



Legislation Text

File #: O-25-22, Version: 1

Revenue and Finance - Purchasing and Procurement - Prevailing Wage and Local Hiring - For the purpose of establishing prevailing wage and local hiring provisions applicable to specific types of capital improvement contracts; defining certain terms; adding the types of capital improvement contracts to which general wage provisions apply; allowing wage deductions in particular instances; requiring capital improvement contracts to include specific terms; adding worksite notice requirements; requiring maintenance of certain records relating to prevailing wage requirements; allowing audits and investigations of complaints of violations of overall wage requirements; adding local hiring requirements; adding reporting requirements for prevailing wage and local hiring data; establishing penalties for violations of prevailing wage and local hiring provisions; providing for the applicability of this ordinance; providing for a delayed effective date; generally relating to purchasing.

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 25-22

**Introduced by: Alderman Schandelmeier
Co-sponsored by:**

**Referred to
Finance Committee
Rules and City Government Committee**

AN ORDINANCE concerning

**REVENUE AND FINANCE - Purchasing and Procurement -
Prevailing Wage and Local Hiring**

FOR ESTABLISHING PREVAILING WAGE AND LOCAL HIRING PROVISIONS APPLICABLE TO SPECIFIC TYPES OF CAPITAL IMPROVEMENT CONTRACTS; DEFINING CERTAIN TERMS; ADDING THE TYPES OF CAPITAL IMPROVEMENT CONTRACTS TO WHICH PREVAILING WAGE PROVISIONS APPLY; ALLOWING WAGE DEDUCTIONS IN SPECIFIC INSTANCES; REQUIRING CAPITAL IMPROVEMENT CONTRACTS TO INCLUDE SPECIFIC TERMS; ADDING WORKSITE NOTICE REQUIREMENTS; REQUIRING MAINTENANCE OF CERTAIN RECORDS RELATING TO PREVAILING WAGE REQUIREMENTS; ALLOWING AUDITS AND INVESTIGATIONS OF COMPLAINTS OF VIOLATIONS OF PREVAILING WAGE REQUIREMENTS; ADDING LOCAL HIRING REQUIREMENTS; ADDING REPORTING REQUIREMENTS FOR PREVAILING WAGE AND LOCAL HIRING DATA; ESTABLISHING

PENALTIES FOR VIOLATIONS OF PREVAILING WAGE AND LOCAL HIRING PROVISIONS; PROVIDING FOR THE APPLICABILITY OF THIS ORDINANCE; PROVIDING FOR A DELAYED EFFECTIVE DATE; GENERALLY RELATING TO PURCHASING.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Code of the City of Annapolis shall be amended to read as follows:

Title 6 - REVENUE AND FINANCE
Chapter 6.08 - Purchasing and Procurement
Section 6.08.081 - Prevailing Wage

A. DEFINITIONS. IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

1. "APPRENTICE" MEANS AN INDIVIDUAL WHO:
 - a. IS AT LEAST 16 YEARS OLD; AND
 - b. HAS SIGNED AN AGREEMENT WITH AN EMPLOYER OR EMPLOYER'S AGENT, AN ASSOCIATION OF EMPLOYERS, AN ORGANIZATION OF EMPLOYEES, OR A JOINT COMMITTEE WITH MEMBERS FROM TWO OR MORE DIFFERENT ORGANIZATIONS THAT INCLUDES A STATEMENT OF:
 - i. THE TRADE, CRAFT, OR OCCUPATION THAT THE INDIVIDUAL IS LEARNING; AND
 - ii. THE BEGINNING AND ENDING DATES OF THE APPRENTICESHIP; AND
 - iii. IS REGISTERED IN A PROGRAM OF A COUNCIL OR BUREAU OF APPRENTICESHIP AND TRAINING THE UNITED STATES DEPARTMENT OF LABOR OR A FEDERALLY APPROVED STATE EQUIVALENT.

2. "CAPITAL IMPROVEMENT CONTRACT" MEANS A CONTRACT RELATED TO:
 - a. A CITY CAPITAL PROJECT WITH A VALUE OF MORE THAN \$100,000; OR
 - b. A CAPITAL PROJECT TO WHICH THE CITY CONTRIBUTES FUNDING WITH A VALUE OF MORE THAN \$5,000,000; HOWEVER
 - c. "CAPITOL IMPROVEMENT CONTRACT" DOES NOT INCLUDE A BLANKET CONTRACT OR OPEN-END AGREEMENT IN WHICH THE INDIVIDUAL PURCHASE ORDER ISSUED HAS A VALUE OF LESS THAN \$250,000.

3. "CAPITAL PROJECT" SHALL MEAN:
 - a. ANY PHYSICAL PUBLIC BETTERMENT OR IMPROVEMENT AND ANY PRELIMINARY STUDIES AND SURVEYS RELATIVE THERETO; AND
 - b. THE ACQUISITION OF PROPERTY OF A PERMANENT NATURE FOR PUBLIC USE; AND
 - c. THE PURCHASE OF EQUIPMENT FOR ANY PUBLIC BETTERMENT OR IMPROVEMENT WHEN FIRST CONSTRUCTED.

4. "CONTRACTOR" INCLUDES ALL SUBCONTRACTORS TO A CONTRACTOR ON A CAPITAL IMPROVEMENT CONTRACT AND MEANS A CONTRACTOR WHO:
 - a. HAS A CAPITAL IMPROVEMENT CONTRACT WITH THE CITY FOR MORE THAN \$100,000; OR
 - b. HAS A CONTRACT FOR A CAPITAL PROJECT TO WHICH THE CITY CONTRIBUTES FUNDING WITH A VALUE OF MORE THAN \$5,000,000.

5. "DEPARTMENT" MEANS THE DEPARTMENT DESIGNATED BY THE CITY MANAGER TO ADMINISTER AND ENFORCE THE CITY'S PREVAILING WAGE REQUIREMENTS UNDER THIS TITLE.

6. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT THAT ADMINISTERS AND ENFORCES THE CITY PREVAILING WAGE REQUIREMENTS OR THE DIRECTOR'S DESIGNEE.

7. "EMPLOYEE" MEANS AN APPRENTICE, LABORER, OR MECHANIC EMPLOYED BY A CONTRACTOR ON A CAPITAL IMPROVEMENT CONTRACT. "EMPLOYEE" DOES NOT INCLUDE AN INDIVIDUAL EMPLOYED BY THE CITY.

8. "MECHANICAL SERVICE CONTRACTS" MEANS CONTRACTS FOR SERVICE OF THE FOLLOWING SYSTEMS:
 - a. HVAC SYSTEMS, INCLUDING HEATING, VENTILATION, AND COOLING/AIR-CONDITIONING EQUIPMENT; AND

- b. ELECTRICAL SYSTEMS, TO INCLUDE ANY ELECTRICAL COMPONENTS THAT SUPPLY, DISTRIBUTE, AND USE ELECTRICAL POWER; AND
- c. ELEVATOR SYSTEMS, INCLUDING ESCALATORS, MOVING WALKWAYS, AND OTHER CONVEYANCES; AND
- d. OVERHEAD AND UNDERGROUND LINES, POLES, TRANSFORMERS, AND OTHER RELATED EQUIPMENT; AND
- e. PLUMBING SYSTEMS, INCLUDING PIPES, TANKS, FITTINGS, AND OTHER ELEMENTS THAT CONTROL THE WATER AND GAS SUPPLY, HEATING, AND SANITATION OF A BUILDING; AND
- f. REFRIGERATION SYSTEMS.

9. "OVERTIME RATE" MEANS THE RATE A CONTRACTOR SHALL PAY AN EMPLOYEE AT A RATE EQUAL TO OR MORE THAN THE REGULAR PREVAILING WAGE RATE FOR OVERTIME FOR THE TYPE OF WORK PERFORMED FOR EACH HOUR THAT THE EMPLOYEE PERFORMS DIRECT AND MEASURABLE WORK:

- a. MORE THAN EIGHT HOURS IN ANY SINGLE CALENDAR DAY; AND
- b. MORE THAN 40 HOURS IN A WORKWEEK; OR ON A SUNDAY OR A LEGAL HOLIDAY.

10. "PREVAILING WAGE" MEANS THE BASIC HOURLY RATE AND FRINGE BENEFIT RATE ESTABLISHED ANNUALLY BY THE STATE COMMISSIONER OF LABOR AND INDUSTRY FOR STATE-FUNDED CONSTRUCTION CONTRACTS AT THE TIME OF THE AWARD OF THE CAPITAL IMPROVEMENT CONTRACT.

B. APPLICABILITY.

- 1. ALL MECHANICAL SERVICE CONTRACTS, AS DEFINED IN TITLE 6 § 08.081, AT OR ABOVE THE AMOUNT CODIFIED AT 41 U.S.C. 6702(A)(2), THE MCNAMARA-O'HARA SERVICE CONTRACT ACT OF 1965 (SCA), SHALL BE PREVAILING WAGE CONTRACTS.

2. THIS SECTION DOES NOT APPLY TO A CAPITAL IMPROVEMENT CONTRACT:
 - a. SUBJECT TO A FEDERAL OR STATE PREVAILING WAGE LAW; OR
 - b. AWARDED WITHOUT COMPETITION; OR
 - c. WITH ANOTHER GOVERNMENTAL ENTITY; OR
 - d. TO THE EXTENT THAT THE CONTRACTOR IS EXPRESSLY PRECLUDED FROM COMPLYING WITH THIS SECTION BY THE TERMS OF ANY FEDERAL OR STATE LAW, CONTRACT, OR GRANT; OR
 - e. ENTERED INTO AS A JOINT OR COOPERATIVE PURCHASE; OR
 - f. ENTERED INTO AS AN EMERGENCY PURCHASE.

C. PREVAILING WAGE REQUIRED. A CONTRACTOR THAT PERFORMS DIRECT AND MEASURABLE CONSTRUCTION WORK ON A CAPITAL IMPROVEMENT CONTRACT SHALL PAY EACH:

1. EMPLOYEE AT A RATE EQUAL TO OR MORE THAN THE PREVAILING WAGE RATE CURRENTLY IN EFFECT FOR THE TYPE OF WORK PERFORMED; AND
2. APPRENTICE AT LEAST THE RATE THAT THE STATE'S APPRENTICESHIP AND TRAINING COUNCIL SETS FOR AN APPRENTICE IN THE TRADE INVOLVED, BASED ON A PERCENTAGE OF THE PREVAILING WAGE RATE IN THAT TRADE.

D. WAGE DEDUCTIONS PERMITTED. A CONTRACTOR MAY MAKE ONLY FAIR AND REASONABLE DEDUCTIONS THAT ARE:

1. REQUIRED BY LAW; AND
2. AUTHORIZED IN A WRITTEN AGREEMENT BETWEEN THE EMPLOYEE AND THE CONTRACTOR SIGNED AT THE BEGINNING OF EMPLOYMENT THAT:
 - a. CONCERNS FOOD, SLEEPING QUARTERS, OR SIMILAR ITEMS; AND
 - b. IS SUBMITTED BY THE CONTRACTOR TO THE DIRECTOR; OR
 - c. REQUIRED OR ALLOWED BY A COLLECTIVE BARGAINING AGREEMENT BETWEEN A BONA-FIDE LABOR ORGANIZATION AND A CONTRACTOR.

E. CONTRACT REQUIREMENTS. A CAPITAL IMPROVEMENT CONTRACT:

1. SHALL REQUIRE THE CONTRACTOR TO COMPLY WITH THIS SECTION;

2. SHALL SPECIFY THAT AN AGGRIEVED EMPLOYEE OR APPRENTICE, AS A THIRD-PARTY BENEFICIARY, MAY BY A CIVIL ACTION AGAINST THE CONTRACTOR, RECOVER THE DIFFERENCE BETWEEN THE PREVAILING WAGE FOR THE TYPE OF WORK PERFORMED AND THE AMOUNT ACTUALLY RECEIVED, WITH INTEREST AND REASONABLE ATTORNEY’S FEES, AS APPLICABLE; AND
3. MAY SPECIFY THE PAYMENT OF LIQUIDATED DAMAGES OWED TO THE CITY BY THE CONTRACTOR FOR NONCOMPLIANCE WITH THIS SECTION OF NOT MORE THAN THREE TIMES THE AMOUNT OF WAGES OWED TO AN EMPLOYEE OR APPRENTICE.

F. PROHIBITIONS. A CONTRACTOR MAY NOT:

1. SPLIT OR SUBDIVIDE A CAPITAL IMPROVEMENT CONTRACT OR A SUBCONTRACT AWARDED PURSUANT TO THE CAPITAL IMPROVEMENT CONTRACT; OR
2. PAY AN EMPLOYEE THROUGH A THIRD PARTY, OR TREAT AN EMPLOYEE AS A SUBCONTRACTOR OR INDEPENDENT CONTRACTOR TO AVOID ANY REQUIREMENT OF THIS SECTION; OR
3. EMPLOY AN INDIVIDUAL CLASSIFIED AS A HELPER OR TRAINEE TO PERFORM DIRECT AND MEASURABLE WORK UNDER A CAPITAL IMPROVEMENT CONTRACT.

G. NOTICE REQUIRED. A CONTRACTOR SHALL PROMINENTLY POST AT THE WORKSITE A CLEARLY LEGIBLE STATEMENT IN ENGLISH AND ANY OTHER LANGUAGE THAT IS PRIMARILY SPOKEN BY THE EMPLOYEES AT THE WORKSITE THAT STATES EACH PREVAILING WAGE RATE.

H. RECORDS.

1. A CONTRACTOR SHALL SUBMIT A CERTIFIED COMPLETE COPY OF ITS PAYROLL RECORDS FOR A CAPITAL IMPROVEMENT CONTRACT COVERED BY THIS SECTION TO THE DIRECTOR WITHIN 14 DAYS AFTER THE END OF EACH PAYROLL PERIOD.
2. THE PAYROLL RECORDS SHALL CONTAIN A STATEMENT SIGNED BY THE CONTRACTOR CERTIFYING THAT:
 - a. THE PAYROLL RECORDS ARE COMPLETE AND CORRECT;
 - b. THE WAGE RATES PAID ARE NOT LESS THAN THOSE REQUIRED BY THIS SECTION; AND

- c. THE RATE OF PAY AND CLASSIFICATION FOR EACH EMPLOYEE ACCURATELY REFLECTS THE WORK THE EMPLOYEE PERFORMED.

3. PAYROLL RECORDS SHALL INCLUDE:

- a. THE NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL OF THE CONTRACTOR; AND
- b. THE NAME AND LOCATION OF THE JOB; AND
- c. EACH EMPLOYEE'S:
 - i. NAME; AND
 - ii. CURRENT ADDRESS, UNLESS PREVIOUSLY REPORTED; AND
 - iii. SPECIFIC WORK CLASSIFICATION; AND
 - iv. DAILY BASIC TIME AND OVERTIME HOURS; AND
 - v. TOTAL BASIC TIME AND OVERTIME HOURS FOR THE PAYROLL PERIOD; AND
 - vi. RATE OF PAY; AND
 - vii. FRINGE BENEFITS BY TYPE AND AMOUNT;

AND

- viii. GROSS WAGES.

4. CONTRACTOR SHALL:

- a. MAINTAIN PAYROLL RECORDS COVERING A CAPITAL IMPROVEMENT CONTRACT COVERED BY THIS SECTION FOR NOT LESS THAN FIVE YEARS AFTER THE WORK IS COMPLETED; AND
- b. SUBJECT TO REASONABLE NOTICE, PERMIT THE DIRECTOR TO INSPECT THE PAYROLL RECORDS AT A REASONABLE TIME AND AS OFTEN AS NECESSARY.

5. THE DIRECTOR SHALL:

- a. MAINTAIN PAYROLL RECORDS COVERING A CAPITAL IMPROVEMENT CONTRACT COVERED BY THIS SECTION FOR NOT LESS THAN FIVE YEARS AFTER THE WORK IS COMPLETED; AND,
- b. SUBJECT TO ANY REQUIRED EXEMPTIONS OR DENIALS UNDER THE ANNAPOLIS PUBLIC INFORMATION ACT OR ANY OTHER APPLICABLE OPEN PUBLIC RECORDS LAWS, SHALL MAKE THE RECORDS AVAILABLE FOR PUBLIC INSPECTION DURING REGULAR BUSINESS HOURS.

I. **AUDITS.** THE DIRECTOR MAY PERFORM RANDOM OR REGULAR AUDITS AND INVESTIGATE ANY COMPLAINT OF A VIOLATION OF THIS SECTION.

J. **VIOLATIONS.**

1. IF THE DIRECTOR DETERMINES THAT A PROVISION OF THIS SECTION HAS BEEN VIOLATED, THE DIRECTOR:
 - a. SHALL ISSUE A WRITTEN DECISION, INCLUDING APPROPRIATE SANCTIONS; AND
 - b. MAY WITHHOLD FROM PAYMENT DUE TO THE CONTRACTOR, PENDING A FINAL DECISION, AN AMOUNT SUFFICIENT TO:
 - i. PAY EACH EMPLOYEE OF THE CONTRACTOR THE FULL AMOUNT OF WAGES DUE UNDER THIS SECTION; AND
 - ii. SATISFY A LIABILITY OF A CONTRACTOR FOR LIQUIDATED DAMAGES AS PERMITTED IN THIS SECTION.

2. A CONTRACTOR MAY APPEAL THE DECISION WITHIN 10 WORKING DAYS AFTER RECEIVING A COPY OF THE DECISION.
 - a. THE CONTRACTOR MUST PROVIDE A WRITTEN RESPONSE TO THE CITY'S PROCUREMENT OFFICER.
 - b. WITHIN A REASONABLE TIME AFTER RECEIPT OF THE APPEAL, THE PROCUREMENT OFFICER MAY INVESTIGATE, REQUEST WRITTEN TESTIMONY, OR CONDUCT A HEARING, AS THE PROCUREMENT OFFICER DEEMS NECESSARY FOR THE REVIEW OF THE APPEAL.
 - c. THE DECISION OF THE PROCUREMENT OFFICER ON THE APPEAL IS FINAL AND NOT SUBJECT TO APPEAL.
 - d. IF THE CONTRACTOR DOES NOT APPEAL THE DIRECTOR'S DECISION WITHIN 10 WORKING DAYS AFTER RECEIPT, THE DECISION OF THE DIRECTOR IS DEEMED FINAL AND NOT APPEALABLE.

3. IF THE FINAL DECISION OF THE DIRECTOR, OR THE PROCUREMENT OFFICER AFTER APPEAL, IS THAT THE CONTRACTOR HAS VIOLATED THE PROVISIONS OF THIS SECTION AND THAT THE VIOLATION WAS INTENTIONAL, AT THE

DISCRETION OF THE DIRECTOR, THE CONTRACTOR, ANY OF THEIR PRINCIPALS, OR ANY FIRM, CORPORATION, PARTNERSHIP, OR OTHER BUSINESS ENTITY IN WHICH THAT CONTRACTOR HAS AN INTEREST, MAY NOT BE AWARDED A CITY CONTRACT AND MAY NOT PERFORM ANY WORK ON ANY CITY CONTRACT FOR ONE YEAR FROM THE DATE OF THE FINAL DECISION.

4. A CONTRACTOR MAY NOT DISCHARGE OR OTHERWISE RETALIATE AGAINST AN EMPLOYEE FOR ASSERTING ANY RIGHT UNDER THIS SECTION OR FOR FILING A COMPLAINT OF A VIOLATION.
5. A CONTRACTOR IS JOINTLY AND SEVERALLY LIABLE FOR A SUBCONTRACTOR'S NONCOMPLIANCE WITH THIS SECTION.
6. IF A CONTRACTOR IS LATE IN SUBMITTING COPIES OF PAYROLL RECORDS REQUIRED TO BE SUBMITTED UNDER THIS SECTION, THE CITY MAY DEEM THE INVOICES DEFICIENT UNTIL THE CONTRACTOR PROVIDES THE REQUIRED RECORDS AND MAY POSTPONE PROCESSING PAYMENTS DUE UNDER THE CONTRACT.

K. REPORT. THE DIRECTOR SHALL ANNUALLY PUBLISH AND POST ON THE CITY'S WEBSITE A REPORT ON THE OPERATION OF AND COMPLIANCE WITH THIS SECTION.

L. POLICIES AND GUIDELINES. THE DIRECTOR MAY PROMULGATE SUCH REGULATIONS, POLICIES, AND GUIDELINES AS MAY BE REQUIRED FROM TIME TO TIME FOR THE PROPER IMPLEMENTATION AND ENFORCEMENT OF THIS SECTION.

Title 6 - REVENUE AND FINANCE
Chapter 6.08 - Purchasing and Procurement
SECTION 6.08.082 - LOCAL HIRING.

A. DEFINITIONS. TERMS IN THIS SECTION HAVE THE MEANINGS INDICATED IN TITLE 6 § 08.081.A.

B. LOCAL HIRING. A CONTRACTOR SHALL MAKE BEST EFFORTS TO FILL AT LEAST 51% OF NEW JOBS REQUIRED TO COMPLETE THE CAPITAL IMPROVEMENT CONTRACT OR THE CAPITAL PROJECT WITH CITY OF ANNAPOLIS OR ANNE ARUNDEL COUNTY RESIDENTS.

C. REPORTING. THE CONTRACTOR SHALL SUBMIT QUARTERLY REPORTS TO THE DIRECTOR, ON THE FORM DESIGNATED BY THE DIRECTOR, WHICH INCLUDES THE FOLLOWING WITH RESPECT TO THE CAPITAL IMPROVEMENT CONTRACT OR CAPITAL PROJECT:

1. THE NUMBER OF NEW HIRES NEEDED FOR THE CONTRACT DURING THE REPORTING PERIOD; AND
2. THE TOTAL NUMBER OF CITY OF ANNAPOLIS OR ANNE ARUNDEL CITY RESIDENTS HIRED DURING THE REPORTING PERIOD; AND
3. THE TOTAL NUMBER OF ALL EMPLOYEES HIRED DURING THE REPORTING PERIOD; AND
4. DESCRIBE EFFORTS MADE TO FILL THE OPEN POSITIONS WITH CITY OR COUNTY RESIDENTS; AND
5. INFORMATION ABOUT NEW HIRES DURING THE REPORTING PERIOD THAT INCLUDES:
 - a. NAME; AND
 - b. LAST FOUR NUMBERS OF THEIR SOCIAL SECURITY NUMBER; AND
 - c. JOB TITLE; AND
 - d. HIRE DATE; AND
 - e. ADDRESS; AND
 - f. REFERRAL SOURCE.

D. VIOLATIONS.

1. IF THE DIRECTOR DETERMINES THAT A CONTRACTOR HAS NOT MADE BEST EFFORTS OR REPORTED AS REQUIRED UNDER THIS SECTION, THE DIRECTOR SHALL INVESTIGATE SAID FAILURE TO REPORT AS REQUIRED AND ISSUE A WRITTEN NOTICE OF VIOLATION DETAILING THE FAILURES TO REPORT AND ANY INVESTIGATION FINDINGS AND ANY ASSOCIATED PENALTIES ASSESSED.
2. A CONTRACTOR MAY APPEAL A WRITTEN DECISION OF THE DIRECTOR THAT THE

CONTRACTOR VIOLATED A PROVISION OF THIS SECTION BY FOLLOWING THE PROTEST AND APPEAL PROCEDURES PROVIDED IN TITLE 6 § 08.330 THROUGH TITLE 6 § 08.360

3. IF A CONTRACTOR IS LATE IN SUBMITTING REPORTS REQUIRED TO BE SUBMITTED UNDER THIS SECTION, THE CITY MAY POSTPONE PROCESSING PAYMENTS DUE UNDER THE CONTRACT UNTIL THE REQUIRED REPORTS ARE SUBMITTED.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this ordinance shall take effect from the date of its passage.

Explanation:

UPPERCASE indicates matter added to existing law.
~~Strikethrough~~ indicates matter stricken from existing law.
Underlining indicates amendments.