



January 26, 2024

Via Email

Mayor Regina Romero
and the Honorable Members
of the Tucson City Council

255 West Alameda Street
Tucson, Arizona 85701

Re: Tucson Prevailing Wage Ordinance

Mayor Romero and Honorable Councilmembers:

On January 9, 2024, you enacted Ordinance No. 12066, a “Prevailing Wage Ordinance.” In its key provisions, Tucson’s Prevailing Wage Ordinance is substantially similar to an ordinance Phoenix passed the same day: in particular, their requirement that public works contractors and sub-contractors pay a “prevailing wage,” their record-keeping and reporting requirements, their enforcement procedures, and their penalties for violations.

The purpose of this letter is to inform you that we have filed a lawsuit in Maricopa County Superior Court challenging the Phoenix prevailing wage ordinance in its entirety for violating both state law and the Arizona Constitution’s due process protections. *See* A.R.S. § 34-321; Ariz. Const. art. II § 4. As Tucson’s Prevailing Wage Ordinance closely tracks the Phoenix ordinance, it is unlawful for the same reasons detailed in the attached complaint against Phoenix.

It appears that Tucson, like Phoenix, has relied heavily on Attorney General Mayes’ opinion stating that cities may enact prevailing wage ordinances because Proposition 206, the Minimum Wage Act, authorizes cities to set minimum wages. This analysis is misguided: “prevailing wage” and “minimum wage” are distinct terms of art under Arizona law, and Proposition 206’s references to municipal minimum wage laws do not override the clear, longstanding, statutory prohibition on municipal prevailing wage ordinances.

Tucson Prevailing Wage Ordinance
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We urge you to repeal the Prevailing Wage Ordinance and avoid the unnecessary, costly, and futile defense of this illegal mandate in court. Please do not hesitate to contact me with any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "John Thorpe". The signature is written in black ink and is positioned below the word "Sincerely,".

John Thorpe
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Attorneys for Plaintiffs

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

ASSOCIATED MINORITY
CONTRACTORS OF ARIZONA, an
Arizona non-profit corporation; ARIZONA
CHAPTER OF THE ASSOCIATED
GENERAL CONTRACTORS OF
AMERICA, an Arizona non-profit
corporation; ARIZONA BUILDERS
ALLIANCE, an Arizona non-profit
corporation,

Plaintiffs,

vs.

CITY OF PHOENIX, a municipal
corporation; KATE GALLEGÓ, in her
official capacity as Mayor of the City of
Phoenix; JEFF BARTON, in his official
capacity as City Manager of the City of
Phoenix; and ERIC FORBERG, in his
official capacity as the City Engineer of the
City of Phoenix,

Defendants.

Case No.

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT**

INTRODUCTION

1. Since 1984, Arizona law has been clear: the wages and benefits paid under public works contracts are a matter of statewide concern, and so-called “prevailing wage” requirements for public works contractors are not to be imposed piecemeal by individual cities, towns, or other political subdivisions of the State of Arizona. *See* A.R.S. § 34-321.

2. Despite this clear prohibition, the City of Phoenix (“City”) recently enacted a “Prevailing Wage” ordinance.

1 3. This lawsuit challenges that ordinance, as it conflicts with, and is pre-empted by,
2 state law.

3 **PARTIES, JURISDICTION, AND VENUE**

4 4. Plaintiff Associated Minority Contractors of Arizona is an Arizona non-profit
5 corporation principally located in Maricopa County, Arizona.

6 5. Plaintiff Arizona Chapter of the Associated General Contractors of America is an
7 Arizona non-profit corporation principally located in Maricopa County, Arizona.

8 6. Plaintiff Arizona Builders Alliance is an Arizona non-profit corporation
9 principally located in Maricopa County, Arizona.

10 7. Defendant City of Phoenix is a municipal corporation organized under the laws of
11 the State of Arizona.

12 8. Defendant Kate Gallego is the Mayor of the City of Phoenix and is sued in her
13 official capacity only.

14 9. Defendant Jeff Barton is the City Manager of the City of Phoenix and is sued in
15 his official capacity only.

16 10. Defendant Eric Froberg is the City Engineer of the City of Phoenix and is sued in
17 his official capacity only.

18 11. Jurisdiction over this action and all claims herein is provided by A.R.S. §§ 12-123,
19 12-1831, and 12-1801.

20 12. Venue is proper pursuant to A.R.S. § 12-401.

21 **ENACTMENT AND REPEAL OF PREVIOUS ORDINANCE**

22 13. The enactment of a prevailing wage ordinance has been a political priority for
23 several members of the Phoenix City Council (“Council”).

24 14. On March 22, 2023, at a regular meeting of the Council, the Council considered a
25 proposed “Prevailing Wage Ordinance for City Projects,” which would require businesses that
26 contract with the City for construction projects costing \$250,000 or more to provide their
27 employees with “prevailing” wages and benefits, as defined by the City Engineer and the United
28 States Department of Labor.

1 15. The ordinance was introduced with barely 24 hours’ notice, leaving no opportunity
2 for the many organizations and individuals affected by the law to weigh in.

3 16. The City Attorney admitted during the March 22, 2023 Council meeting that her
4 legal team had not had an opportunity to review the draft ordinance and that “there might be
5 some legal issues” with it.

6 17. The City Manager also admitted during the meeting that the ordinance would
7 result in City budget overruns and would likely cost the City upwards of \$93 million in the
8 coming year.

9 18. Nevertheless, the Council enacted the Prevailing Wage Ordinance for City
10 Projects by a 5–4 vote.

11 19. Less than a month later, on April 19, 2023, the Council repealed the ordinance,
12 with Council members expressing concerns that the ordinance was preempted by state law and
13 that, if left in place, it would lead to costly litigation that the City would lose.

14 20. Nevertheless, several Council members expressed a desire to revisit the issue of a
15 municipal prevailing wage requirement in the future, and they directed City staff to research the
16 issue and prepare another draft ordinance for the Council’s consideration.

17 **THE PREVAILING WAGE ORDINANCE**

18 21. On January 9, 2024, the Council considered a new proposed prevailing wage
19 ordinance, Ordinance G-7217 (the “Prevailing Wage Ordinance”).

20 22. Apart from some minor technical differences, the Prevailing Wage Ordinance is
21 substantially similar to the March 22, 2023 ordinance in (a) its requirement that public works
22 contractors and sub-contractors pay their employees a “prevailing wage” as defined by the City,
23 (b) its record-keeping requirements, and (c) its penalties for violations, including restitution,
24 treble damages, contract rescission, and disqualification from future City contracts.

25 23. At the January 9, 2024, meeting, Councilmember Ann O’Brien, voting against the
26 ordinance, expressed “strong concerns” that the ordinance would be “deemed illegal,” and
27 explained that “state law is clear: we cannot pass a prevailing wage.” Phoenix City Council
28

1 Policy Session (Jan. 9, 2024) at 48:45–48:00.¹ Councilmember Stark also expressed doubt about
2 the legality of the Prevailing Wage Ordinance, voting against the ordinance and explaining that
3 it was pre-empted by state law. *Id.* at 50:30–51:10.

4 24. Nevertheless, the Council approved the Prevailing Wage Ordinance by a 6–3 vote.

5 25. This ordinance, entitled “Prevailing Wage,” declares that “it is in the best interests
6 of the City to have a uniform determination of the prevailing wages to be paid to the various
7 classes of mechanics, laborer or other workers on City construction projects.”

8 26. To that end, the Prevailing Wage Ordinance requires that any contractor or
9 subcontractor under a City construction contract with an aggregate value of \$4,000,000 or more
10 must pay its workers “not less than the Prevailing Wage Rate for the same class and kind of
11 work in the Phoenix metropolitan area.”

12 27. The Prevailing Wage Ordinance also requires that every applicable City
13 construction contract include provisions requiring contractors to pay their employees “at least
14 once a week the full amount of wages accrued at the time of payment at the applicable
15 Prevailing Wage Rate,” and mandating painstaking “recordkeeping and notice posting
16 requirements,” including the requirement that contractors “keep certified payroll records
17 showing the name, address, job classification, wages and benefits paid or provided, and the
18 number of hours worked for each employee,” for at least four years “from the date of an
19 employee’s final payment.” It designates all such records as “public records under Arizona
20 Public Records Law.” It also requires contractors to file detailed paperwork (Federal Form WH-
21 347) every week, for every employee, with the City Engineer, along with weekly statements of
22 compliance, and to post workplace notices.

23 28. The Prevailing Wage Ordinance authorizes “[a]ny affected individual or
24 organization representing such individual(s)” to “file a complaint with the City engineer for any
25 violation,” and it establishes an administrative process for investigating and adjudicating such
26 complaints.

27
28

¹ <https://www.youtube.com/watch?v=akRyKFBIInTY>.

1 29. Pursuant to such investigations, the Prevailing Wage Ordinance requires
2 contractors to “permit authorized agents of the City Engineer to observe the work being
3 performed on the work site, to interview employees, and examine the books and records relating
4 to the payrolls.”

5 30. The Prevailing Wage Ordinance authorizes the City Engineer to impose penalties
6 for violations, including “wage restitution,” “liquidated damages in the amount of three (3)
7 times the wages owed,” “a directive to the applicable City department to withhold any payments
8 due” under the public works contract, and “rescission of the City Construction Contract in
9 violation.”

10 31. If the City Engineer or the City Engineer-appointed hearing officer determines that
11 a contractor has violated the Prevailing Wage Ordinance “willfully or more than twice in a
12 three-year period,” they may “order debarment of the contractor” as well as additional fines.

13 32. The Prevailing Wage Ordinance allows a contractor to request review of the City
14 Engineer’s findings by a hearing officer, who is appointed by the City Engineer. The Prevailing
15 Wage Ordinance does not provide for judicial review of any findings or penalties. What’s more,
16 if the City Engineer or City Engineer-appointed hearing officer deems a contractor’s “dispute of
17 a finding ... frivolous or ... brought for the purpose of delaying compliance,” they may order
18 *additional* penalties.

19 33. The Prevailing Wage Ordinance includes several exemptions, including any
20 “youth employment program where the participant is employed in non-construction work,”
21 “situations where there is no contract directly requiring or permitting construction work,” and
22 “contracts that are neither a revenue nor expenditure contract contemplating construction work,
23 such as licenses or permits to use city-owned land.”

24 34. Exhibit A is a true, correct, and complete copy of the Prevailing Wage Ordinance.

25 **EFFECTS OF PREVAILING WAGE ORDINANCE ON PLAINTIFFS**

26 35. Plaintiffs are membership organizations whose members are contractors and
27 subcontractors.

28

1 36. The purposes of Plaintiffs’ membership organizations are to represent and
2 advocate for the interests of contractors and subcontractors, including interests that are impacted
3 by state and municipal law that affect contracting and subcontracting businesses and the
4 contracting and construction trade.

5 37. The Prevailing Wage Ordinance directly regulates how Plaintiffs’ members
6 engage in their trade and conduct their businesses, including how Plaintiffs’ members
7 compensate workers, engage in record keeping, and respond to requests for proposals and
8 invitations for bids issued by the City.

9 38. Plaintiffs’ members regularly bid on, enter into, and perform public works
10 contracts with the City with aggregate values of \$4,000,000 or more, to which no exemptions in
11 the Prevailing Wage Ordinance apply.

12 39. On information and belief, the City will solicit requests for proposals for projects
13 to which the Prevailing Wage Ordinance will apply after the effective date of the Ordinance.

14 40. On information and belief, some members of Plaintiffs’ organizations will bid on
15 contracts to which the Prevailing Wage Ordinance applies and suffer higher costs and
16 administrative requirements for those contracts.

17 41. Some of Plaintiffs’ members will continue to bid on, enter, and perform such
18 public works contracts with the City. These members are directly affected by the Prevailing
19 Wage Ordinance because it increases costs incurred by Plaintiffs’ members by mandating they
20 pay wages that are not in line with and higher than market rates. These members also are
21 directly affected by the Prevailing Wage Ordinance because of the Ordinance’s record keeping
22 and reporting requirements.

23 42. Because of the wage mandates in the Prevailing Wage Ordinance, some of
24 Plaintiffs’ members will be unable to hire new employees or retain existing employees.

25 43. The Prevailing Wage Ordinance also increases costs on some of Plaintiffs’
26 members because it mandates costly new payroll, recordkeeping, and notice requirements, and
27 new provisions in their contracts.
28

1 44. Other of Plaintiffs' members currently bid on, enter, and perform such public
2 works contracts with the City, but they will no longer do so when the Prevailing Wage
3 Ordinance goes into effect, because they cannot afford to comply with the requirements of the
4 Prevailing Wage Ordinance or otherwise find the requirements too onerous.

5 45. Other of Plaintiffs' members currently bid on, enter, and perform such public
6 works contracts with the City, but they will no longer do so when the Prevailing Wage
7 Ordinance goes into effect because they cannot risk the potential liability they would incur for
8 violations under the Ordinance, including inadvertent or minor violations.

9 **STATE LAW PROHIBITION**

10 46. State law expressly forbids cities from enacting prevailing wage laws.
11 Specifically, it provides:

12 Agencies and political subdivisions of this state shall not by regulation, ordinance
13 or in any other manner require public works contracts to contain a provision
14 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.

15 A.R.S. § 34-321(B).

16 47. "The public interest in the rates of wages paid under public works contracts
17 transcends local or municipal interests and is of statewide concern." A.R.S. § 34-321(A).

18 48. When the Legislature enacts a law on a matter of statewide concern, that law pre-
19 empts and overrides any conflicting municipal ordinance.

20 **COUNT 1**
21 **State Law Pre-emption**

22 49. Plaintiffs incorporate the allegations in the preceding paragraphs.

23 50. The Prevailing Wage Ordinance regulates a matter of public interest and statewide
24 concern.

25 51. Local ordinances that conflict with state statute are preempted and void. *City of*
26 *Scottsdale v. Scottsdale Associated Merchs., Inc.*, 120 Ariz. 4, 6 (1978)

27 52. The Prevailing Wage Ordinance in its entirety conflicts with state law, which
28 prohibits municipalities from imposing prevailing wage requirements on contractors and

1 subcontractors for public works contracts, insofar as the entire Prevailing Wage Ordinance
2 includes requirements that contractors and subcontractors pay a “prevailing wage,” provisions
3 for ensuring and demonstrating compliance with those requirements, procedures for
4 investigating and adjudicating alleged violations of those requirements, and penalties for
5 violating those requirements.

6 53. Accordingly, the Prevailing Wage Ordinance is preempted by state law and is
7 invalid in its entirety.

8
9 **COUNT 2**
Due Process

10 54. Plaintiffs incorporate the allegations in the preceding paragraphs.

11 55. The Arizona Constitution guarantees the rights of Arizonans to due process of law:
12 “No person shall be deprived of life, liberty, or property without due process of law.” Ariz.
13 Const. art. II, § 4.

14 56. Due process under the Arizona Constitution ensures that Arizonans will not be
15 deprived of liberty or property interests without adequate procedural safeguards. This requires,
16 at a minimum, that rights and property are not taken by a government authority without adequate
17 notice, a reasonable opportunity to be heard, and fair and neutral adjudication.

18 57. The Prevailing Wage Ordinance lacks adequate procedural safeguards because it
19 vests a single unelected City official—the City Engineer—with virtually unchecked power to
20 investigate and adjudicate alleged violations. It makes no provision for a contractor to be given
21 timely and adequate notice of the allegations against it, to be heard meaningfully, or to receive a
22 reasoned explanation of the City Engineer’s decision.

23 58. The Prevailing Wage Ordinance also lacks adequate procedural safeguards
24 because it makes no provision for judicial review; the only opportunity for appeal is before a
25 City “hearing officer” *appointed by the City Engineer himself*, the initial decision maker, and a
26 contractor can be punished for even trying to exercise its due process rights if the City Engineer
27 or his appointed hearing officer, in their sole discretion, deem an appeal “frivolous or ... brought
28 for the purpose of delaying compliance.”

1 59. Accordingly, the Prevailing Wage Ordinance violates Article II, section 4 of the
2 Arizona Constitution, and it is unlawful and invalid.

3 **COUNT 3**
4 **Declaratory Relief**

5 60. Plaintiffs incorporate the allegations in the preceding paragraphs.

6 61. An actual and substantial controversy exists between Plaintiffs and Defendants as
7 to their respective legal rights and duties.

8 62. Plaintiffs believe and contend that the Prevailing Wage Ordinance is unlawful and
9 invalid, and that they are not bound by its provisions, while Defendants maintain that the
10 Prevailing Wage Ordinance is lawful and valid, and that Plaintiffs are bound by its provisions.

11 63. Thus, declaratory relief is appropriate under A.R.S. §12-1831.

12 **REQUEST FOR RELIEF**

13 For their relief, Plaintiffs respectfully request that this Court take the following actions:

- 14 A. Enjoin the Prevailing Wage Ordinance, and the City's enforcement thereof, in its
15 entirety.
- 16 B. Enter a judgment declaring the Prevailing Wage Ordinance invalid facially and
17 unlawful in its entirety.
- 18 C. Award Plaintiffs their costs pursuant to A.R.S. § 12-341, and attorney fees
19 pursuant to the private attorney general doctrine; and
- 20 D. Award such other and further relief as may be just and equitable.

21 **RESPECTFULLY SUBMITTED** this 23rd day of January, 2024.

22 GOLDWATER INSTITUTE

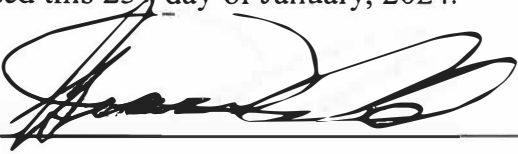
23
24 /s/ John Thorpe
Jonathan Riches (025712)
John Thorpe (034901)
Scharf-Norton Center for
25 Constitutional Litigation at the
26 GOLDWATER INSTITUTE
500 E. Coronado Rd.
27 Phoenix, Arizona 85004

28 *Attorneys for Plaintiffs*

VERIFICATION

I, Ricardo Carlo, declare under penalty of perjury that I am the President of the Associated Minority Contractors of Arizona (“AMCA”), a Plaintiff in this action. I am authorized by AMCA to declare, and I do declare, that to the best of my knowledge, information, and belief, the facts in the foregoing complaint are true and correct.

Dated this 23rd day of January, 2024.



Ricardo Carlo

President, Associated Minority Contractors of Arizona

Verification

I, David M. Martin, declare under penalty of perjury that I am the President of the Arizona Chapter of the Associated General Contractors of America, Inc. ("AZAGC"), a Plaintiff in this action. I am authorized by AZAGC to declare, and I do declare, that to the best of my knowledge, information, and belief, the facts in the foregoing complaint are true and correct.

Dated this 23rd day of January, 2024.

A handwritten signature in black ink, appearing to read "D M Martin", is written above a horizontal line.

David M. Martin

President, Arizona Chapter of the Associated General Contractors of America, Inc.

Verification

I, Kimberly Davids, declare under penalty of perjury that I am the President of the Arizona Builders Alliance (“ABA”), a Plaintiff in this action. I am authorized by ABA to declare, and I do declare, that to the best of my knowledge, information, and belief, the facts in the foregoing complaint are true and correct.

Dated this 23rd day of January, 2024.

Kimberly Davids

Kimberly Davids

President, Arizona Builders Alliance

**THIS IS A DRAFT COPY ONLY AND IS NOT AN OFFICIAL COPY OF THE FINAL
ADOPTED ORDINANCE**

ORDINANCE G-7217

AN ORDINANCE AMENDING CHAPTER 43 OF THE
PHOENIX CITY CODE ENACTING THE FOLLOWING
PREVAILING WAGE ORDINANCE FOR CITY
CONSTRUCTION PROJECTS TO BE CODIFIED AS
ARTICLE XIV OF CHAPTER 43 OF THE PHOENIX CITY
CODE.

WHEREAS, the City Council for the City of Phoenix hereby declares that it is in the best interests of the City to have a uniform determination of the prevailing wages to be paid to the various classes of mechanics, laborer or other workers on City construction projects which will be required in the performance of work covered by this Ordinance.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. That Chapter 43 of the Phoenix City Code is amended and a new Article XIV is adopted as follows:

**Chapter 43 –Article XIV.
Payment of Prevailing Wage for Work Performed on City Construction Projects.**

Sec. 43-51. Definitions.

In this Article, unless the context otherwise requires:

Affordable Housing means residential or mixed-use development, excluding any projects that are subject to the Davis-Bacon Act, that provides low-to-moderate-income housing to at least 50% of the dwelling units at a site committed for a minimum term through covenants or restrictions to households with incomes at 80% or less of the area median income as defined by the United States Department of Housing and Urban Development.

City means the City of Phoenix and any related City agency, department or authority.

Construction in the context of *Construction Contracting* has the meaning as set forth in Section 34-101(3) of Title 34, Chapter 1, Article 1 of the Arizona Revised Statutes. For the purposes of this Article, Construction Contracting is limited to construction conducted on City-owned or leased property and does not include work performed by employees of the City.

City Construction Contract means a contract for construction on City-owned or City-leased property and to which the City is the contracting party financially obligated to pay the contract sum and which is solicited in accordance with the City Procurement Code.

Covered Employer means any employer obligated to pay employees a prevailing wage under this Article.

Prevailing Wage Rate means the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding class of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the construction takes place, as determined by the City Engineer

on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 3142 et seq., as amended.

Willfully means any act which is intentional, deliberate, conscious or voluntary and designed to achieve a particular result.

Sec. 43-52. Payment of Prevailing Wages.

(A) *Required.* Every mechanic, laborer or other worker employed by any contractor or subcontractor under any applicable City Construction Contract to perform Construction Contracting shall be paid not less than the Prevailing Wage Rate for the same class and kind of work in the Phoenix metropolitan area. This section shall not apply to: (i) any participant in a youth employment program where the participant is employed in non-construction work; (ii) situations where there is no contract directly requiring or permitting construction work; or (iii) contracts that are neither a revenue nor expenditure contract contemplating construction work, such as licenses or permits to use city-owned land.

(B) *Apprenticeship Programs.* Every Covered Employer may support employee apprenticeship participation by contributing an amount to an apprenticeship program approved by the U.S. Department of Labor that is equivalent to and consistent with the appropriate Prevailing Wage Rate as determined by the U.S. Department of Labor and registered with the State of Arizona, Western Maricopa Education Center, East Valley Institute of Technology, or an equivalent career training program.

(C) *Contract Specifications.* Every City Construction Contract with an aggregate value of four million dollars (\$4,000,000) or greater at the time the City Construction Contract is entered into shall contain a provision: (i) stating that the minimum wages to be paid for every class of mechanic, laborer and worker shall be not less than the Prevailing Wage Rate for each class of worker; (ii) requiring a Covered Employer to pay every mechanic, laborer or other worker at least once a week the full amount of wages accrued at the time of payment at the applicable Prevailing Wage Rate; (iii) mandating that every Covered Employer comply with the recordkeeping and notice posting requirements in Section 43-53 of this Article. No Covered Employer shall misclassify any mechanic, laborer or other worker as an independent contractor, as defined in CFR 541. A mechanic, laborer or other worker shall be classified as an independent contractor only if their work relationship satisfies the legal definition of an independent contractor under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., as amended.

Sec. 43-53. Required Recordkeeping and Notice Posting.

(A) Every Covered Employer shall keep certified payroll records showing the name, address, job classification, wages and benefits paid or provided, and the number of hours worked for each employee. These records shall be preserved for four (4) years from the date of an employee's final payment and shall be considered public records under Arizona Public Records Law. A.R.S. § 39-101 et seq.

(B) Every Covered Employer shall file weekly Federal Form WH-347 or its equivalent which shall specify for each employee the employee's name,

address, employee ID#/last four digits of the Social Security Number, job classification, hourly wage rate paid, the number of hours worked each week, all deductions made from gross pay, and net weekly pay, with the City Engineer. Every Covered Employer shall file a statement weekly with the City Engineer certifying that all workers have been paid no less than the wage required by their contract, if any wages remain unpaid to set forth the amount of wages due and owing to each worker respectively, and that the job classification for each employee conforms with the work performed. Social Security Numbers and other personal identifying information shall be kept confidential by the City, unless otherwise required by law.

(C) The City Engineer must notify in writing all Covered Employers at least once every twelve (12) months of their obligation to file weekly the Federal Form WH-347 or its equivalent. The notification must include a copy of the Federal Form WH-347 with instructions for completing the form, the dates that the completed form is due throughout the proceeding twelve (12) months, contact information for an employee within the City Engineer's office where questions can be referred, a notice of the penalties that can be assessed if the Covered Employer becomes non-compliant. In addition, the notice shall include a letter that provides the name, address and telephone number of the City Engineer, the applicable prevailing wages for the job classifications at the Covered Employer, and a statement advising workers that if they have been paid less than the Prevailing Wage Rate they may notify the City Engineer and request an investigation. The City's failure to provide the previously described written

notification to covered employers does not relieve Covered Employers of their obligations under this Article.

(D) Every Covered Employer shall post the letter with the related information referenced in Subsection C above at the job site in an area easily accessible by all employees.

Sec. 43-54. Enforcement.

(A) *Complaint Procedure.* The City Engineer shall provide a complaint form on the official City website. Any affected individual or organization representing such individual(s) may file a complaint with the City Engineer for any violation of this Article.

(B) *Review and Investigation.* The City Engineer shall review and investigate the complaint and shall make a finding of compliance or noncompliance within sixty (60) days of the complaint being filed, including a determination of whether an employer is covered by this Article. The Covered Employer shall permit authorized agents of the City Engineer to observe the work being performed on the work site, to interview employees, and examine the books and records relating to the payrolls being investigated to determine whether or not the Covered Employer is in compliance with this Article. Failure of the City Engineer to issue a finding of compliance or noncompliance does not relieve the Covered Employer of their obligations under this Article.

(C) *Finding of Noncompliance.* If at any time the City Engineer, upon investigation of a complaint or upon independent investigation, finds that a

violation of this Article has occurred, it shall issue a finding of noncompliance and notice of corrective action to the Covered Employer. The finding of noncompliance shall specify the areas of noncompliance, indicate such corrective action as may be necessary to achieve compliance, and impose deadlines for achieving compliance.

(D) *Dispute of Finding of Noncompliance.* A Covered Employer may dispute a finding of noncompliance and notice of corrective action by requesting a review within thirty (30) days of the date of the finding. The City Engineer shall appoint a hearing officer, who shall affirm or reverse the finding of noncompliance based upon evidence presented by the applicable City department and the Covered Employer. Where the finding of noncompliance and notice of corrective action requires wage restitution, the Covered Employer must, as a precondition to a request for review, provide evidence that such wages have either been paid or placed into an escrow account for the satisfaction of the judgment of the hearing officer. A Covered Employer who does not request review or appeal, or who fails to pay or escrow wages as provided herein, waives the right to dispute a finding of noncompliance. A finding of noncompliance and notice of corrective action shall become final if either the Covered Employer fails to request review within thirty (30) days as provided in this paragraph, or the hearing officer affirms such finding after a review.

(E) A violation by a subcontractor of a Covered Employer shall be deemed a violation by the Covered Employer.

Sec. 43-55. Sanctions.

(A) In the event the City Engineer or hearing officer determines that a Covered Employer has failed to comply for more than sixty (60) days after a notice of corrective action has become final, or in the event the hearing officer determines that any portion of a Covered Employer's dispute of a finding of noncompliance is frivolous or was brought for the purpose of delaying compliance, the City Engineer shall order any or all of the following penalties: (1) wage restitution for the affected employee(s); (2) liquidated damages in the amount of three (3) times the wages owed; (3) a directive to the applicable City department to withhold any payments due the Covered Employer, and to apply such payments to the payment of fines or the restitution of wages; or (4) rescission of the City Construction Contract in violation.

(B) In the event that the City Engineer or hearing officer determines that a Covered Employer has willfully or more than twice in a three-year period failed to comply with this Article, the City Engineer or hearing officer, in addition to the sanctions that may be imposed pursuant to subsection A above, may (1) order debarment of the contractor pursuant to Section 43-28 of the Phoenix City Code; and (2) in the case of a project receiving a city subsidy, order the payment of a fine in the amount of no less than 3% of the total cost of construction.

Sec. 43-56. Regulation.

The City Engineer may issue regulations to implement the provisions of this Article.

Sec. 43-57. Exclusions.

The provisions of this Article do not apply to City Construction Contracts:

1. valued at less than \$4,000,000;
2. subject to Federal prevailing wage law;
3. solicited before July 1, 2024, including any renewals; or
4. excluded from the City of Phoenix Procurement Code.

In addition, none of the provisions of this Article apply to any of the following:

5. Procurements for any projects funded in whole or in part by the proposed 2023 General Obligation Bond Program.

6. Any Job Order Contracts (JOCs).

7. Any Affordable Housing construction project.

8. Any solicitation where a City Construction Contract is being re-advertised because the initial solicitation received less than three (3) responsive qualifying bids.

9. Public infrastructure reimbursement agreements between the City and private developers.

10. Construction by private developers of improvements that are, or are intended to be, constructed in City rights-of-way or on other property dedicated, or intended to be dedicated, to the City.

SECTION 2. That the provisions of this Ordinance are severable, and if any provision of this Ordinance or any application thereof is held invalid, that invalidity shall not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application.

SECTION 3. That this Ordinance shall become effective on July 1, 2024.

PASSED by the City Council of the City of Phoenix this 9th day of
January, 2024.

MAYOR

Date

ATTEST:

Denise Archibald, City Clerk

APPROVED AS TO FORM:
Julie M. Kriegh, City Attorney

By:

REVIEWED BY:

Jeffrey Barton, City Manager