

December 14, 2022

To: Mayor and Members of City Council

From: Sheryl M. M. Long, City Manager *SM* 202202203

Subject: **COUNCIL REPORT – PROTECTIONS FOR FAIR WAGES AND WORKING CONDITIONS ON DEVELOPMENT PROJECTS**

REFERENCE DOCUMENT #202201290

The City Council at its session on June 8, 2022, referred the following item for review and report:

MOTION, submitted by Councilmembers Cramerding, Parks and Vice Mayor Kearney, WE MOVE that the Administration provide a REPORT on how the city can include fair wages and safe working conditions clauses in development projects that receive a municipal benefit, rather than placing such requirements on a contract-by-contract basis. (STATEMENT ATTACHED)

BACKGROUND

The City of Cincinnati (City) has a number of laws and administrative requirements that are included in each agreement for development projects that are not negotiated on a contract-by-contract basis. Herein the Administration is providing a summary of the existing laws and requirements that are applicable to agreements for development projects and under what circumstances the law or requirement applies.

APPLICATION OF WAGE LAWS

WAGE ENFORCEMENT

In 2016, the City of Cincinnati adopted Wage Enforcement requirements for Community & Economic Development (DCED) projects. Wage Enforcement requires that development entities ensure that no instances of Wage Theft or Payroll Fraud occur on a development site. Wage Theft is defined as a violation of State of Ohio Prompt Pay, Minimum Wage, Prevailing Wage, Minor Wage & Hour Laws, failure to timely pay subcontractors or materialmen, and other similar state laws. Wage Theft also includes violations of federal prevailing wage law and the City's local living wage

ordinance where applicable. Payroll Fraud includes tax evasion or tax fraud, misclassification of employees as independent contractors, unreported or underreported payment of wages, and cash payment without record of reporting or withholding. The City's Department of Economic Inclusion (DEI) oversees wage enforcement requirements for development projects receiving financial assistance from the City. DEI has set up a reporting process for complaints involving instances of Wage Theft or Payroll Fraud. A Development Manager position was added in DEI's budget starting in FY23 to assist in fulfilling its role to oversee the Wage Enforcement requirements on applicable development projects.

PREVAILING WAGE

The City has had a long history of supporting protections for wages and working conditions on development projects receiving financial support from the City. DEI and its predecessor agencies have led the City's oversight of the City's prevailing wage responsibilities under federal, state, and local law. Prevailing wage is a minimum wage set by construction trade classification on qualifying construction projects. Both the Davis Bacon Act establishing a federal prevailing wage and the Ohio statutes establishing an Ohio prevailing wage were passed in 1931. In 2016, the City established a local prevailing wage for certain substantial development projects, as outlined in Cincinnati Municipal Codes 321-1-D2 and 321-118, which provides for the payment of State of Ohio prevailing wage rates on development projects without regard to whether prevailing wage otherwise would apply. Among other factors used to determine whether a development project would trigger the City's local prevailing wage law, the (1) estimated net present value of the City's incentive must equal or exceed \$3 million and (2) total project costs must equal or exceed \$5 million for the City's local prevailing wage law to apply.

DCED and DEI work with development groups seeking assistance from the City to understand what wage requirements apply to their project, and to ensure that the relevant rates are included in their bid packages and associated cost increases are included in their budgets prior to finalizing incentive offers from the City.

MINIMUM QUALIFYING WAGE

In 2018, City Council adopted Motion No. 201800353 requesting that the Administration implement a minimum qualifying wage when offering Job Creation Tax Credit (JCTC) incentives. As of July 1, 2019, any employer receiving a JCTC incentive must pay a Minimum Qualifying Wage (MQW) of \$15 per hour for each job for which it receives a tax credit. To establish whether an employee meets the MQW threshold to receive a tax credit for an individual employee, DCED reviews the application and determines whether an award of a JCTC should be recommended based on the project merits and benefits to the City. JCTC Agreements are structured to ensure that the employer accurately reports on all created and/or maintained jobs and corresponding payroll. An employer will be considered in compliance with the terms of their JCTC agreement if they have created and/or maintained all jobs and

payroll obligations. Tax credits will only be provided to employers pursuant to a JCTC agreement for employees that are verified to be earning the MQW. DCED considers employee benefits to be an important part in the determination of a quality job with a living wage. With that in mind, certain benefits provided to employees can be considered when determining if a tax credit can be earned including health insurance, retirement, childcare, and tuition reimbursement.

LIVING WAGE

In 2002, the City of Cincinnati established Section 317 of the Cincinnati Municipal Code providing for a "living wage" for full-time City employees or for employees of contractors providing or delivering services to the City of Cincinnati. The intent of the Living Wage requirements was, among other things, to use City spending to encourage the development of jobs paying wages above poverty level and to raise the income of low-income working people and their families employed by covered employers on City contracts. Living Wage is adjusted for inflation and indexed annually by DEI, with the rates published on the DEI website and provided to contractors and subcontractors who have contracts covered by Living Wage. In 2016, the City updated the Living Wage requirements and established a \$15 per hour minimum wage for certain covered employees, which amount has increased over time and is now \$17.15 per hour.

WAGE PROVISION THRESHOLDS

The City's Living Wage policy applies to all service contracts in excess of \$20,000. The City's Wage Enforcement requirements apply to all contracts relating to construction or real estate development that receive an incentive of more than \$25,000. Local, State and Federal prevailing wage laws have different thresholds that vary depending on the funding source, funding amount and project specifics. At a high level, federal funding of more than \$2,000 for construction will trigger Davis Bacon Act wages on most development projects receiving federal funding (with the exceptions provided for by Federal Law) and State or City funding of more than \$75,000 for building renovation, \$250,000 for new building construction, \$27,950 for road, bridge, and other non-building renovation ("flat work") and \$93,292 for new flat work construction will trigger state prevailing wages (with exceptions as provided for under the Ohio Revised Code).

SAFE WORKING CONDITIONS

Ohio is under federal Occupational Safety and Health Administration (OSHA) jurisdiction, which covers most private-sector workers within the state. There are four federal OSHA offices in Ohio that cover private sector employers and workers. The City refers complaints or observations by City staff regarding unsafe working conditions on development projects to OSHA's Cincinnati Area Office.

SUMMARY

The Administration ensures that the City's wage policies are incorporated into development agreements and overseen to ensure compliance with the applicable requirements. We are committed to ensuring that the current legislation and policy are continuously applied as a standard practice as dictated by the Cincinnati Municipal Code and Council Ordinances as applicable.

The Administration is open to discussing policy proposals to supplement existing wage policies as they are applied to City development agreements.

Copy: Markiea L. Carter, Director, Department of Community & Economic Development