



April 13, 2023

Via email and certified mail

Mayor Kate Gallego
City Council Members
City of Phoenix
200 W. Washington St.
Phoenix, AZ 85003

Re: Prevailing Wage Ordinance for City Projects

Dear Mayor Gallego and Councilmembers:

We represent the Arizona Builders Alliance and the Associated Minority Contractors of Arizona. We are writing to express serious concerns about the “Prevailing Wage Ordinance for City Projects” the City Council passed during its March 22, 2023 meeting.

We understand that the proposed ordinance was amended during the Council’s discussion at the March 22 meeting, and that the final version enacted by the Council has not yet been made publicly available.¹ However, we also understand that the ordinance as originally introduced imposes, among other measures, prevailing wage and apprenticeship requirements on contractors who bid on public works projects for the City. Insofar as the enacted version contains similar provisions, it is unlawful, and we strongly urge you to repeal the ordinance.

When the Legislature enacts a law on a matter of statewide concern, that law pre-empts and overrides any conflicting municipal provision. *See, e.g., State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 598 ¶ 40 (2017). In this instance, voter-approved state law dating back to 1984 expressly provides that “prevailing wage” requirements for public works contractors are a matter of statewide concern and may *not* be imposed by municipalities:

¹ We are also unaware of any legal authority the City possesses to withhold a duly enacted ordinance from public inspection, and we therefore urge the Council to produce the Prevailing Wage Ordinance *as passed* immediately.

The public interest in the rates of wages paid under public works contracts transcends local or municipal interests and is of statewide concern.

Agencies and political subdivisions of this state shall not by regulation, ordinance or in any other manner require public works contracts to contain a provision requiring the wages paid by the contractor or any subcontractor to be not less than the prevailing rate of wages for work of a similar nature in the state or political subdivision where the project is located.

A.R.S. § 34-321(A)–(B). The statute also expressly forbids municipalities from requiring public works contractors to “[p]articipate in or contribute to an apprenticeship program.” *Id.* (C)(3).

To the extent the enacted version of the ordinance regulates matters that are expressly pre-empted by state law, it exposes the City to a high risk of litigation, as well as costs and attorneys’ fees for parties who successfully challenge the unlawful ordinance. A.R.S. § 12-341; *see Ariz. Ctr. for Law in the Pub. Int. v. Hassell*, 172 Ariz. 356, 371 (App. 1991).

In addition to these serious legal issues, we find it troubling that this ordinance was enacted after providing the public barely twenty-four hours’ notice and without any meaningful input from the many stakeholders it will affect. For all these reasons, we strongly urge the City to take immediate action to repeal the ordinance.

Sincerely,



John Thorpe
Staff Attorney
Scharf-Norton Center for
Constitutional Litigation at the
Goldwater Institute