

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING THE PAYMENT OF PREVAILING WAGES ON CITY PUBLIC WORKS CONTRACTS AND OTHER MEASURES REQUIRED TO REMAIN ELIGIBLE FOR STATE FUNDING AND FINANCIAL ASSISTANCE FOR CITY CONSTRUCTION PROJECTS UNDER CALIFORNIA LABOR CODE SECTION 1782 (ALSO KNOWN AS SB 7) UNLESS AND UNTIL SB 7 IS ENJOINED OR INVALIDATED

WHEREAS, the City of Chula Vista is a Charter City protected from State legislative interference in its municipal affairs by *the California Constitution, Article XI, Sec. 5(a)*; and

WHEREAS, in *State Building and Construction Trades Council of California, AFL-CIO v. Vista* (2012) 54 Cal.4th 547 (the "Vista Case"), the California Supreme Court determined that the subject of prevailing wage rates for locally funded public works projects is a municipal affair, and that Charter cities are not subject to the state law requirement to pay prevailing wages; instead, Charter cities have the independent authority to determine whether and when to paying prevailing wages as they deem appropriate; and

WHEREAS, in response to the Vista Case, with the intent of imposing the state's prevailing wage requirements on Charter cities with an indirect approach, the California Legislature adopted and the Governor signed Senate Bill 7 (SB 7), adding Section 1782 to the California Labor Code. By its terms, SB 7 disqualifies a charter city from receiving state funding for any construction project if that city has awarded within the prior two years a public works contract without requiring the contractor to pay prevailing wage rates; and

WHEREAS, in *City of El Centro et al v. Lanier* (Cal. Court of Appeal, Fourth District, Case No. D-066755), a group of charter cities filed suit to invalidate SB 7 on the grounds that it violates the Constitutional prohibition on interference in the municipal affairs of charter cities; and

WHEREAS, the *Lanier* case is pending before the Court of Appeal, and no injunction has been issued staying the effect of SB 7; and

WHEREAS, pursuant to Chula Vista Municipal Code Section 2.58.070, the policy of the City is to not pay prevailing wages on City contracts unless (A) The prevailing wage is legally required, and constitutionally permitted to be imposed, by federal or state grants; or (B) The project is considered by the City Council not to be a municipal affair of the city; or (C) Payment of the prevailing wage is authorized by resolution of the city council; and

WHEREAS, the City of Chula Vista desires to maintain its authority to determine on a local level whether and when to pay prevailing wages on locally funded projects, but is constrained by the prospect of losing state funds on all construction projects, a significant financial impact that would make it infeasible for the City to undertake certain critical infrastructure maintenance and improvement projects on which local residents depend; and

WHEREAS, in order to avoid the significant negative financial impact of losing state funding as a result of SB 7, the City Council has found and determined that it is in the best interests of the City to modify City policy regarding the payment of prevailing wage to require the payment of prevailing wages to the extent necessary to comply with SB 7 unless and until SB 7 is enjoined or invalidated;

WHEREAS, such Council action is expressly authorized by CVMC Section 2.58.070.C:

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista that it hereby authorizes and directs City staff to: (a) advertise, bid and award public works contracts (as defined in Labor Code section 1782(d)(1)) in conformance with the Public Contracting Code requirements regarding payment of prevailing wages; and (2) take such other measures required by SB 7 to remain eligible for state funding and financial assistance for City construction projects, including, without limitation, the development and implementation of appropriate administrative procedures.

BE IT FURTHER RESOLVED that this Resolution shall expire and be of no further force or effect immediately on the issuance of a preliminary or permanent injunction enjoining the state from enforcing SB 7, or the entry of any other court order that invalidates or suspends the operation of SB 7.

Presented by

Approved as to form by

Richard A. Hopkins
Director of Public Works

Glen R. Googins
City Attorney