

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing sections 1900., 1901., 1902., 1903., and 1905., Jackson County Code, 1984, relating to prevailing wage compliance, and enacting, in lieu thereof, five new sections relating to the same subject.

ORDINANCE NO. 5358, June 8, 2020

INTRODUCED BY Theresa Cass Galvin, County Legislator

WHEREAS, with the adoption of House Bill 1729 (Laws 2018), the Missouri General Assembly enacted significant changes to the state's Prevailing Wage Law found in sections 290.210-.340, RSMo; and,

WHEREAS, among the changes is the elimination of the applicability of the Prevailing Wage Law to state and local public works projects costing less than \$75,000.00; and,

WHEREAS, in view of these changes in state law, it is appropriate that chapter 19 of the County Code be revised to reflect these changes; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, as follows:

Section A. Enacting Clause. Sections 1900., 1901., 1902., 1903., and 1905., Jackson County Code, 1984, are hereby repealed and four new sections enacted in lieu thereof to be known as sections 1900., 1901., 1902., 1903., and 1905., to read as follows:

1900. Prevailing Wage Policy.

Jackson County, Missouri, reaffirms its long-standing policy that no less than the hourly Prevailing Wage shall be paid to all workers performing work on behalf of Jackson County, as required by the Missouri Prevailing Wage Law.

1901. County [Contracts] Projects.

Jackson County, Missouri, reaffirms its long-standing policy to [let certain] award Contracts for applicable County [Contracts] Projects only to Contractors which demonstrate their commitment to a policy of compliance with Prevailing Wage laws, regulations, and codes, by paying their workers the appropriate wage rates, and complying with all other Prevailing Wage requirements.

1901.1 Construction of Chapter.

Nothing in this chapter shall be construed to require a Contractor or Subcontractor to hire unqualified or incompetent personnel or to discharge qualified or competent personnel

1902. Definitions.

For the purposes of this chapter, all applicable terms defined in the Missouri Prevailing Wage Law, sections 290.210-290.340 and 290.550-290.580, RSMo, and Prevailing Wage Regulations 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030, shall be adopted unless otherwise supplemented or designated below.

The following definitions shall apply unless the context explicitly indicates otherwise:

1902.1 Affiliate.

An "Affiliate" is a Contractor effectively controlled by another individual or entity under common ownership or control. A franchise company shall not be deemed to be an Affiliate of the franchisor if the owner(s) of the franchise company has the right to profit from the franchise, the company has the right to profit from its effort proportionate to ownership, and bears the risk of loss.

1902.2 Compliance Review Officer (CRO).

"Compliance Review Officer" is the person appointed pursuant to section 629 of this code, who may be referred to by the abbreviation "CRO."

1902.3 Construction of Public Works.

"Construction of Public Works" generally includes construction activity, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The manufacture or furnishing of materials, articles, supplies, or equipment is not "Construction of Public Works" within the meaning of the Missouri Prevailing Wage Law, unless conducted in connection with and at the site of construction. "Construction of Public Works" also means all work done in the construction or development of a Project, including without limitation, altering, remodeling, demolishing existing structures, installation on the site of the construction of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the site of the construction by the employees

of the construction Contractor or construction Subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the construction by persons employed by the Contractor or Subcontractor.

1902.[3] 4 Contract.

“Contract” means any lawful agreement for the Construction [or construction materials] of Public Works to which the County is a party and which is subject to the provisions of the Missouri Prevailing Wage Law.

1902.[4] 5 Contractor. “Contractor” means any prime or general Contractor doing business or operating as an individual or entity employing one (1) or more persons which has undertaken a Contract or Project as defined herein. In determining whether an individual or entity employs one (1) or more persons, the following rules shall govern:

a. Employees Counted.

All employees, including owner-employees, independent contractors, and all employees of every affiliate of the individual or entity, engaged in the Construction of Public Works [construction], shall be counted regardless of whether they are full-time or part-time, permanent or temporary.

b. Employees Not Counted.

Notwithstanding anything to the contrary, any employee who is an owner of the entity, and not performing work on the site, shall not be counted; and,

c. Evidence Required.

Every individual or entity claiming to be a Contractor shall submit documentary evidence, satisfactory to the CRO, verifying the number of its employees and the employees of its Affiliates, and the work being completed by those individuals or entities, and any other evidence deemed necessary to the CRO.

1902.[5] 6 Director of Finance and Purchasing.

“Director of Finance and Purchasing” means the County official charged with the administration of chapter 10 of this code. For the administration of Contracts for “construction projects,” as [defined] that term is used in section 1070. of this code, “Director of Finance and Purchasing” means the “Director of Public Works.”

1902.[6] 7 Prevailing Wage.

“Prevailing Wage” means the prevailing hourly rate of wages established for Jackson County, Missouri, by the Missouri Department of Labor and Industrial Relations, as listed in the applicable Annual Wage Order [, including the Annual Incremental Increases,] and in accord with the definition of Prevailing Hourly Rate of Wages in chapter 290, RSMo.

1902.8 Project.

A "Project" is an undertaking planned and designed to achieve a particular aim. A Project may encompass work by two or more Contractors, some or all of whom may have existing Contracts with the County. No Project may be split into smaller Projects valued at less than \$75,000 for the purpose of evading the requirement set out in section 1905.2 of this chapter to pay prevailing wage or public works contracting minimum wage.

1902.[7] 9 Subcontractor.

"Subcontractor" means any individual or entity employing one (1) or more person(s), which has undertaken by virtue of a separate Contract with another individual or entity, whether or not such individual or entity is a Contractor, to fulfill all or any part of the obligation of the other under a Contract with Jackson County, Missouri. In determining whether a subcontracting individual or entity employees one (1) or more person(s), the rules of section 1902.5 of this chapter shall govern.

1903. Compliance Review Officer (CRO)

In addition to other duties enumerated in chapter 6 of this code, it shall be the duty of the CRO to monitor construction companies awarded County Contracts or Projects to ensure compliance with the state of Missouri's Prevailing Wage Law and any other State or Federal Laws which may impact a company's ability to bid competitively. Specific prevailing wage duties authorized to be completed by the CRO include, but are not limited

to, those listed in section 1904. of this chapter. The using County department shall notify the CRO before work commences on any Construction of Public Works.

1905. Contractor Compliance.

All Contractors and Subcontractors contracting for the Construction of Public Works [construction] within the County shall comply with the State of Missouri Prevailing Wage Law, sections 290.210 through 290.340 and 290.550 through 290.580, RSMo (“the Law”), and 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030 (“the Regulations” or “the Wage Order”), [including any Annual Incremental Wage Increase (“Wage Increase”),] and this code. Each Contractor shall be ultimately responsible for the compliance of all its Subcontractors.

1905.1 Prevailing Wages to be Incorporated.

The Law, Regulations, Wage Order, and Wage Increases are to be incorporated into all [public works construction] Contracts and Subcontracts for the Construction of Public Works for the County.

1905.2 Prevailing Wages Required to be Paid.

Each Contractor shall pay, and require its Subcontractors to pay, workers performing work on Contracts or Projects within Jackson County, not less than the prevailing hourly rate of wages for the type of work performed in accordance with this section.

a. Exception for Contracts or Projects Less Than \$75,000.00.

This subsection shall not apply to those Contracts or Projects for which the engineer's estimate of the awarded contract cost is \$75,000.00 or less, which are excepted from the provisions of the Missouri Prevailing Wage Law by virtue of section 290.230.5, RSMo.

b. Exception for Registered Apprentices.

As authorized by section 290.235, RSMo, such workers who are individually registered in a bona fide apprenticeship program approved by the U.S. Department of Labor, Office of Apprenticeship, may be paid less than the journeyman rate of pay specified in the applicable wage order. Entry level workers, as that term is used in section 290.235, must be registered apprentices. The authorized apprenticeship utilization ratio shall be no greater than one-to-one, apprentice to journeyman of the same classification. Any worker on a County Project who is not registered as an apprentice in accordance with this subsection shall be paid as a journeyman, unless the applicable County Contract or Project is within the exception described in subsection 1905.2.a, above.

1905.3 Signage Required.

Each Contractor and Subcontractor engaged in a Contract or Project with the County that exceeds \$250,000 shall have its name, and acceptable abbreviation or recognizable logo, and the name of the city and state of the Contractor's or

Subcontractor's principal mailing address on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with such Contract or Project during the time the Contractor or Subcontractor is engaged on such Contract or Project. The signs shall be legible from a distance of twenty feet, but the size of the lettering need not be larger than two inches. In cases where the equipment is leased or where affixing a legible sign to the equipment is impractical, the Contractor may place a temporary stationary sign, with the information required pursuant to this subsection, at the main entrance of the location of the work on the Contract or Project in place of affixing the required information on the equipment, so long as such sign is not in violation of any state or federal statute, rule, or regulation. Motor vehicles which are required to have information affixed on them pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

1905.4. Each Contractor must correct any errors in the Contractor's or any Subcontractor's records, or any violations of the Law, Rules, Annual Wage Order, Incremental Wage Increases, or this chapter, within fourteen (14) days after notice from the County.

1905.5. Contractor Cooperation.

Each Contractor shall, and shall require its Subcontractors to, cooperate with any authorized representative of the County, the Missouri Department of Labor and Industrial Relations, or any other state or federal agency, in the enforcement of this

chapter, the Law, Rules, Annual Wage Order, and Incremental Wage Increases, and shall allow said representatives to interview any and all workers during working hours on any project, at Contractor's or Subcontractor's sole cost and expense.

1905.6 Penalty.

Each Contractor shall forfeit as a statutory penalty to the County one hundred dollars (\$100.00) for each worker employed, for each calendar day or portion thereof, such worker is paid less than the prevailing hourly rate of wages for any work done under a County Contract, by the Contractor or any of its Subcontractors, and additional penalties as provided in any other provision of this chapter. If the Contractor or any of its Subcontractors has violated the Law or this chapter in the course of the performance of a County Contract, the County shall, when making payments to the Contractor coming due under such Contract, withhold and retain all sums and amounts deemed due and owing as a result of any violations.

1905.7 Restitution to Workers.

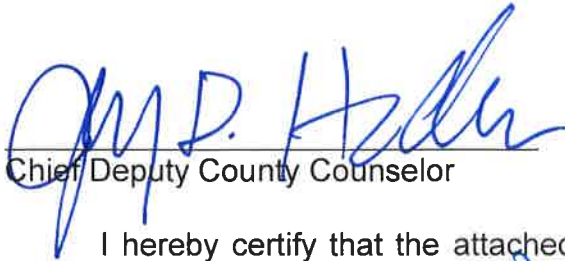
In the event a violation is found, the County has the authority to determine the amount of wages owed to workers as a result of that violation, to collect those wages on behalf of the workers, and distribute those wages to the affected workers.

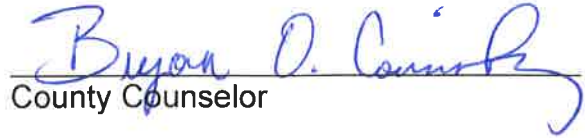
1905.8 Whistleblower Protection.

Any worker who provides information, complaints, or interviews, or who otherwise assists in an investigation of any violation of this chapter shall not be disciplined, discharged, or otherwise harmed for providing such assistance or information.

Effective Date: This ordinance shall be effective immediately upon its signature by the County Executive.

APPROVED AS TO FORM:


Chief Deputy County Counselor


County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5358 introduced on June 8, 2020, was duly passed on June 15, 2020 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

This Ordinance is hereby transmitted to the County Executive for his signature.

6-15-2020
Date


Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 5358.

6-15-2020
Date


Frank White, Jr., County Executive