

RESOLUTION NO. R2024.112

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, SUSPENDING THE OPERATION AND ENFORCEMENT OF ORDINANCE NO. O2024.18 REGARDING THE PAYMENT OF PREVAILING WAGES ON CITY CONSTRUCTION CONTRACTS PENDING THE OUTCOME OF LITIGATION IN THE MATTER OF ASSOCIATED MINORITY CONTRACTORS OF ARIZONA, ET AL. V. CITY OF PHOENIX ET AL. AND DIRECTING THE CITY ATTORNEY TO FILE AN AMICUS BRIEF IN SUPPORT OF DEFENDANTS CITY OF PHOENIX AND CITY OF TUCSON.

WHEREAS, on May 9, 2024, this Council adopted Ordinance No. O2024.18 amending Chapter 26A of the Tempe City Code which instituted a prevailing wage requirement for certain defined City public works contracts; and,

WHEREAS, Ordinance No. O2024.18 contains certain provisions similar to ordinances adopted by the cities of Phoenix and Tucson; and,

WHEREAS, the plaintiffs in the case of *Associated Minority Contractors of Arizona, et al v. City of Phoenix et al.*, Maricopa Superior Court Cause No. CV2024-001435 (“the lawsuit”), filed suit against Phoenix and Tucson and alleged that cities in Arizona are preempted from passing ordinances requiring the payment of prevailing wages; and,

WHEREAS, on June 21, 2024, the trial court in the lawsuit found that the ordinances of Phoenix and Tucson violated state law; and,

WHEREAS, Phoenix and Tucson have each appealed the trial court’s ruling with the Arizona Court of Appeals; and,

WHEREAS, the City of Tempe, although not a party in the lawsuit, is in support of the appeals filed by Phoenix and Tucson; and,

WHEREAS, the City Council believes that it is important to provide clarity to City employees and those entities contracting with the City who might otherwise be affected by Ordinance No. O2024.18 regarding whether the ordinance will be enforced at this time; and,

WHEREAS, it is the best interest of the City to suspend operation of Ordinance No. O2024.18 until a final disposition of the lawsuit is made through the Arizona court system;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA AS FOLLOWS:

1. That the operation of Ordinance No. O2024.18 is hereby suspended indefinitely, and the City Manager or designees are authorized to issue such agreements, solicitations, or other manner of public works contracting without a prevailing wage requirement;
2. That the City Attorney or designee is directed to monitor the lawsuit and periodically apprise this Council of the status and outcome of the lawsuit;
3. That the City Attorney or designee with the advice and consultation of the City Manager or designee is directed to take steps to seek permission for and file an Amicus Brief or such other legal documents that should demonstrate the City of Tempe's support for Phoenix and Tucson in the lawsuit; and
4. The City Manager, City Attorney or designees are further authorized to take such action and to execute such documents as may be necessary to carry out the purposes of this Resolution.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 5th day of September, 2024.

Corey D. Woods, Mayor

ATTEST:

Kara A. DeArrastia, City Clerk

APPROVED AS TO FORM:

Eric C. Anderson, City Attorney