (1) This section does not restrict a charter city from receiving or using state funding or financial assistance that was awarded to the city prior to January 1, 2015, or from receiving or using state funding or financial assistance to complete a contract that was awarded prior to January 1, 2015.
 - (2) A charter city is not disqualified by subdivision (b) from receiving or using state funding or financial assistance for its construction projects based on the city's failure to require a contractor to comply with this article in performing a contract the city advertised for bid or awarded prior to January 1, 2015.