

Duluth City Prevailing Wage Ordinance Sections 2-25 thru 2-29 as of May 30, 2018.

- Sec. 2-16.** Renumbered to Section 2-5 by Ordinance No. 9929, 10-13-2008, § 8.
- Sec. 2-17.** Renumbered to Section 2-6 by Ordinance No. 9929, 10-13-2008, § 9.
- Sec. 2-18.1.** Renumbered to Section 2-7 by Ordinance No. 9929, 10-13-2008, § 10.
- Sec. 2-18.2.** Renumbered to Section 2-7.1 by Ordinance No. 9929, 10-13-2008, § 11.
- Secs. 2-19 to 2-20.1.** Repealed by Ordinance No. 8287, 11-22-1976, § 1.
- Sec. 2-20.2.** Repealed by Ordinance No. 8032, 12-17-1973, § 32.
- Secs. 2-20.3 to 2-21.** Repealed by Ordinance No. 8287, 11-22-1976, § 1.
- Sec. 2-22.** Repealed by Ordinance No. 8180, 11-3-1975, § 5.
- Secs. 2-23 to 2-24.7.** Repealed by Ordinance No. 8287, 11-22-1976, § 1.

Article IV. Public Works.

Sec. 2-25. Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them in this Section:

Basic hourly rate. The hourly wage paid to any employee.

Prevailing wage rate. The basic hourly rate plus fringe benefits prevailing in the city of Duluth as determined by the United States secretary of labor pursuant to the Davis-Bacon Act, as amended; provided that whenever employer and employee organizations employing and representing a majority of a class of workers in a particular industry within the city jointly certify that the prevailing basic hourly rate plus fringe benefits of such workers differs from the amount determined by the secretary of labor, the certified rate shall be considered to be the prevailing wage rate for such class of workers in that industry.

Fringe benefits. Employer contribution for health and welfare benefits, vacation benefits, pension benefits, and all other economic benefits other than the basic hourly rate.

Apprentice-trainee. An employee who is working under a training program which is approved either by the U.S. department of labor bureau of apprenticeship and training or the Minnesota director of voluntary apprenticeship.

Project. Erection, construction, demolition, painting, remodeling or repairing of any public building, highway, sidewalk, bridge, water or gas line, sewer and sewage treatment facility or other public work performed under contract with the city.

Laborer, mechanic. All persons utilized, employed or working on a project who are doing work usually done by mechanics and laborers, including proprietors, partners, and members of cooperatives. (Ord. No. 8016, 10-1-1973, § 1; Ord. No. 8465, 6-25-1979, § 1; Ord. No. 8731, 6-24-1985, § 1; Ord. No. 8940, 5-8-1989, § 1; Ord. No. 9616, 7-28-2003, § 1.)

Sec. 2-26. Wage rates and hours for city projects.

(a) Any contract which provides for a project of estimated total cost of over \$2,000 shall contain a stipulation that no laborer, mechanic or apprentice-trainee employed directly upon the project work site by the contractor or any subcontractor shall be permitted or required to work at a rate of pay less than the prevailing wage rate; nor shall any such employee be permitted or required to work more than eight hours in any work day or 40 hours in any work week unless he is paid at a rate of at least 1-1/2 times the basic hourly rate for all hours in excess of eight per day or 40 per week and unless he receives fringe benefits that are at least equal to those in the prevailing wage rate; provided that whenever employer and employee organizations employing

and representing a majority of a class of workers in a particular industry within the city jointly certify that the maximum number of hours that such persons may work under existing labor agreements before overtime wages must be paid differs from the hours specified in this paragraph, the maximum number of hours specified in such labor agreements shall be substituted for those specified above in applying the provisions of this paragraph to such workers;

(b) All contracts for city projects shall have applicable schedules of prevailing wage rates set forth in the contract. Schedules of applicable prevailing wage rates shall be present on all project job sites and shall either be posted on the site or be on the person of any supervisor in charge of the job site;

(c) Employees on projects shall be paid at least weekly. Fringe benefits shall be paid either in cash or to an employee benefit plan that has been approved by the U.S. department of labor;

(d) Any contractor or subcontractor working on a project shall furnish the city with a copy of all payrolls relating to the project. Such payroll reports shall be submitted weekly on U.S. department of labor standard forms or their equivalent to the employee of the city in charge of supervising contract performance;

(e) No contractor or subcontractor working on a project shall evade or attempt to evade the provisions of this Section through the use of nonrecognized training programs. The only employees involved in training programs that shall be allowed to work on projects covered by this Section shall be apprentice-trainees as defined by this Article;

(f) Any person violating the provisions of this Section shall be guilty of a misdemeanor with each day of violation constituting a separate offense. In addition, if the prevailing wage rate is not paid to employees working on a project, the city of Duluth may withhold contract payments to the contractor until such deficiencies are corrected;

(g) This Section shall not apply to contracts for projects where the total estimated cost of the project is less than \$2,000; nor to materialmen who do no more than deliver materials to the work site, except that this Section shall apply to employees who deliver asphalt, concrete or mineral aggregate such as sand, gravel or stone where such material is incorporated into the project by depositing the material substantially in place, either directly or through spreaders, from the transporting vehicle. (Ord. No. 8016, 10-1-1973, § 1; Ord. No. 8027, 12-3-1973, § 1; Ord. No. 8465, 6-25-1979, § 2; Ord. No. 8940, 5-8-1989, § 1.)

Sec 2-27. Kickbacks from public works employees prohibited.

No contractor working on a project or other person shall, by force intimidation, or threat of termination of employment, cause any employee working on a project to give up any part of the compensation to which he is entitled under his contract of employment. (Ord. No. 8016, 10-1-1973, § 1; Ord. No. 8465, 6-25-1979, § 3; Ord. No. 8466, 7-23-1979, § 1.)

Sec. 2-28. Labor agreements in hotel/restaurant development projects.

(a) The city council finds that when the city involves itself as an owner, lessor, guarantor, pledger, investor or contributor to a development project that involves construction or operation of a hotel or restaurant business the city has an ongoing proprietary interest in the development and therefore has a direct interest in its financial performance. In such situations, the city must make precedent management decisions to protect the project. One of those decisions is whether and how to protect against conflict between management and organized labor. This Section sets forth the city's policy in that regard. Because the tourism industry is vital to the city's economic state, and because some labor organizing campaigns can disrupt or delay development and construction and obstruct normal business operation, it is for the protection of the industry and the city's proprietary interests that this Section is enacted. The purpose of this Section is to protect the city's proprietary interests in certain narrowly prescribed circumstances where the city commits its economic resources and its proprietary interests are put at risk by the potential for some types of labor-management conflict;

(b) This Section is subject to any applicable federal or state regulation. If any part of this Section is affected by state, federal or judicial action, the remainder of it shall continue in full force and effect;

(c) Definitions.

(1) Hotel/restaurant development project means a business development which includes, or is planned to include, construction or operation of a hotel or restaurant, and in which project the city has an ongoing proprietary interest, as set out herein;

(2) City protection agreement means a written agreement between an employer and a labor organization that provides, at a minimum, the following:

(A) Employee preference regarding whether to be represented by a labor organization for collective bargaining, and if so, by which labor organization shall be determined based on signed authorization cards in a card check procedure conducted by a neutral third party in lieu of a formal election;

(B) The employer and the labor organization shall at all times refrain from the use of intimidation, reprisal or threats of reprisal, or other conduct designed to intimidate or coerce employees to influence the decision by employees whether to join or be represented by any labor organization;

(C) Signatory labor organizations shall forbear from taking economic action, such as striking or picketing, against the signatory employer at the worksite of an organizing drive covered by this Section, so long as the employer complies with the terms of the agreement. The employer and labor organization may incorporate additional consistent provisions to protect the city's/agency's proprietary interest if they so agree;

(3) Proprietary interest means an interest in a hotel/restaurant development project where the city administration determines, on a case-by-case basis, that one or more of the following conditions are met:

(A) That the city, as property owner, receives ongoing revenue such as rent payments under a lease of real property owned by the city for the development of a project, excluding government fees or tax or assessment revenues, or the like, except for tax revenues exempted herein;

(B) That the city receives ongoing revenue from a project to repay loans provided by the city to assist the development of said project, including incremental tax revenues generated by the project and used, directly or indirectly, to repay the loan by the city where the proceeds are used for development of that project;

(C) That the city receives ongoing revenue from a project to pay debt service on bonds provided by the city to assist the development of said project, including incremental tax revenues generated by the project and used, directly or indirectly, to pay debt service on bonds by the city where the proceeds are used for development of the project;

(D) That the city has significant assets at risk because it has agreed to underwrite or guarantee the development of a project, or loans related thereto;

(E) That the city has a significant ongoing economic and nonregulatory interest at risk in the financial service of a project which is likely to be adversely affected by labor/management conflict resulting from a union organizing campaign, except that no interest shall be considered "economic and nonregulatory" if it arises from the exercise of regulatory or police powers such as taxation (except as set forth above), zoning or the issuance of permits or licenses;

(4) Employer means any person, corporation, company, association, limited or general partnership, joint venture, contractor, subcontractor or other entity who employs individuals at the site of a development project, and whose ongoing economic performance and potential for labor/management conflict can affect the city's proprietary interest, including, but not limited to commercial, retail, hospitality or services enterprises in a development project;

(5) Contract means a lease, management agreement, service agreement, development agreement, loan, bond, guarantee or similar agreement to which the city is a party and in which the city has a proprietary interest;

(6) City means the city of Duluth, Minnesota;

(d) Regulation.

(1) **Duty of city.** On any hotel/restaurant development project in which the city participates or has a financial interest, the city administration shall determine, whether employers on the project are required to enter into a proprietary interest protection agreement (hereinafter "agreement"). All such determinations shall be made on a case-by-case basis pursuant to the standards articulated in the definition in this Section, subject to the exemptions set forth below. Such determination shall be made in all cases as a necessary precondition of the city's participation in a development project;

(2) **When agreements required.** A proprietary interest protection agreement shall be required where the city determines that the city has a proprietary interest at risk in a hotel/restaurant development project pursuant to the definition set forth in this Section;

(3) **Contracts.** Where the city determines that a proprietary interest protection agreement is required on a development project, any city contract must include a provision requiring any employer on said project to enter into said agreement as essential consideration for the city entering into the contract;

(4) **Requests for proposal.** Any request for proposal or invitation to bid or similar document regarding a city development project must include in such document a reference to the policy and requirements of this ordinance [Section]. Failure to include reference to this ordinance [Section] in a request for proposal or similar document shall not exempt any employer otherwise subject to the requirements of this ordinance [Section];

(5) **Scope.** The requirements of this Section apply only to the procedures for determining employee preference regarding whether to be represented by a labor organization for purposes of collective bargaining and/or by which labor organization to be represented. Nothing in this ordinance [Section] requires an employer to recognize a particular labor organization. Nor does any provision of this ordinance [Section] require that an employer enter into a collective bargaining agreement establishing the substantive terms and conditions of employment;

(e) **Exemptions.** The requirements of this Section shall not apply to:

(1) Employers employing fewer than the equivalent of eight full-time or part-time employees at the site of the development project;

(2) Any employer signatory to a valid and binding collective bargaining agreement covering the terms and conditions of employment for its employees at that development project, or which has entered into an agreement with a labor organization regarding such employees which agreement provides for a procedure for determining collective bargaining units;

(3) Any development project where the city administration determines that the risk to the city's financial or other nonregulatory interest resulting from labor/management conflict is so minimal or speculative as not to warrant concern for the city's investment or other nonregulatory interest;

(4) Any development project that receives less than \$50,000 of assistance from the city;

(5) Any residential development project;

(6) Any multi-tenanted development project that is built on a speculative basis;

(7) Any development project that receives only conduit bond financing from the city;

(8) Any development project in which the city, by contract approved by the council, became a participant before November 15, 2006. (Repealed by Ord. No. 7990, 4-23-1973, § 1; amended by Ord. No. 9798, 10-23-2006, § 1.)

Sec. 2-29. Project labor agreements.

(a) **Policy.** The city, as a purchaser of construction services, has a compelling interest in ensuring that city construction contracts proceed in a timely, cost-effective manner with the highest degree of quality and with minimal delays and disruptions. City contracts should be performed with the highest degree of safety for workers and the public, and in a manner that provides meaningful training and employment opportunities for residents. Throughout the state and country, public and private construction owners regularly utilize and require project labor

agreements for billions of dollars worth of construction each year. St. Louis county is successfully using project labor agreements on county construction contracts. Project labor agreements that establish uniform terms and conditions of employment for the contractors and other parties working on a project have been shown to provide an effective mechanism for construction management because they allow project owners to:

(1) Predict their labor costs and requirements, and, therefore, more accurately estimate actual total project costs;

(2) Promote cost-efficient, timely and safe construction project delivery, by providing access to a reliable supply of properly trained and skilled construction craft personnel for all aspects of the project;

(3) Assure greater productivity and workmanship quality from construction craft personnel, thereby yielding high quality, cost-efficient projects, while also reducing maintenance and repair costs over the life of the project;

(4) Integrate work schedules and standardize work rules for the project to provide a well-coordinated, efficiently functioning construction worksite that will minimize delays, promote quality, and maintain project safety; and

(5) Assure that construction will proceed without interruption from staffing shortages, high employee turnover, safety incidents, and labor disputes by providing reliable project staffing, contractual guarantees against work stoppages and mutually binding procedures for resolving disputes;

(b) Project labor agreement required. A project labor agreement, in substantially the form adopted by resolution of the council from time to time and kept by the city clerk as a public document, shall be required to be used on each city construction project, as project is defined in Section 2-25, with a total project cost of \$150,000 or more. Any project labor agreement entered into by the city shall be made binding on all contractors and subcontractors working on the project. The city shall implement the project labor agreement by requiring adherence to the agreement in the bid specifications in all relevant bid documents. No contractor shall be required to be or become a party to a collective bargaining agreement on any other construction project in order to qualify to work under a project labor agreement implemented for a particular city project. (Ord. No. 9856, 8-27-2007, § 1.)

Sec. 2-30. Repealed by Ordinance No. 7990, 4-23-1973, § 1.

Article V. Use, Occupancy and Lease of Buildings, Grounds and Lands.

Sec. 2-31. Authority of mayor to issue permits, negotiate, etc., agreements and leases.

Authority is hereby conferred upon the mayor of the city to issue permits for the use and occupancy for certain purposes of public grounds which are under the control or supervision of the city and to negotiate for, make, enter into, sign and execute agreements or leases concerning buildings or lands owned by the city or lands or buildings which are privately owned, upon such terms and conditions as are set forth in this Article. (Ord. No. 7157, § 1.)

Sec. 2-32. Consideration, terms and conditions; maximum term.

Every agreement or lease granted under the authority of this Article shall be for such a good and sufficient consideration, upon such conditions, covenants and terms as the mayor may or shall deem to be for the advantage, benefit, profit, economy or welfare of the city. Without excluding other considerations and for the purpose of determining the rent to be received by the city under any such agreement or lease for any lands or buildings owned by the city or for rent to be paid by the city for lands or buildings privately owned, the mayor shall, in negotiating any such agreement or lease, take into account the location of the premises, their adaptability for the purpose for which the lands or buildings are to be used and the full and true valuation or assessed value of the lands or buildings. When the lands or buildings which are the subject of a proposed agreement or lease are owned by the city, the amount of the rent to be paid to the city