



Legislation Details (With Text)

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Title: Repealing Sections 4.23 and 23.01 of the Madison General Ordinances to repeal void language regarding prevailing wages on publicly funded and public works projects.
Sponsors: CITY ATTORNEY
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Date	Ver.	Action By	Action	Result
1/22/2013	1	COMMON COUNCIL	Place On File	Pass
1/17/2013	1	Attorney's Office	RECOMMEND TO COUNCIL TO PLACE ON FILE - REPORT OF OFFICER	
9/4/2012	1	COMMON COUNCIL	Re-refer	Pass
8/22/2012	1	BOARD OF PUBLIC WORKS	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
8/7/2012	1	COMMON COUNCIL	Referred	
7/30/2012	1	Attorney's Office/Approval Group	Referred for Introduction	

Fiscal Note

No appropriation is required.

Title

Repealing Sections 4.23 and 23.01 of the Madison General Ordinances to repeal void language regarding prevailing wages on publicly funded and public works projects.

Body

DRAFTER'S ANALYSIS: Wis. Stats. Sec. 66.0903(1m) prohibits Wisconsin municipalities from enacting or administering local ordinances regarding the payment of prevailing wage to laborers employed on publicly-funded private construction projects and public works projects. Because of this state statute, Sec. 4.23, MGO, is void, and the City may not require that prevailing wage be paid to laborers on City-funded private construction projects other than those projects described in Sec. 66.0903(1m)(a)1-3, Wis. Stats. In addition, Sec. 23.01, MGO, is void, and the City shall follow the requirements set forth in Sec. 66.0903 requiring prevailing wages on certain public works projects.

The Common Council of the City of Madison do hereby ordain as follows:

- Section 4.23 entitled "Prevailing Wage on Building or Work Financed in Whole or in Part with City Financial Assistance" of the Madison General Ordinances is hereby repealed.
- Section 23.01 entitled "Regulating of Public Work" of the Madison General Ordinances is hereby repealed.

EDITOR'S NOTES:

- Section 4.23 currently reads as follows:

"4.23 PREVAILING WAGE ON BUILDING OR WORK FINANCED IN WHOLE OR IN PART WITH CITY

FINANCIAL ASSISTANCE.

- (1) Purpose and Intent. It is the policy of the City to assure equitable wages for all building or work which is financed in whole or in part with City financial assistance. The Common Council finds that extending prevailing wages to workers employed on such projects preserves and promotes the public health, safety, prosperity, and general welfare of the people of the City of Madison.
- (2) On any projects for which the City contributes financial assistance and which are “public works,” “building or work,” or “erection, construction, remodeling, repairing” as those terms are defined in Sec. 23.01(1)(a) of these ordinances and such work is performed by “employees working on the project” or “laborers, workers, and mechanics” as those terms are defined in Sec. 23.01(1) (a), all employees shall be compensated at the rates established pursuant to Sec. 23.01(1) of these

ordinances, Wis. Stat. § 66.0903, and Wis. Admin. Code § DWD 290 as therein provided. In the event of a difference in the required rates or provisions, the higher wage or more stringent provision established by the City or the State shall be required.

- (3) “City financial assistance” means any grant, cooperative agreement, loan, contract (other than a public works contract, a supply procurement contract, a contract of insurance or guaranty or a collective bargaining agreement) or any other arrangement by which the City provides or otherwise makes available assistance, in the form of
 - (a) Funds.
 - (b) Services of City personnel.
 - (c) Real and personal property or any interest in or use of such property, including:
 - 1. Transfers or leases of such property for less than the fair market value, or for reduced consideration; and
 - 2. Proceeds from a subsequent transfer or lease of such property if the City’s share of its fair market value is not returned to the City.
 - (d) The sale and lease of, and the permission to use (on other than a casual or transient basis) City property or any interest in such property, the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale, lease or furnishing of services to the recipient, and
 - (e) Any City agreement, arrangement or other contract which has as one of its purposes the provision of financial assistance, including purchase of service agreements.
 - (f) “City financial assistance” includes, but is not limited to, redevelopment contracts, economic development agreements, revenue or loan agreements with an eligible participant or authorized developer under Wis. Stat. § 66.1103, contracts with developers or other entities authorized by Wis. Stat. § 66.1333(5) and 66.1105(3), and assistance provided under Wis. Stat. § 66.1109.
- (4) All contracts or agreements for such projects shall include the following provision:

Prevailing Wages. The Contractor shall pay its employees the wage rates established by Sec. 4.23, Madison General Ordinances, and its referenced sections and shall require in its contracts and subcontracts for work on the project, adherence by those contractors, subcontractors and agents to the wage rates established by this Section 4.23 and its referenced sections. The contractor and its contractors, subcontractors and agents shall also adhere to the requirements of Madison General Ordinances Sec. 23.01(1)(d) “Payrolls and Records,” Sec. 23.01(1)(j) “Evidence of Compliance by Contractor,” and Sec. 23.01(1)(k) “Evidence of Compliance by Agent and Subcontractor” with the exception that the reference to “City Engineer” and “Department of Public Works” shall be to the City agency administering the project.
- (5) Exceptions.
 - (a) This ordinance does not apply to work or contracts which are governed by Sec. 23.01 of these ordinances.
 - (b) This ordinance does not apply to wages of student learners or employees of licensed

- (c) sheltered workshops, as those terms are defined in Wis. Stat. ch. 104. This ordinance does not apply to any construction or rehabilitation project which involves fewer than eight residential units and which does not include commercial space.
- (d) This ordinance does not apply to projects funded in whole or in part by federal funds.”

2. Section 23.01 currently reads as follows:

“23.01 REGULATING OF PUBLIC WORK.

(1) Wage Rates for Employees of Public Works Contractors.

- (a) General and Authorization. Every contract for public works issued by the City of Madison shall contain Section 23.01(1) of these Ordinances and shall require the contractor to compensate its employees at the prevailing wage rate in accordance with Wis. Stat. § 66.0903, Wis. Admin. Code ch. DWD 290 and as hereinafter provided.

This ordinance shall apply to all contracts for public works regardless of the value of the contract. This ordinance shall not apply to: a project of public works in which the labor for the project is provided by unpaid volunteers; warranty work; or work under a supply or installation contract. Notwithstanding Wis. Stat. § 66.0903(5), this ordinance shall apply to bid public works contracts for minor services and maintenance work, as defined in such statute.

“Public works” shall include building or work involving the erection, construction, remodeling, repairing or demolition of buildings, parking lots, highways, streets, bridges, sidewalks, street lighting, traffic signals, sanitary sewers, water mains and appurtenances, storm sewers, and the grading and landscaping of public lands.

“Building or work” includes construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work, except for the delivery of mineral aggregate such as sand, gravel, bituminous asphaltic concrete or stone which is incorporated into the work under contract with the City by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle. “Erection, construction, remodeling, repairing” means all types of work done on a particular building or work at the site thereof in the construction or development of the project, including without limitation, erecting, construction, remodeling repairing, altering, painting, and decorating, the transporting of materials and supplies to or from the building or work done by the employees of the contractor, subcontractor, or agent thereof, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work, by persons employed by the contractor, subcontractor, or agent thereof.

“Employees working on the project” means laborers, workers, and mechanics employed directly upon the site of the work.

“Laborers, workers, mechanics and truck drivers” includes subjourneypersons and properly registered and indentured apprentices but excludes clerical, supervisory, and other personnel not performing manual labor.

This is a Charter Ordinance and shall be effective upon sixty (60) days from passage and publication subject, however, to the referendum procedures of Wis. Stat. § 66.0101(5).

- (b) Establishment of Wage Rates. The City of Madison has been granted exemption from applying to the Wisconsin Department of Workforce Development (DWD) for determination of prevailing wage rates in accordance with Wis. Stat. § 66.0903(3). The Department of Public Works shall periodically obtain a current schedule of prevailing wage rates from DWD. The schedule shall be used to establish the City of Madison Prevailing Wage Rate Schedule for Public Works Construction (prevailing wage rate). The Department of Public Works may include known increases to the prevailing wage rate which can be documented and are to occur on a future specific date. Upon approval by the Common Council, the prevailing wage rate shall be included in public works contracts subsequently negotiated or solicited by the City. Except for known

increases contained within the schedule, the prevailing wage rate shall not change during the contract.

- (c) Workforce Profile. The contractor shall, at the time of signature of the contract, notify the City Engineer in writing of the names and classifications of all the employees of the contractor, subcontractors and agents proposed for the work. In the alternative, the contractor shall submit in writing the classifications of all the employees of the contractor, subcontractors and agents and the total number of hours estimated in each classification for the work. This workforce profile(s) shall be reviewed by the City Engineer who may, within ten (10) days, object to the workforce profile(s) as not being reflective of that which would be required for the work. The contractor may request that the workforce profile, or a portion of the workforce profile, be submitted after the signature of the contract but at least ten (10) days prior to the work commencing. Any costs or time loss resulting from modifications to the workforce profile as a result of the City Engineer's objections shall be the responsibility of the contractor.
- (d) Payrolls and Records. The contractor shall keep weekly payroll records setting forth the name, address, telephone number, classification, wage rate and fringe benefit package of all the employees who work on the contract, including the employees of the contractor's subcontractors and agents. Such weekly payroll records must include the required information for all City contracts and all other contracts on which the employee worked during the week in which the employee worked on the contract. The contractor shall also keep records of the individual time each employee worked on the project and for each day of the project. Such records shall also set forth the total number of hours of overtime credited to each such employee for each day and week and the amount of overtime pay received in that week. The records shall set forth the full weekly wages earned by each employee and the actual hourly wage paid to the employee.

The contractor shall submit the weekly payroll records, including the records of the contractor's subcontractors and agents, to the City engineer for every week that work is being done on the contract. The submittal shall be within twenty-one (21) calendar days of the end of the contractor's weekly pay period.

Employees shall be paid unconditionally and not less often than once per week. Employees shall receive the full amounts accrued at the time of the payment, computed at rates not less than those stated in the prevailing wage rate and each employee's rate shall be determined by the work that is done within the trade or occupation classification which should be properly assigned to the employee.

An employee's classification shall not be changed to a classification of a lesser rate during the contract. If, during the term of the contract, an employee works in a higher pay classification than the one which was previously properly assigned to the employee, then that employee shall be considered to be in the higher pay classification for the balance of the contract, receive the appropriate higher rate of pay, and she/he shall not receive a lesser rate during the balance of the contract. For purposes of clarification, it is noted that there is a distinct difference between working in a different classification with higher pay and doing work within a classification that has varying rates of pay which are determined by the type of work that is done within the classification. For example, the classification Operating Engineer provides for different rates of pay for various classes of work and the employer shall compensate an employee classified as an operating engineer based on the highest class of work that is done in one day. Therefore, an operating engineer's rate may vary on a day to day basis depending on the type of work that is done, but it will never be less than the base rate of an operating engineer. Also, as a matter of clarification, it is recognized that an employee may work in a higher paying classification merely by chance and without prior intention, calculation or design. If such is the case and the performance of the work is truly incidental and the occurrence is infrequent, inconsequential and does not serve to undermine the single classification principle herein, then it may not be required that the

employee be considered to be in the higher pay classification and receive the higher rate of pay for the duration of the contract. However, the contractor is not precluded or prevented from paying the higher rate for the limited time that an employee performs work that is outside of the employee's proper classification.

Questions regarding an employee's classification, rate of pay or rate of pay within a classification, shall be resolved by reference to the established practice that predominates in the industry and on which the trade or occupation rate/classification is based. Rate of pay and classification disputes shall be resolved by relying upon practices established by collective bargaining agreements and guidelines used in such determination by appropriate recognized trade unions operating within the City of Madison.

The contractor, its subcontractors and agents shall submit to interrogation regarding compliance with the provisions of this ordinance.

Mulcting of the employees by the contractor, subcontractor and agents on public works contracts, such as by kickbacks or other devices, is prohibited. The normal rate of wage of the employees of the contractor, subcontractors and agents shall not be reduced or otherwise diminished as a result of payment of the prevailing wage rate on a public works contract.

- (e) Hourly Contributions. Hourly contributions shall be determined in accordance with the prevailing wage rate and with Wis. Admin. Code § DWD 290.01(10).
- (f) Apprentices and Subjourneypersons. Apprentices and subjourneypersons performing work on the project shall be compensated in accordance with the prevailing wage rate and with Wis. Admin. Code §§ DWD 290.02 and DWD 290.025, respectively.
- (g) Straight Time Wages. The contractor may pay straight time wages as determined by the prevailing wage rate and DWD 290.04, Wis. Admin. Code.
- (h) Overtime Wages. The contractor shall pay overtime wages as required by the prevailing wage rate and DWD 290.05, Wis. Admin. Code.
- (i) Posting of Wage Rates and Hours. A clearly legible copy of the prevailing wage rate, together with the provisions of Sec. 66.0903(10)(a) and (11)(a), Wis. Stats., shall be kept posted in at least one conspicuous and easily accessible place at the project site by the contractor and such notice shall remain posted during the full time any laborers, workers or mechanics are employed on the contract.
- (j) Evidence of Compliance by Contractor. Upon completion of the contract, the contractor shall file with the Department of Public Works an affidavit stating:
 - a. That the contractor has complied fully with the provisions and requirements of Sec. 66.0903(3), Wis. Stats., and Chapter DWD 290, Wis. Admin. Code and Sec. 23.01, Madison General Ordinances; the contractor has received evidence of compliance from each of the agents and subcontractors; and the names and addresses of all of the subcontractors and agents who worked on the contract.
 - b. That full and accurate records have been kept, which clearly indicate the name and trade or occupation of every laborer, worker or mechanic employed by the contractor in connection with work on the project. The records shall show the number of hours worked by each employee and the actual wages paid therefore; where these records will be kept and the name, address and telephone number of the person who will be responsible for keeping them. The records shall be retained and made available for a period of at least three (3) years following the completion of the project of public works and shall not be removed without prior notification to the municipality.
- (k) Evidence of Compliance by Agent and Subcontractor. Each agent and subcontractor shall file with the contractor, upon completion of their portion of the work on the contract an affidavit stating that all the provisions of Sec. 66.0903(3), Wis. Stats., and Sec. 23.01, Madison General Ordinances, have been fully complied with and that full and accurate records have been kept, which clearly indicate the name and trade or

occupation of every laborer, worker or mechanic employed by the contractor in connection with work on the project. The records shall show the number of hours worked by each employee and the actual wages paid therefore; where these records shall be kept and the name, address and telephone number of the person who shall be responsible for keeping them. The records shall be retained and made available for a period of at least three (3) years following the completion of the project of public works and shall not be removed without prior notification to the municipality.

(l) Failure to Comply with the Prevailing Wage Rate. If the contractor fails to comply with the prevailing wage rate or this ordinance, s/he shall be in default on the contract.”

(4) Reserved for Future Use.

This is a Charter Ordinance and shall be effective upon sixty (60) days from passage and publication subject, however, to the referendum procedures of Sec. 66.0101(5), Wis. Stats.”