

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 31 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PURCHASING," BY AMENDING ARTICLE II THEREOF, ENTITLED "CONSTRUCTION CONTRACTS - MINIMUM WAGES AND BENEFITS," BY AMENDING SECTION 31-27, ENTITLED "ESTABLISHMENT OF MINIMUM WAGES," TO EXTEND THE WAGE REQUIREMENTS OF THE ORDINANCE TO CONSTRUCTION PROJECTS ON CITY-OWNED LAND THAT ARE DEVELOPED BY PERSONS OR ENTITIES OTHER THAN THE CITY, PURSUANT TO A (I) DEVELOPMENT AGREEMENT, (II) GROUND LEASE, OR (III) MANAGEMENT AGREEMENT WITH THE CITY; BY AMENDING SECTION 31-31, "ENTITLED EXCEPTIONS," TO EXEMPT CERTAIN PROJECTS FROM THE REQUIREMENTS OF THE ORDINANCE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Section 31-27 of the City Code, commonly referred to as the City's "Prevailing Wages" Ordinance, currently requires that for "City construction projects" with a contract value in excess of \$1,500,000, the contractor must pay laborers, apprentices and mechanics minimum wages, in accordance with the wage rates established from time to time by the United States Department of Labor and published in the Federal Register; and

WHEREAS, the Mayor and City Commission desire to amend the City's Prevailing Wages Ordinance, to extend the requirements of the Ordinance to construction projects that are developed by persons or entities other than the City, but which require the participation of the City as a party to a (i) development agreement, (ii) ground lease, or (iii) management agreement for a city-owned building or facility having a term of ten years or more (including renewal terms).

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Chapter 31, entitled "Purchasing," Article II thereof, entitled "Construction Contracts-Minimum Wages and Benefits," Section 31-27 thereof, entitled Establishment of Minimum Wages, and Section 31-32 thereof, entitled Certified payroll reporting requirement, of the Code of the City of Miami Beach are hereby amended as follows:

CHAPTER 31 PURCHASING

* * *

ARTICLE II. - CONSTRUCTION CONTRACTS-MINIMUM WAGES AND BENEFITS

Sec. 31-27. – Establishment of minimum wages.

(a) Definitions. "City construction contract" shall mean every contract in excess of \$1,500,000, where:

(1) the city is a party to a contract for the construction, demolition, alteration and/or repair of a city building, facility or other public improvement; or

(2) the construction project is developed by persons or entities other than the city, pursuant to a (i) development agreement with the city, (ii) ground lease, or (iii) management agreement with the city having a term of ten years or more (including renewal terms), and such agreement provides for construction, demolition, alteration and/or repair of buildings or improvements located on city-owned land, whether privately-funded or otherwise.

(b) Prevailing wage requirements. Except for projects exempted pursuant to Section 31-31 of this Article, every city construction contract in excess of \$1,500,000.00 to which the City of Miami Beach is a party shall include a provision that the rate of wages and fringe benefits, or cash equivalent, for all laborers, mechanics and apprentices employed by any contractor or subcontractor on the work covered by the contract, shall be not less than the prevailing rate of wages and fringe benefit payments or cash equivalence for similar skills or classifications of work as established by the Federal Register, in the City of Miami Beach, Florida..

(c) Every three years commencing in 1997, the city manager shall present a report to the city commission regarding increases in the Construction Cost Index for South Florida, if any, and shall recommend to the city commission whether there should be an adjustment to the \$1,500,000.00 threshold. In the event that the city manager recommends an adjustment, the city commission shall hold a public hearing regarding an amendment to this article to consider the adjustment.

Sec. 31-28. - Implementation by the Federal Register.

The prevailing wage rate and fringe benefit payments to be used in implementation of this article shall be those last published by the United States Department of Labor in the Federal Register prior to the date of issuance of specifications by the City of Miami Beach in connection with its invitation for bid.

Sec. 31-29. - Notice requirement.

On the date on which a laborer or mechanic commences work on a city construction contract to which this article applies, the contractor shall be required to post a notice in a prominent place at the work site stating the requirements of this article.

Sec 31-30. - Preemption by federal funding.

When city construction contracts involve federal funding or are otherwise subject to the provisions of the Davis-Bacon Act [40 U.S.C. 276(a)], this article shall not apply, and the minimum wages to be paid the various classes of laborers, mechanics and apprentices shall be based upon the wages determined by the Secretary of Labor in accordance with the Davis-Bacon Act [40 U.S.C. 276(a)]. (Ord. No. 86-2507, § 1, 7-9-86; Ord. No. 94-2960, § 1, 12-21-94)

Sec. 31-31. - Exceptions.

The provisions of section 31-27 shall not apply to the following projects~~City of Miami Beach projects~~:

- (a) Water, except water treatment facilities and lift stations.
- (b) Sewer, except sewage treatment facilities and lift stations.
- (c) Storm drainage.
- (d) Road construction, except bridges or structures requiring pilings.
- (e) Beautification projects which may include resurfacing new curbs, gutters, pavers, sidewalks, landscaping, new lighting, bus shelters, bus benches and signage.
- (f) Proposed parking garage projects located at Seventh Street and Collins Avenue, Tenth Street and Collins Avenue, Thirteenth Street and Collins Avenue, Twelfth Street and Washington Avenue and the Seventeenth Street garage renovation project; however future parking structures not specified herein and estimated to cost in excess of \$1,000,000.00 shall not be exempt.
- (g) Emergency projects pursuant to Section 2-396 of the City Code.
- (h) Affordable housing or workforce housing projects.
- (i) Any project covered under subsection 31-27(a)(2) of the city code, where the development agreement, ground lease, or management agreement was entered into prior to June 1, 2021, or where the contract was entered into pursuant to any competitive solicitation issued prior to June 1, 2021.
- (j) Any project covered under section 31-27(a)(2) of the city code, for which the city commission, by resolution approved by a 5/7ths vote, has waived the requirements of this article, finding such waiver to be in the best interest of the city.

Sec. 31-32. - Certified payroll reporting requirement.

- (a) All city construction contracts covered under section 31-27(a)(1) of the city code, including contracts for exempt city projects pursuant to subsections 31-31(a) through (g) of the city Code, shall include a provision requiring the contractor to submit certified payroll records along with each payment application, to allow the city to verify the wage rates paid to construction workers performing work on city projects. All certified payroll records submitted to the city shall, at a minimum, include the name, address or zip code, labor classification, hours worked, and hourly base rate paid for each laborer, mechanic and apprentice employed by any contractor or subcontractor on the work covered by the contract.
- (b) For city construction contracts covered under section 31-27(a)(2) of the city code, the development agreement, ground lease or management agreement with the city shall include a contract provision requiring the developer, ground lessee, or manager/operator, as applicable, to obtain certified payroll records from its construction contractor, and to submit such certified payroll records to the city upon request, to allow the city to audit the wage rates paid to construction workers performing work on the city construction project.
- (c) All certified payroll records submitted to the city shall, at a minimum, include the name, address or zip code, labor classification, hours worked, and hourly base rate paid for each laborer, mechanic and apprentice employed by any contractor or subcontractor on the work covered by the city construction contract.

The requirements of this section shall be reviewed annually by the finance and citywide projects committee (or successor committee), at which time the committee will provide an advisory recommendation to the city commission as to whether to continue to maintain this section in force and effect.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity. portions of this ordinance.

SECTION 5. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Miami Beach City Code. The sections of this ordinance may be

renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect on the 27 day of March, 2021.

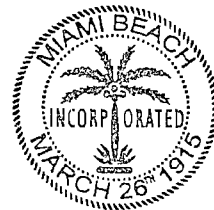
PASSED AND ADOPTED this 17 day of March, 2021.

ATTEST:

78 3/25/2021
Rafael E. Granado, City Clerk


Dan Gelber, Mayor

Underline denotes additions
~~Strikethrough~~ denotes deletions



(Sponsored by Commissioner David Richardson)

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

 1-25-21
City Attorney PAZ Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Rafael Paz, Acting City Attorney
DATE: March 17, 2021

10:15 a.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 31 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PURCHASING," BY AMENDING ARTICLE II THEREOF, ENTITLED "CONSTRUCTION CONTRACTS - MINIMUM WAGES AND BENEFITS," BY AMENDING SECTION 31-27, ENTITLED "ESTABLISHMENT OF MINIMUM WAGES," TO EXTEND THE WAGE REQUIREMENTS OF THE ORDINANCE TO CONSTRUCTION PROJECTS ON CITY-OWNED LAND THAT ARE DEVELOPED BY PERSONS OR ENTITIES OTHER THAN THE CITY, PURSUANT TO A (I) DEVELOPMENT AGREEMENT, (II) GROUND LEASE, OR (III) MANAGEMENT AGREEMENT WITH THE CITY; BY AMENDING SECTION 31-31, "ENTITLED EXCEPTIONS," TO EXEMPT CERTAIN PROJECTS FROM THE REQUIREMENTS OF THE ORDINANCE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

BACKGROUND/HISTORY

The proposed ordinance was prepared at the request of Commissioner David Richardson.

On October 14, 2020, the Mayor and City Commission referred the proposed ordinance to the Finance and Economic Resiliency Committee (the "FERC").

On January 22, 2021, the FERC unanimously recommended the adoption of the proposed ordinance.

On February 10, 2021, the Mayor and City Commission adopted the proposed Ordinance at first reading.

ANALYSIS

The City's Prevailing Wages Ordinance, set forth in Chapter 31 of the City Code, currently requires that for "City construction projects" with a contract value in excess of \$1,500,000, the contractor must pay laborers, apprentices and mechanics minimum wages, commonly referred to as "prevailing wages," in accordance with the wage rates established from time to time by the United States Department of Labor.

As currently drafted, based on the definition of "City construction project" in the Prevailing Wages Ordinance, the requirements only apply to **construction contracts to which the City is a party**. Accordingly, the Prevailing Wages Ordinance does not apply where the City is approving the construction of a building on City-owned land pursuant to a development agreement, ground lease or long-term management agreement, simply because the City is not a party to the underlying construction contract with the general contractor or the design/builder for the project.

The proposed ordinance would extend the Prevailing Wages Ordinance to include construction projects on City-owned land that are developed by persons or entities other than the city, but which require the participation of the city as a party to a (i) development agreement, (ii) ground lease, or (iii) management agreement.

If adopted, the proposed ordinance would provide the same wage protections to construction workers performing work on City-owned land as those that perform work on City projects. Simply put, if a developer desires the privilege of constructing a project on City-owned land, the sponsor proposes that the same wage requirements that the City imposes on itself for its own projects should apply to the developer's project.

The proposed language is similar to language currently set forth in the City's Local Workforce Hiring Ordinance, which extends local workforce hiring goals to privately funded projects on City-owned land, as well as the City's Art in Public Places Ordinance, which applies to privately funded developments on City-owned land. The proposed ordinance would simply place minimum wages for construction workers at parity with the City's desire to obtain public art contributions from developers.

In addition, as every development implicates unique issues and the City Commission may desire the flexibility to take into account the overall public benefits or other issues associated with any given project, the sponsor proposes that the requirements of the Ordinance could be waived by the City Commission on a case-by-case basis, by an affirmative 5/7ths vote. In addition, as the City Commission's express policy is to incentivize affordable housing and workforce housing projects in the City, the proposed ordinance would exclude such projects from the requirements of the Prevailing Wages Ordinance.

SUPPORTING SURVEY DATA

N/A

FINANCIAL INFORMATION

The proposed Ordinance would not impact the City's revenues/expenses.

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

Yes

Does this item utilize G.O. Bond Funds?

No

Legislative Tracking

Office of the City Attorney

Sponsor

Commissioner David Richardson and Co-sponsored by Commissioner Micky Steinberg

ATTACHMENTS:**Description**

- ▣ Ordinance