



May 1, 2023

Via email and certified mail

Mayor Corey D. Woods
City Council Members
City of Tempe
P.O. Box 5002
Tempe, AZ 85280

Re: Prevailing Wage Ordinance on City Construction Contracts

Dear Mayor Woods and Councilmembers:

We represent the Arizona Builders Alliance and the Associated Minority Contractors of Arizona. We are writing to express serious concerns about proposed Ordinance No. O2023.21, “Relating to the Payment of Prevailing Wages on City Construction Contracts,” on the agenda for the City Council’s Thursday, May 4 meeting. We understand that the proposed ordinance imposes, among other measures, prevailing wage and apprenticeship requirements on all contractors who participate in public works projects for the City for contracts exceeding \$250,000.

When the Legislature enacts a law on a matter of statewide interest, 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). Although charter cities like Tempe have limited authority to regulate on some issues, charter city status is no defense where the Legislature has spoken on a matter of statewide concern, and it is certainly no defense in this case. *See id.*

As you may know, 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:

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

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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).

If the City adopts this ordinance and regulates matters that are expressly pre-empted by state law, it will expose 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).

We also find it troubling that the City Council is set to consider this proposal, which implicates complex economic issues and impacts many stakeholders, with less than one week’s notice and little chance for input from those most affected.

For all these reasons, we strongly urge the City not to adopt the proposed ordinance. Please do not hesitate to contact me with any questions you may have.

Sincerely,



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