

# City of Cincinnati



Interdepartment  
Correspondence Sheet

**Date:** March 25, 2016

**To:** Mayor John Cranley

**From:** Paula Boggs Muething, City Solicitor

A handwritten signature in blue ink, appearing to read "PBM", is written over the name Paula Boggs Muething.

**Subject:** Emergency Ordinance – Prevailing Wage Rates

201600428

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Transmitted herewith is an emergency ordinance captioned as follows:

**MODIFYING** the provisions of Cincinnati Municipal Code Chapter 321, "Procurement and Disposal of Supplies, Services and Construction," by **AMENDING** Section 321-1, "Definition," by **ORDAINING** new Subsections 321-1-D1, "Development," and 321-1-D2, "Development Agreement," and further **ORDAINING** Section 321-118, "Applicability of Prevailing Wage Rates to City Development Agreements."

PBM/JBW/(skj)  
Attachment  
190997-10

{00193139-1}

City of Cincinnati

JBW 

An Ordinance No. \_\_\_\_\_

- 2016

**MODIFYING** the provisions of Cincinnati Municipal Code Chapter 321, “Procurement and Disposal of Supplies, Services and Construction,” by **AMENDING** Section 321-1, “Definition,” by **ORDAINING** new Subsections 321-1-D1, “Development,” and 321-1-D2, “Development Agreement,” and further **ORDAINING** Section 321-118, “Applicability of Prevailing Wage Rates to City Development Agreements.”

WHEREAS, a fair, living wage should be provided to those who work on the construction or renovation of projects in which the City has made significant investment; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Cincinnati Municipal Code Subsections 321-1-D1 “Development,” and 321-1-D2, “Development Agreement,” of Section 321-1, “Definition,” and new Section 321-118, “Applicability of Prevailing Wage Rates to City Development Agreements,” are hereby ordained as follows:

**Sec. 321-1-D1. – Development.**

“Development” means a project, or multiple projects, involving the remodeling or construction of real property by an entity other than the city, the completion of which is required by the city pursuant to an agreement. Notwithstanding the foregoing, The Banks Project in the Central Business District shall not constitute a development for the purposes of Section 321-118.

**Sec. 321-1-D2. – Development Agreement.**

“Development agreement” means any agreement the city has with any person or other entity involving a development where the aggregate construction or remodeling cost of the development and any public infrastructure improvements constructed or remodeled in connection therewith equals or exceeds \$5,000,000, and where, for the purpose of building public infrastructure in connection with a development or providing subsidies or incentives to a development, the city provides one or more incentives or benefits, the aggregate net present value of which, at the time of the execution of such agreement, is anticipated by the city to equal or exceed \$3,000,000 over the expected term of the agreement, including, but not necessarily limited to, the following:

- (a) earnings tax credits;
- (b) direct grants or payments, or forgivable loans, of city funds, including without limitation:
  - 1) funds consisting of payments in lieu of taxes in connection with tax increment financing pursuant to Ohio Revised Code section 5709.40, Ohio Revised Code chapters 725 or 1728, and other comparable tax increment financing arrangements as may be authorized by the State of Ohio from time to time; *provided* that funds consisting of rebates of payments in lieu of taxes in connection with tax increment financing pursuant to Ohio Revised Code section 5709.41 shall not count towards the \$3,000,000 threshold;
  - 2) funds consisting of the proceeds of debt obligations issued by the city, whether secured by payments in lieu of taxes or otherwise; and
  - 3) funds which constitute reimbursement or payment for the construction, by the person or other entity with whom the city has entered into such agreement, of public infrastructure improvements benefiting such person or other entity's development; *provided* that, any portion of a loan of city funds that is non-forgivable shall not count towards the \$3,000,000 threshold;
- (c) the conveyance of real property, including buildings or other facilities, at no cost or below market cost;
- (d) the issuance of debt obligations by the city and the use of the proceeds of the same for a development or for public infrastructure improvements benefiting a development, whether or not the city anticipates that a person or other entity other than the city will service such debt obligations; and
- (e) the construction by the city of public infrastructure improvements benefiting a development.

Neither (i) real property tax abatements provided by the city pursuant to Ohio Revised Code section 3735.65 *et seq.* nor (ii) the value of statutory service payments in lieu of taxes not imposed by the city, with respect to exemptions granted under Ohio Revised Code sections 5709.40, 5709.41, or chapter 1728, shall count towards the \$3,000,000 threshold.

**Sec. 321-118 - Applicability of Prevailing Wage Rates to City Development Agreements.**

- (a) Every development agreement must, as a condition of disbursement of city funds or the receipt of any other incentive or benefit, include a provision that:

- 1) requires the payment of the wage rates set forth pursuant to Ohio's Prevailing Wage Law, Ohio Revised Code sections 4115.03 to 4115.16, with respect to every component of the development, whether public or private, and whether or not such wage rates would otherwise be required to be paid pursuant to Ohio's Prevailing Wage Law;
  - 2) provides that violations of Ohio's Prevailing Wage Law on a development, or violations of the provision that must be included in development agreements pursuant to clause (a)(1) of this section, that remain unresolved or uncured after the city provides notice thereof and a reasonable opportunity to resolve and cure the same shall result in the forfeiture of all benefits, incentives, and subsidies provided under the development agreement, whether said benefits, incentives, and subsidies have been previously disbursed or provided or have yet to be disbursed or provided; *provided* that (i) forfeiture of benefits, incentives or subsidies under this provision shall only apply with respect to the portion of the benefits, incentives, or subsidies that the development agreement does not obligate the developer to repay or reimburse, such as in the case of public infrastructure improvements benefiting a development constructed by the city but paid for by the developer, and (ii) if the city has provided non-monetary benefits, incentives or subsidies, such as the construction of public infrastructure improvements, prior to the date of forfeiture, then the development agreement shall stipulate that, in lieu of the forfeiture of such non-monetary benefits, incentives or subsidies, the forfeiting party shall remit funds to the city in an amount equal to the total value of any such non-monetary benefits, incentives, or subsidies;
  - 3) authorizes the city to review and audit project records of the developer and requires the developer to cause any construction contractors or subcontractors to likewise agree to permit the city's review and audit of project records as may be needed to ensure compliance with this section and Ohio's Prevailing Wage Law; and
  - 4) grants the city the authority to take such actions, request such documentation, conduct such investigations, and make such determinations with respect to the compliance with or enforcement of this section as may be taken, requested, conducted or made by the Director of the Ohio Department of Commerce with respect to the compliance with or enforcement of the provisions of Ohio's Prevailing Wage Law.
- (b) The department of community and economic development will determine the wage rates that must be paid pursuant to the provisions described in clause (a)(1) on an individual development basis, premised on its review of the scope of the development and any public improvements undertaken in connection therewith. Each development agreement must include and identify the applicable residential or commercial prevailing wage rates that apply to each component of the work undertaken as a part of the development, regardless of

whether such component consists of private improvements. Notwithstanding anything to the contrary in this clause (b), the department of community and economic development will apply (i) commercial rates to a residential component of a development if such residential component is five stories or greater and (ii) residential rates to a residential component of a development if such residential component is below five stories. Without limitation or modification of any obligations the city or the department of community and economic development may be subject to under applicable state and federal law, this clause (b) shall apply only with respect to development agreements, as defined in this Chapter 321, and shall not operate to require the city or the department of community and economic development to determine the applicability of Ohio's Prevailing Wage Law or any other prevailing wage laws or regulations to any agreements or contracts other than development agreements, as defined in this Chapter 321.

- (c) The city manager or his or her designee may issue any rules or regulations necessary to implement and administer this section.
- (d) The department of economic inclusion will assist the department of community and economic development in fulfilling its obligations under clause (a) of this section by providing information on the applicable prevailing wage rates with respect to each development agreement. For all developments which are subject to development agreements, the department of community and economic development is responsible for monitoring compliance with and enforcing the requirements of this section and Ohio's Prevailing Wage Law. In furtherance of this clause (d), the department of community and economic development, with the cooperation and assistance of the department of economic inclusion, shall prepare and submit to the city manager an annual report summarizing the compliance of all developments subject to this section.
- (e) This Section 321-118 shall be construed as being in addition to, and not in limitation of, the requirements of Ohio's Prevailing Wage Law.

Section 2. That this ordinance shall not apply to development agreements which have already been authorized by this Council.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to ensure that a fair, living wage is paid to individuals working on

construction or renovation projects in which the City of Cincinnati has made significant investment.

Passed: \_\_\_\_\_, 2016

\_\_\_\_\_  
John Cranley Mayor

Attest: \_\_\_\_\_  
Clerk