

CITY OF PALO ALTO  
City Council Ad Hoc Committee on Prevailing Wages

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Special Meeting  
Tuesday, March 10, 2009

The meeting of the City Council Ad Hoc Committee on Prevailing Wages was called to order at 6:01 p.m.

Present: Barton, Drekmeier, Espinosa

Absent: Kishimoto

1. Oral Communications

None

2. Review and Recommendation on Proposed Prevailing Wage Policy for City Capital Construction Projects.

City Attorney, Gary Baum reviewed the City's Prevailing Wage policy.

Assistant Public Works Director Mike Sartor reviewed the PowerPoint presentation in follow-up of the December 9, 2008 meeting. His presentation included a summary of that meeting, the Prevailing Wage exemptions and Staff's recommendations.

Neil Struthers, 2102 Almaden Road, San Jose, thanked Staff for incorporating information from meetings held prior. He questioned why \$250,000 was listed as a threshold for the prevailing wage. He stressed more thought should be given to the public-private partnership aspects of the policy. He spoke regarding affordable housing and requested further research be completed on Staff's recommendation and how the policy affected the General Fund.

Lindsay Byers, 4577 Las Positas Blvd., Livermore, Associated Builders and Contractors Union, in representation of non-union members, stated they would continue to work in the City of Palo Alto whether or not prevailing wage was opposed. She gave an overview of prevailing wage calculations and the wide variety of areas that the wages cover beyond employee compensation. She suggested raising maintenance project wage thresholds to allow smaller community businesses to remain competitive with regional and statewide contractors.

Aletha Coleman, 296 Bay Road, Atherton, from the Palo Alto Friends of the Junior Museum and Zoo spoke in support of Staff's recommendations from a public-private partnership viewpoint.

Molly McAuliffe, 1554 Cowper Street, from the Palo Alto Friends of the Junior Museum and Zoo spoke in support of Staff's recommendations.

Council Member Barton stated it was his understanding that the \$250,000 threshold was consistent with what the City Manager brought forth to Council for authorization and approval.

Mr. Sartor stated that was correct.

Council Member Barton asked how many projects fit within this \$250,000 threshold per year.

Mike Sartor stated the amount pertained to Capital Improvement Projects (CIP) and maintenance type projects, with several projects projected for the year within that threshold. He gave the example of parks and maintenance type projects.

Council Member Barton stated maintenance was defined under California Code and State Law exemptions.

Mr. Sartor stated many maintenance projects exceed the threshold. He gave the example of the Utility Department's gas main replacement project, which was considered a maintenance project and routine work and repair of an existing system. He stated Staff is mindful that larger projects should be included, but they did not want to restrict the smaller maintenance-type projects.

Council Member Espinosa stated Staff's current report was concise and covered all the options available. He asked for further clarification on the different dollar points (\$50,000, \$100,000 to \$250,000 and above). He asked for further information on the scale and scope of projects within each threshold.

Mr. Sartor stated there were \$10-12 million contracts each year in the CIP. Smaller projects made up less than one million, or 10 percent, of the total for projects. Most of the CIPs greater than \$250,000 are major projects. The types of small range projects included annual roofing, interior finishing and landscaping contracts for buildings and parks. The total value of maintenance-type projects was likely less than one-tenth of the overall CIP.

Assistant Director of Utilities, Tom Marshall stated there were not a lot of contracts in the under \$250,000 range. Projects that fell into this range included annual Roto-Rooter service contracts for sewer maintenance, as one example.

City Manager, James Keene reviewed various projects from the 2008-09 Adopted Budget for CIP. He listed projects that fit underneath the \$250,000 threshold which included the Bayland Athletic Center's fencing, dugout and trailhead park projects as one example. He listed several other projects of the same caliber.

Council Member Espinosa asked how each specific project was cast as a recipient of these budgeted amounts within the CIP budgeting. He stressed they were making the effort to create a policy around what these projects were exactly.

Mr. Sartor gave an overview of what projects are considered as maintenance projects. Maintenance projects specifically include such items as annual roofing projects or interior projects such as carpeting and painting. Park trail projects were also included within this realm. He stated many of these projects were already defined in the Public Contract Code as Maintenance projects and separate from the Public Work projects. He stated these types of contracts typically attract the smaller contractors.

Mr. Keene stated one of the goals is to spread the work around, from these smaller projects, to smaller contractors that might not otherwise be considered. He stated this brought with it social equity value. He asked what the results were in areas where there were no prevailing wage policies.

Mr. Sartor stated when compared to what other cities are doing, a broader range of bids come through with smaller contractors when prevailing wage policies did not exist.

Council Member Espinosa stated this was an area where he felt he did not have sufficient data with which to form a decision.

Council Member Barton asked whether Staff might consider modification of the public-private partnership funding exemptions to the point at which the private-partner became the managing partner. He understood that there could be bookkeeping issues and volunteers may not be able to do this. He stated that public funds should be spent in ways that cover external costs associated with living in this area.

Mr. Keene stated the goal was to move projects forward and keeping costs to a minimum. In some cases, when volunteers took the lead on a project, they were not considered under the prevailing wage guidelines.

Council Member Barton stated the assumption was that prevailing wages drove up the costs for a project. He was not of this mind. When you build in externalities it is better all around. He doesn't want to go down the road of implied incentives.

Mr. Keene stressed taking a look at future emerging public-private partnerships where there may be a situation wherein the City may want the lead on the project. He noted civil liability issues came into play in this case.

Council Member Espinosa hoped for clarity around defining the public-private partnership aspects of this proposed policy. He agreed with the policy in concept but was worried about these public-private partnerships working against the policy. He stated he felt that clarity was needed on this policy as it pertains to public-private partnerships.

Mr. Baum stated there were different standards in the public-private partnership where the private party is the majority contributor but is not the managing partner.

Council Member Espinosa stressed there were instances where further clarity was necessary when private parties were donating money for these projects within the confines of the proposed policy.

Mr. Keene pointed the Committee towards Page 4 of the Staff report on regarding exemptions and exclusions. He gave examples and applications of what was proposed on Page 4 of the proposed policy.

Council Member Espinosa stated this was a good start. He hoped for more clarity on the criteria and an outline of this prior to taking it to Council.

Mr. Baum stated under the Committee's general direction this was adequate for them to forward on to Council. The presumption of paying prevailing wage in public-private partnerships and if not then under what circumstances.

Council Member Espinosa stressed the needs for more specifics.

Mr. Baum stated ironing out the specifics may require another meeting.

Council Member Barton suggested deleting the complicated language on Federal Tax Credits on Page 5 of the proposed policy.

Council Member Espinosa asked for clarification on what he specifically wanted excluded.

Council Member Barton wished to delete bullet point 3, on Page 2, which refers to affordable housing projects.

Council Member Espinosa stated it was included at this point more for clarity than policy based on information Mr. Sartor and Mr. Baum gave in address to this point.

Council Member Barton stated if the inclusion was for clarity's sake, it should be worded to include affordable housing projects that would otherwise be exempt.

Mr. Sartor stated the extent of the exemption was an attempt to clarify and specifically note the other two bulleted items.

Council Member Barton stated this did not matter in either direction and was merely semantics.

Mayor Drekmeier asked for further clarification on the prevailing wage. He asked what causes fluctuations in the prevailing wage.

Mr. Sartor stated fluctuations were tied to union bargaining agreements and labor rates. He was not familiar with any recent bargaining agreements which cut these wages and rates.

Mayor Drekmeier asked if they went with prevailing wage, would the prevailing wage go up a notch with the addition of their City coming on board.

Mr. Sartor stated it would not go up. The wages are set by the County and State.

Council Member Espinosa asked if there was a way to move forward but also get clarity on how decisions were made and what the different dollar amounts meant with regard to the number of projects.

Mr. Sartor stated in projects less than \$250,000, prior Council was comfortable in providing the City Manager with the authority to award those types of contracts.

Council Member Espinosa stated the issue was not about the dollar amount of the contracts but the kind of contracts we are setting up in terms of whether we would have more bids, different kinds of companies, workers doing different levels of work. The decision making would be based on the types of contracts, companies, skill levels of employees and that would drive prevailing wage

Mr. Sartor stated the difference remained in what was considered a maintenance versus construction project in that maintenance projects were of a recurring nature on existing structures. He stressed these projects were typically significantly smaller in scope. He stated they were not suggesting that a new building project under \$250,000 would be exempt. A new building project would still require prevailing wage parameters.

Mr. Keene stated moving forward meant getting something on the Consent Calendar and then they could return with more definitive data.

Council Member Espinosa stated it was important to understand who these companies are, and understand why the dollar amount is what it is for these smaller projects.

Mr. Keene stated the dollar amount was not at issue. They were not vetted to any particular dollar amount at this point.

Council Member Espinosa agreed it was more important how they arrived at their final conclusions rather than the actual final numbers.

Mayor Drekmeier stated recent Request for Proposals brought in lower bids. He asked if wages were the same, how or where costs were rising within this bidding process.

Mr. Sartor stated product costs were the primary reason for any extra or higher costs above and beyond what may have been seen in the past. Also material costs have gone down.

Council Member Barton stated it was not labor rate, per se, of a project, but the number of people working on that project that also played a role.

**MOTION:** Council Member Barton moved, seconded by Mayor Drekmeier to recommend to the City Council to adopt: 1) Paying Prevailing wage for City Capital Improvement Projects with exemptions for; a) maintenance projects between \$100k-\$250k to be determined by the Council after further investigation by Staff, b) projects worked entirely by volunteers, c) public-private partnerships unless otherwise exempted by Council.

Mayor Drekmeier asked how many projects would be heard by Council.

Council Member Barton stated it would not be each and every project. It would be prevailing wage, unless the private funding is greater than City funding.

Mayor Drekmeier stated it was suggested that the City is in a better position to manage prevailing wages than a private group. He asked if they were suggesting that the City would manage all or most of the projects.

Council Member Barton asked how many public-private partnership projects have been done where the City has not been the hiring agent.

Mr. Sartor stated it was his experience that the private partners have managed more than the City has managed in the past.

Council Member Barton asked by what percentage has the private partner provided more than 50 percent of the funds for a project.

Mr. Sartor stated the Heritage Park project received more private partner funds.

Mayor Drekmeier stated he did not want his vote to be a recommendation at this point. He remained neutral until more information was available. He agreed that if more than 50% of the funds came from private partner that it could fall into one category, but in fairness it would make it easier to be the same across the board.

Chair Espinosa clarified Staff's return at a later date with delineation of the decision-making criteria for public-private partnerships.

Council Member Barton was comfortable with Staff making the decision to modify the Motion.

Chair Espinosa asked for clarification of what exact information they would return with for further discussion.

Mr. Baum stated what he heard was they should bring back more information on the presumption and concerns over paying prevailing wage for public-private partnerships unless specific exemptions are met.

**INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER** to change the language to read “public-private partnerships needed to meet specific exemptions in order to receive payment of prevailing wage.”

Council Member Barton asked the number of yes votes required to take action.

Mr. Baum stated the in the absence of a member there would not be a unanimous vote and the Chair had the discretion to provide their own Motion.

Chair Espinosa asked why there needed to be a specified dollar amount in order to qualify for prevailing wage.

Council Member Barton stated the dollar amount was not necessary.

Chair Espinosa had a concern about the affordable housing aspect and he did not have a concern how Staff had written it. He wanted the inclusion of the wording on page 2 and page 5 of the Staff report.

Mr. Baum stated the language “unless otherwise required by law” would be added.

**INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER** to add “unless otherwise required by law.”

Mayor Drekmeier asked how the situation would be handled if both the affordable housing and public-private partnership entities were vying for the same project.

Mr. Keene stated there would be qualifying factors of exemption and one entity would be less qualified than the other.

Mr. Baum stated the public-private partnership was not designed to apply to affordable housing projects.

**MOTION PASSED** : 3-0, Kishimoto absent

Meeting Adjourned at 7:14 p.m.