

COMPARED VERSION
COMMITTEE SUBSTITUTE TO ORIGINAL ORDINANCE

COMMITTEE SUBSTITUTE ORDINANCE NO. 240276

Amending Section 3-622, “Prevailing wage applications to incentive plans,” for the purpose of changing procedures related to the application of prevailing wage requirements to development projects.

WHEREAS, on March 4, 2021, the City Council passed Ordinance No. 210179, as Amended, enacting Code § 3-622, entitled “Prevailing Wage”; and

WHEREAS, Code § 3-622 requires that developers for certain city projects, including those that seeking certain incentives from the City or economic development agencies, pay prevailing wage to workmen on the project; and

WHEREAS, on November 10, 2021, the Council passed Committee Substitute for Ordinance No. 210991, as Amended, which expanded the projects covered by § 3-622; and

WHEREAS, § 3-622 provides that exceptions to the prevailing wage requirement may be granted in certain circumstances; and

WHEREAS, the Council desires to clarify the requirements and conditions for the exceptions; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 3, section 3- 622 of the Code of Ordinances, entitled “Contracts and Leases,” is hereby amended by repealing Section 3-622 and enacting in lieu thereof a new section of like number and subject matter to read as follows:

Sec. 3-622. Prevailing wage applications to incentive plans.

(a) The following definitions shall apply to this section:

- (1) *Board* shall mean the Fairness in Construction Board.
- (2) *City* means the City of Kansas City, Missouri.
- (3) *Director* means the director of the civil rights and equal opportunity department or such director's delegate.
- (4) *Prevailing wage rate* shall mean the prevailing hourly rate of wages as set forth in RSMo §§ 290.210 to 290.340 and the annual wage order which is paid to a workman engaged in work of a similar character within the locality.

- (5) *Wage theft* shall mean the withholding or denial of wages or employee benefits rightfully owed to a workman or employee.
- (6) *Workman* means a person employed to perform labor for which a prevailing wage rate is applicable.

(b) Unless superseded by federal or state law, no less than the prevailing wage rate shall be paid to a workman performing work as part of the construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair on any of the following:

- (1) All construction contracts entered into by the city for which the total project cost exceeds \$75,000.00.
- (2) Any new development plan, substantial modification to an existing plan, or development project, that is approved by the city council or any economic development agency created by the city and that seeks ad valorem real and/or personal property tax abatement, exemption, redirection, tax contribution, City or City created economic development agency grant, or other City or City created economic development agency subsidy for which the total project cost exceeds \$75,000.00 conducted as part of the plan or project.
- (3) Any projects on property leased by the city for which the total project cost exceeds \$75,000.00.

(c) The director shall promulgate rules and regulations as are necessary to carry out the provisions of this section. All such rules and regulations shall be provided to the economic development agencies created by the city and authorized to approve tax abatement, exemption or redirection within ten days of their promulgation.

(d) Notwithstanding the foregoing provisions of this section, the city council shall retain the discretion to waive the requirements of this section. The city council shall give particular consideration to the following characteristics (“extraordinary qualifications”) in determining whether to authorize waiver of this section:

- (1) Projects located in a severely distressed census tract that has continuously maintained such status for not less than ten years immediately prior to the effective date of the request.
- (2) Projects that support affordable housing and extremely affordable housing by meeting the requirements Code § 74-11, for such housing.
- (3) Projects that connect residents living in continuously distressed census tracts to new employment opportunities by:

- a. Providing at least 100 new entry-level jobs to Kansas City with an annual salary of at least \$32,000.00, or \$42,000.00 inclusive of wages and benefits; and
 - b. Incorporating options for mass public transportation or locating in an established high-frequency transit corridor.
- (4) Projects that involve the renovation or rehabilitation of a building has been designated by a government entity as a local or national historic landmark or contribute to a historic district, or projects that have filed an application with the National Park Service to be placed on the National Register of Historic Places, in which case the exclusion would be subject to such designation being approved.

(e) Any economic development agency created by the City may waive the requirements of this section and enter into a development or financing agreement that does not require compliance with this section, if the project meets ~~at least one~~ extraordinary qualification ~~(1)-(3)~~ or if the project meets extraordinary qualification (4) and the total cost of the project does not exceed \$1,000,000.00. Total costs of the project shall be based on the total costs of the entire project to be developed pursuant to the accompanying agreement with the economic development agency, not just based on the cost of the public contribution. ~~If an economic development agency chooses to waive the requirements of this section and enter into an agreement without the requirements, the economic development agency shall notify the director of request and the applicable extraordinary qualification at least 10 days prior to making a determination on the waiver request. If the City is a party to the agreement, the waiver must all be approved by the City Council.~~ For project where the total cost exceeds \$1,000,000.00 the agency may choose to make a recommendation to the council as to whether waiver should be granted.

(f) Any contractor, subcontractor, developer or any other entity who performs work on a city contract, or receives tax incentive, abatement, redirection, contribution, grant, or other subsidy, from the City or an economic development agency created by the city, or contracts for the construction of a project or development on land owned by the city shall be subject to the following penalties if determined by the director to have not paid prevailing wage or otherwise engaged in wage theft:

- (1) Termination of contract; and
- (2) Loss of tax incentive, abatement, or redirection; and
- (3) Debarment from future work pursuant to section 3-321.

(g) Upon a finding of non-compliance with this section, the director has the discretion to impose any of the above penalties. Any entity subject to penalty may appeal the determination of the director to the board in conformance with the appeal process outlined in section 3-453.

(h) In addition to penalties imposed pursuant to RSMo § 290.340, any person who is found to have violated this section shall be guilty of an ordinance violation, punishable by a fine of not more than \$500.00, by imprisonment of not more than 180 days, or by such fine and imprisonment.

(i) This section shall apply only to projects that have not yet submitted an application for the abatement, redirection or exemption of taxes to the city or any economic development agency created by the city and shall not be construed in a manner as to apply to any tax abatement or transaction authorized by the city, any economic development agency created by the city, or any other public entity prior to May 14, 2021. Notwithstanding the foregoing, the requirements of this ordinance shall be imposed on any project that has submitted to the city or any economic development agency created by the city an application for the abatement, redirection or exemption of taxes prior to its effective date but has not received final approval from the relevant authorizing body within three years of May 14, 2021.

Approved as to form:

Emalea Kaye Black
Associate City Attorney