

# Are Charter Cities Taking Advantage of State-Mandated Construction Wage Rate ("Prevailing Wage") Exemptions?

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CALIFORNIA

**CONSTRUCTION  
COMPLIANCE GROUP**

The Labor Compliance Equalizer

# Introduction

## Preface to the Third Edition:

This Guide Is More Relevant Than Ever to the People of California

The first edition (July 2009) and second edition (January 2011) of this first and only guide to the status of government-mandated construction wage rate policies in California's charter cities (now numbering [121 cities](#) – up from [107 cities in May 2007](#)) were downloaded more than one thousand times from July 2009 to the time of this writing. It clearly intrigued and inspired political, business, and community leaders in the economically beleaguered, budget-challenged State of California.

Like the first two editions, this edition is provided to the people of California free of charge as a resource to comply with or consider local policies concerning government-mandated wage rates (so-called “prevailing wages”) for taxpayer-funded or taxpayer-assisted construction projects.

Four developments in 2012 have spurred demand for this third edition of this guide.

1. After five years, the California courts have [finally resolved](#) a lawsuit filed by an umbrella group for construction unions alleging that the City of Vista and other charter cities cannot legally establish their own government-mandated wage policies even for purely locally funded construction. The City of Vista won the case at all court levels, including at the California Supreme Court on July 2, 2012.
2. Difficult fiscal circumstances continued unabated in the State of California and its local governments. More than ever, budget challenges are compromising the ability of the state and its local governments to maintain their workforce, fulfill pension obligations for their retirees, and provide adequate services to their citizens and other residents.

How can charter cities balance their budgets without raising taxes on residents and businesses and without cutting city services and operations? One way is to enact policies that allow wage rates for city construction contracts to more accurately reflect economic conditions in the local market region. For example, it makes no sense for a charter city to reduce library hours and furlough city employees so that it can continue to pay inflated state-mandated construction wage rates on routine installation, alteration, and repair contracts.

3. Voters throughout the United States – and even in California – recognize the need to curb excessive governmental costs imposed by laws that are enacted and sustained for the benefit of labor unions. Americans have noticed how Wisconsin government leaders risked their political careers by trimming back on some of the terms and conditions of collective bargaining for certain public employees. The failed recall of Wisconsin Governor Scott Walker on June

5, 2012 sent a stunning message to the country's political leaders that many voters see a legitimate need in the country's fifth year of shaky economic conditions for fundamental labor law reforms.

4. As Wisconsin has been the national leader in addressing labor laws on the state level, local governments in California have served as the national leaders in addressing labor laws on the local government level. Here are four prominent examples:

- On June 5, 2012, 66% voters in the City of San Diego (the country's eighth most populous city) and 69% of voters in the City of San José (the country's tenth most populous city) approved ballot measures that addressed city employee pension programs. ([Proposition B](#) in San Diego; [Measure B](#) in San José.)
- In a 15 day period in the summer of 2012, the California cities of Stockton, Mammoth Lakes, and San Bernardino followed the lead of the City of Vallejo (in 2008) and declared Chapter 9 bankruptcy, thus allowing these cities to restructure their collective bargaining agreements for city public employees. Several other California cities are close to filing for bankruptcy.
- Voters have considered, enacted, or will consider proposed charters in several cities that include a provision authorizing the city to establish its own policies for government-mandated construction wage rates on public works construction for projects, in which the only source of government funding or indirect financial assistance comes from that city. (These policies are the topic of this report.)
- Starting in the fall of 2009, voters or elected governing boards in [more than a dozen California local governments](#) enacted or considered prohibitions on government mandates for construction companies to sign Project Labor Agreements with unions as a condition of winning a contract.

Despite these four developments, the governing majority in the California State Legislature is not giving local governments any respite from the cost of state-mandated construction wage rates. As shown by votes in the California Assembly, Labor and Employment Committee on January 4, 2012, the legislature is adamantly and utterly unwilling to buck the intransigence of the State Building and Construction Trades Council of California and move a bill that would more honestly define public works ([Assembly Bill 987](#)) or move a bill that would allow the state to more accurately calculate prevailing wage rates ([Assembly Bill 988](#)).

In fact, on April 18, 2012, the Assembly Labor and Employment Committee rejected an extremely modest bill that would have increased the project cost threshold for state-mandated construction wage rates from \$1000 to \$2000 in order to match the federal Davis-Bacon Act project cost threshold ([Assembly Bill 1958](#)). Obviously, there is no chance anytime

soon that the Democrat majority in the California State Legislature will do anything opposed by the trade unions to reform or update these state laws, even while California courts repeatedly take the opportunity in their decisions to criticize how these laws are written.

That leaves 121 charter cities as the only California local governments with the power to check and balance these costly state laws. Barring interference by the state legislature, one can expect the number of charter cities to grow substantially in the next few years.

This third edition of the guide to the status of government-mandated construction wage rates in California's charter cities provides all the information necessary for charter cities considering exercising their constitutionally-guaranteed right to determine the government-mandated wage rate policies in their own municipal construction contracts.

I intend this guide to give California taxpayers a rare and satisfying victory against the relentless special interests that are driving our state into bankruptcy.

**Kevin Dayton**

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Roseville, California

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# Background on Charter Cities, Public Works Construction, and California's State-Mandated Construction Wage Rates



## 1. Examining the Right of Charter Cities to Establish Their Own Policies Concerning Government-Mandated Construction Wage Rates

While neither the federal government nor the State of California seems capable of controlling costs or balancing its budget, city governments in California still have ample opportunities to cut costs for taxpayers and encourage economic growth and job creation in their communities. One of the most conspicuous ways for city governments to reduce spending and increase revenue is to exempt contractors from paying costly state-mandated prevailing wage rates. This report makes the following recommendations to city governments:

- Charter cities need to exercise their right to exempt contractors from paying costly state-mandated prevailing wage rates. These exemptions would apply to (1) purely locally-funded public works projects and (2) private construction projects that receive any sort of local government subsidies or other local government benefits with an identifiable financial value.
- General law cities should become charter cities in order to exercise their right to exempt contractors from paying costly state-mandated prevailing wage rates.

This report will make the argument for these objectives by explaining and analyzing the following issues:

- A municipal government's status as a charter city includes the right to exempt its locally-funded construction projects (public and private) from costly state-mandated construction wage rates.
- There are numerous reasons for a municipal government to exempt its locally-funded construction projects (public and private) from costly state-mandated construction wage rates. Most significantly, the State of California determines (calculates) so-called prevailing wage rates for construction trades in an absurd way that usually results in wage rates for local government contracts that are much higher than actual market rates.

Finally, the report will provide background on where local governments have exempted locally-funded construction projects (public and private) from costly state-mandated construction wage rates. It will summarize the current legislative status of government-mandated construction wage rate requirements among California's 121 charter cities and report on recent legislative efforts among charter cities to change government-mandated wage policies. It also reports on recent efforts in general law cities to enact charters and contains a strategic guide for cities to overcome the political obstacles to exempting locally-funded construction projects (public and private) from costly state-mandated construction wage rates.

## **2. Under What Authority Does a Charter City Exempt Its Local Construction from State-Mandated Construction Wage Rates?**

Under Government Code Section 34100-34102, cities organized under a charter shall be “chartered cities.” Cities organized under the general law shall be “general law cities.”

Article IX, Section 3 of the California Constitution describes how a general law city can organize under a charter. The provisions of a charter are the law of the State and have the force and effect of legislative enactments. The League of California Cities provides comprehensive information about charter cities, including a list of the 121 charter cities and the procedure to become a charter city, at this web site:

<http://www.cacities.org/chartercities>

Article IX, Section 5 of the California Constitution states that “it shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.” This power for charter cities to establish their own rules when governing their own municipal affairs is commonly called “Home Rule.”

## **3. The Prevailing Wage Exemption Is Legal: the California Supreme Court Ended Five Years of Legal Uncertainty and Upheld the Constitutional Right of Charter Cities to Establish Their Own Prevailing Wage Policies**

Starting in the summer of 2007, the [State Building and Construction Trades Council of California](#) relied on a lawsuit it filed against the City of Vista as a tool to discourage charter cities from legislatively or administratively establishing their own policies concerning government-mandated construction wage rates for purely municipal construction projects.

After [67% of voters](#) in the City of Vista approved [their city charter](#) through Proposition C in June 2007 and gave their city council authority to establish the city’s own prevailing wage policies, the city council moved promptly (on a 5-0) vote to sidestep a state requirement for [state-mandated construction wage rates](#) on \$100 million of upcoming construction projects, including new fire stations. Based on studies and anecdotes, city staff estimated savings to taxpayers of up to 20%.

Union officials challenged the constitutional basis for this decision. They claimed the total hourly wage rates that contractors paid to their construction trade workers were a matter of statewide concern, even when the funding was provided exclusively by City of Vista taxpayers. For example, the State Building and Construction Trades Council asserted on page

20 of [its opening brief](#) to the California Supreme Court that “construction workers today routinely commute to projects outside the cities in which they happen to live” and “it is not uncommon for today’s construction workers to commute more than 100 miles to work at a job site.” That these statements undermine Project Labor Agreements their claims that union-only project labor agreements enhance local hiring is a point union officials probably hope the public will miss.

During oral arguments before a state appeals court in San Diego County, the union [attorney argued in a dialogue](#) with two judges that “when the people as a whole deal through the legislature with a problem that does have real extra-municipal dimension, the interests of an individual locality have to yield.” This statement was in response to questions from the judges asking if a charter city would be justified in exempting its fire station construction from state-mandated construction wage rates if those rates imposed a cost that would prevent the city from actually building those proposed fire stations. (The court hearing occurred one year after devastating fires in San Diego County.)

If these union arguments had provided sufficient evidence to fulfill a constitutional test showing that government-mandated construction wage rates were indeed a matter of statewide concern, the courts would have found the Vista City Council to have violated the law when it used its charter authority to exclude [state-mandated construction wage rates](#) from its bid specifications. Instead the courts sided with the City of Vista.

The State Building and Construction Trades Council of California persisted in its lawsuit, even after a San Diego County [Superior Court decision \(December 6, 2007\)](#) and a California [Court of Appeals decision \(April 28, 2009\)](#) sided with the City of Vista. The union attack on the home rule rights of California’s charter cities came to a conclusive end on July 2, 2012. The California Supreme Court crushed the union argument with a 5-2 *decision* in *State Building Trades Council v. City of Vista* upholding the constitutional right of charters to set its own prevailing wage policies. See the decision [here](#).

It is unclear whether or not union officials actually believed their arguments were valid, or simply used them as a political tactic to discourage additional charter cities from establishing their own policies concerning government-mandated construction wage rates. Top union officials were likely aware that their lingering lawsuit effectively discouraged several city councils from taking the risk to free their purely municipal construction contracts from the state-imposed wage rates.

#### **4. There Are Many Good Reasons for a Charter City to Avoid State Laws Concerning Government-Mandated Construction Wage Rates**

California has the most complicated, convoluted, expansive laws concerning government-mandated construction wage rates in the country. For example, it is noteworthy (but not surprising) that two recent California court decisions have remarked wryly about the law defining public works: “As statutes go, Section 1720 is hardly a triumph of the drafter’s art.”

A 1995 study by economist A.J. Theoblot (*State Prevailing Wage Laws: An Assessment at the Start of 1995*) ranked the state-mandated construction wage rate laws of California as the third most onerous (behind Massachusetts and New York). But from 1999 to 2003, the California State Legislature and Governor Gray Davis added numerous provisions to the California Labor Code and expanded the coverage and cost of state-mandated construction wage rates:

- Senate Bill 16 (1999) required the state to determine prevailing wages by obtaining collective bargaining agreements and using the modal method to calculate the rates. It also designated holidays listed in the applicable collective bargaining agreements as the days for which construction trade workers must be paid special state-mandated construction wage rates for holidays, as opposed to recognizing the holidays designated in state law.
- Assembly Bill 302 (1999) imposed state-mandated construction wage rates on the hauling of refuse from a public works site to an outside disposal location.
- Assembly Bill 1646 (2000) required contractors to engage in cumbersome “annualization” of credits for employer payments against the general prevailing rate of per diem wages.
- Senate Bill 1999 (2000) expanded state-mandated construction wage rates to professional services, such as land surveying, building inspectors, materials testers, and other design and pre-and-post-construction services that are not traditionally defined as construction trades work.
- Senate Bill 588 (2001) allowed union-affiliated labor-management cooperation committees to obtain from governments (such as cities) the home addresses of employees through certified payroll records submitted by their employers. (Yes, a city is obligated under state law to compromise the personal privacy of the employees of its construction contractors.)
- Senate Bill 975 (2001) expanded the definition of public works to numerous private projects, thus requiring affordable housing developers and other private owners and developers to submit to state-mandated construction wage rates. Subsequent regulatory actions and court decisions (such as the notorious *Azusa Land Partners v. Department of Industrial Relations* decision in 2010) have entangled private builders and their contractors in massive project cost increases or costly wage and penalty assessments.
- Senate Bill 868 (2003) incorporated employer payments into state-mandated construction wage rates that are indicated in collective bargaining agreements but not designated as bona fide benefits that accrue to the direct benefit of the employees. Some of these payments are made to union-affiliated funds used for lobbying and political activities.

The frequency of lawsuits and administrative actions concerning prevailing wage demonstrate not so much an unwill-

ingness of contractors to abide by the law but the ambiguity of the law itself. The Director of the California Department of Industrial Relations is constantly issuing “determinations” to decide what obscure conditions subject a privately-owned project to prevailing wage requirements.

## **5. The Term “Prevailing Wage” Is a Misnomer That Deceives California Citizens**

In a moderately-regulated free market, how can the government of the State of California actually determine a “prevailing wage” – including health benefits, pension benefits, vacation, sustenance, travel costs, training expenses, and payments to other union-affiliated programs (regarded incorrectly by the state as compensation) – for every construction trade in every geographical region of the state? The answer is that the State cannot and does not determine true prevailing wages.

Contrary to the impression that most people have when they hear about the concept of prevailing wages, the state doesn’t determine construction wage rates through surveys of local contractors or workers. It does not look at wage statistics compiled by the California Economic Development Department. It does not determine the average wage or even the median wage for workers.

Instead, as a result of a bill signed in 1999 by Governor Gray Davis (Senate Bill 16), the state determines the prevailing wage using the “modal rate,” or the single rate paid to the greatest number of workers. [See Labor Code §1773.9(b)(1)] In a free market, workers are paid a variety of rates, so the single rate paid to the greatest number of workers is almost always the rate for union workers under a collective bargaining agreement.

The state sets its government-mandated construction wage rates by simply obtaining the collective bargaining agreements from unions with jurisdiction in a specific geographic region for a specific trade and adopting the rates contained in those agreements as the prevailing wages. [See Labor Code §1773] The applicable agreements are filed at the Division of Labor Statistics and Research office.

Such a policy establishes strange conditions for prevailing wage rates. For example, the Northern California Carpenters collective bargaining agreement negotiated with Associated General Contractors from 2000-2004 included a provision increasing the prevailing wages when a project was worth \$25 million or more. The state dutifully incorporated this provision into the prevailing wage rates without interpretation or explanation, even though there is nothing in state law that authorizes a higher prevailing wage as the project cost increases. To complicate matters, another construction trade association then contended that its collective bargaining agreement for carpenters superseded the one with the \$25 million project threshold because its agreement represented a greater number of carpenters.

Some collective bargaining agreements encompass a very large area. For example, 10 trades have a statewide agree-

ment – including Ironworker – and 26 trades have a Northern California agreement – including Carpenter, Laborer, Drywaller, and Operating Engineer. While some of these collective bargaining agreements divide Northern California into two or more regions with common wage rates reflected in the state-mandated construction wage rates, these regional classifications of union agreements commonly incorporate rural areas of the state with major urban centers where the cost of living is higher.

## **6. State-Mandated Construction Wage Rates Now Include Fees for Union Programs**

In 2003, Governor Gray Davis signed into law Senate Bill 868, which added to prevailing wage the payments indicated in collective bargaining agreements for labor compliance programs, so-called industry advancement funds, and collective bargaining agreement administrative fees. [See Labor Code §1773.1(a)7-9] These payments are incorporated into a category in prevailing wage determinations known as “Other.”

For example, when a local government requires contractors to pay state-mandated construction wage rates to carpenters in Northern California, the amount incorporates payments to the following funds listed in the Northern California collective bargaining agreement for Carpenters:

- California Construction Advancement Program
- California Builders Advancement Program
- Builders Industry Promotion Trust Fund
- Construction Industry Advancement Fund
- Building Industry Marketing Program
- Carpenter Employers Contract Administration Trust Fund
- Carpenters Work Preservation Committee Trust

## **7. “Public Works” Now Encompasses Much More than Government Projects**

As a result of Senate Bill 975, signed into law by Governor Gray Davis in 2001, public works are now much more than city roads, firehouses, libraries, and projects most people would recognize as government buildings. Public works are now any privately-funded and privately-built projects that receive grants from the city, or transfers of assets from the city for less than market value, or loans from the city to be repaid on a contingent basis, or fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the city. (See Labor Code 1720)

SB 975 has discouraged developers from building numerous commercial projects. In particular, it discourages the construction of affordable housing. It also discourages community organizations or businesses from applying for city

grants for construction-related work.

## **8. Laws Imposing Costly State-Mandated Construction Wage Rates Also Impose Duties on Local Governments Such as Notifications, Monitoring, Recordkeeping, Legal Interpretation, Compliance, and Enforcement**

The state requires local governments to collect and review (and on occasion audit) certified payroll records submitted by contractors to ensure compliance with the prevailing wage law, even requiring them to go so far as to withhold contract payments if the records are delinquent or inadequate. [Labor Code 1771.5]

State-mandated construction wage rate laws force a city to contemplate work jurisdictional disputes, for example between roofers' unions and sheet metal worker unions and between electrician unions and laborers unions. The city needs to know if contractors are classifying their workers correctly for prevailing wage purposes. Then there are issues related to "double asterisks" indicated in the prevailing wage determinations in which the wages change in the middle of a project, because rates change on a specific date in the applicable collective bargaining agreement. And there is travel and subsistence pay, in which a contractor has to call the state prevailing wage unit for information.

Why must a city be entangled in these issues?

## **9. The State Maintains a Sunset Provision That May Require Volunteers to be Paid State-Mandated Construction Wage Rates in the Future**

Certain construction unions and the American Federation of State, County and Municipal Employees (AFSCME) are suspicious of civic volunteers doing work that could be done by workers who would be paid a prevailing wage. While Labor Code §1720.4 has exempted volunteers from prevailing wage requirements since an emergency law took effect in 2004, that exemption has been limited in duration. The current exemption period is scheduled to end on January 1, 2017.

A report issued by the Department of Industrial Relations in 2011 entitled *Volunteers on Public Works Projects* identified only one complaint filed with the Division of Labor Standards Enforcement (DLSE) since 2003 concerning volunteers performing construction trade tasks on projects defined as public works for purposes of the payment of state-mandated construction wage rates. After investigation, the DLSE determined the complaint to be invalid: eight volunteer firefighters were simply completing electrical work on their own firehouse.

Nevertheless, there is always a looming sunset date for the temporary extension of the state volunteer exemption, and unions remain protective of their jurisdictions.

## 10. Studies and Anecdotes Show the High Costs of State-Mandated Construction Wage Rates

A paper published in 2005 by the Program on Housing and Urban Policy at the University of California, Berkeley presented new evidence on the increased costs of California's state-mandated construction wage rates laws on construction. "The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing" estimates that new prevailing wage requirements under Senate Bill 975 signed into law by Governor Davis in 2001 increased costs on state-subsidized low-income housing in California between 9 and 37 percent under the most credible statistical models, which take into account geographical location as well as project attributes, financing, and developer characteristics. According to the paper, under reasonable conditions, the authors' mid-range estimate of the prospective decrease in dwellings in California subsidized by tax credits alone exceeds 3,100 units per year. Research for this paper was supported by a grant from the U.S. Department of Housing and Urban Development and the Berkeley Program on Housing and Urban Policy. See the study at this link:

[http://urbanpolicy.berkeley.edu/pdf/DQR\\_ILRR\\_Proof072905.pdf](http://urbanpolicy.berkeley.edu/pdf/DQR_ILRR_Proof072905.pdf)

A 2004 study from the California Institute for County Government at California State University, Sacramento shows that state prevailing wage rates in California increase costs of construction 6 to more than 15 percent. The maps in this study show that, in general, prevailing wages become disproportionately higher than market wages the farther a project is from San Francisco. A link to this study can be found here:

[http://www.abc.org/files/Government\\_Affairs/StateAffairs/CA%20Prevailing%20Wage%20Study%202004%20from%20Dayton%20CSUS.pdf](http://www.abc.org/files/Government_Affairs/StateAffairs/CA%20Prevailing%20Wage%20Study%202004%20from%20Dayton%20CSUS.pdf)

After Senate Bill 975 was signed into law in 2001, dozens of California newspaper articles reported on private development projects that were cancelled because of the cost increases caused by new prevailing wage requirements on privately-owned projects.

Providing a recent documented anecdotal example of the cost of state-mandated construction wage rates, a group called the "Friends of the Theatre Committee" obtained estimates prepared in the summer of 2009 by a local contractor for a roof repair and a complete repair to the Rodgers Theatre in Corning (northwest of Chico in Tehama County) and provided them to the Corning Community Foundation for presentation to the Corning City Council. Estimates were developed both without a state prevailing wage requirement and with a state prevailing wage requirement. The estimated roof repair cost was \$221,748, but if state prevailing wage rates were required, the cost would be \$274,751, or 24 percent higher. The estimated cost of all repairs to the theater was \$538,493, but if state prevailing wage rates were

required, the cost would be \$726,966, or 35 percent higher.

## **11. Charter Cities Can and Do Adopt Many Kinds of Policies for Government-Mandated Wage Rates on Purely Municipal Construction**

Charter cities exercise their power over prevailing wage policies in diverse and creative ways.

- Just in the area of determining prevailing wages, charter cities conduct their own prevailing wage surveys (Town of Truckee, Resolution No. 2009-18), allow their city managers to recommend city prevailing wage rates (Fortuna Municipal Code Section 2.50.090, Article 4 of the Fresno Municipal Code, Glendale Municipal Code Section 4.16.020, City of San Jose Resolution Number 61144, Section 3(D)), and allow a city commission to recommend city prevailing wage rates (San Francisco Administrative Code Section 6.22. (E)(3)).
- Charter cities have adopted minimum project cost thresholds that differ from the threshold of \$1000 in Labor Code §1771.
- The City of Fresno exempts non-profits from state-mandated construction wage rates (Fresno Municipal Code Section 4-404).
- The City of San Diego exempts contractors from state-mandated construction wage rates except for specific projects (San Diego City Council Resolution 298185/R-2003-1505).
- The City of Auburn proposed a charter that would have permanently exempted city volunteers from state-mandated construction wage rates, based on the concern that the California State Legislature or governor will allow California Labor Code Section 1720.4 to expire on January 1, 2017. (This section temporarily exempts “work performed by a volunteer” from state-mandated construction wage rates.)

Indeed, there are numerous theoretical prevailing wage policies that a charter city could adopt that would not in any way exempt private contractors on its municipal projects from having to pay government-mandated construction wage rates, but would impose different obligations. Here are other examples of prevailing wage policies that charter cities could establish:

- Giving contractors the reasonable option not to pay the so-called “Other” component of state-mandated construction wage rates – as established under California Labor Code Section 1773.1(a)(7-9) – under the premise that employer payments for trust funds identified in collective bargaining agreements with unspecified and unaccountable purposes are not legitimate or proven direct employee benefits, and therefore those payments

should not be part of prevailing wage determinations. Although state law has mandated construction wage rates since 1931, this absurd expansion of the components of these wage rates was only approved by the legislature through Senate Bill 868 in 2003, in a political maneuver as Governor Davis was about to be recalled.

- Giving contractors the option not to recognize artificial and arbitrary project cost thresholds that jack up state-mandated wage rates, such as the prevailing wage determination for carpenters in Northern California in the early 2000s that increased wage rates for projects worth \$25 million or more – a state policy established without statutory authority when the Department of Industrial Relations dutifully included the threshold contained in a collective bargaining agreement into a prevailing wage determination.

Unions have great opportunity to create mischief in the state determination of prevailing wage rates: few people know that the state-mandated construction wage rate for Inside Wiremen (electricians) in San Francisco has been based on a 35-hour French-style workweek that is enshrined in the applicable union collective bargaining agreement.

- Allowing contractors building metal roofs to pay the prevailing wage rates for sheet metal workers or for roofers, depending on who is employed to do the work.
- Exempt private affordable housing projects that receive city grants or other city financial assistance.
- Exempt small business recipients of façade improvement grants and loans.
- Set a project minimum cost threshold of \$1 million (as opposed to the ridiculous state-mandated threshold of \$1000).

# The Specific Status Of Policies Concerning Government-Mandated Construction Wage Rates In California's 121 Charter Cities



## Summary of Findings

Because charter cities have a greater degree of autonomy and flexibility than general law cities, a central question this report seeks to answer is whether or not these charter cities are using their flexibility to maximum advantage to both protect taxpayer funds and support local job creation by exempting themselves from state-mandated construction wage rates.

### Charter Cities with No Exemption

Alameda	Lancaster	San Jose
Albany	Loma Linda	San Leandro
Alhambra	Long Beach	San Luis Obispo
Bakersfield	Los Alamitos	San Mateo
Bell	Los Angeles	San Rafael
Berkeley	Marina	San Ramon
Buena Park	Monterey	Sand City
Burbank	Napa	Santa Ana
Cerritos	Newport Beach	Santa Barbara
Chico	Oakland	Santa Clara
Compton	Palmdale	Santa Cruz
Culver City	Petaluma	Santa Monica
Cypress	Piedmont	Santa Rosa
Del Mar	Pomona	Seal Beach
Downey	Port Hueneme	Signal Hill
Eureka	Redondo Beach	Stockton
Folsom	Redwood City	Torrance
Grass Valley	Richmond	Vallejo
Glendale	Riverside	Ventura
Hayward	Roseville	Vernon
Huntington Beach	Salinas	Watsonville
Inglewood	Sacramento	Woodlake
Irvine	San Bernardino	
Kingsburg	San Francisco	

**Total: 70**

### Charter Cities with Partial Exemption

Anaheim	City of Industry	San Diego
Big Bear Lake	Fresno	Santee
El Centro	Mountain View	Sunnyvale

**Total: 10**

### Charter Cities with Full Exemption

Adelanto	Lemoore	Placentia
Arcadia	Lindsay	Porterville
Carlsbad	Marysville	Rancho Mirage
Chula Vista	Merced	San Marcos
Desert Hot Springs	Modesto	Santa Maria
Dinuba	Needles	Shafter
El Cajon	Norco	Solvang
Exeter	Oceanside	Temple City
Fortuna	Oroville	Tulare City
Gilroy	Pacific Grove	Victorville
Indian Wells	Palm Desert	Visalia
Irwindale	Palm Springs	Vista
King City	Palo Alto	Whittier
La Quinta	Pasadena	

**Total: 41**

## City-Specific Data

Below is an overview of the data each city provided in response to requests for information under the California Public Records Act. If the city did not respond, every effort was made to contact city personnel or independent research was performed to identify city policy as it relates to the payment of prevailing wage. The cities are listed by county in alphabetical order.

### Alameda County

#### Alameda

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	On October 21, 2003, the Alameda City Attorney briefed the Alameda City Council in a special meeting in closed session on the case of <i>City of Long Beach v. California Department of Industrial Relations (DIR)</i> , and the council gave direction to the city attorney. At the November 4 special city council meeting, construction union officials urged the city council to support a union-backed resolution concerning the case. The city council then met in closed session and gave direction to the city attorney. At the February 3, 2004 city council meeting, numerous union representatives spoke in support of the resolution, and the city council voted 3-2 to send a letter to the California Supreme Court indicating that prevailing wage is a matter of statewide concern (and thus charter cities cannot exempt themselves from state-mandated construction wage rates).

#### Albany

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Invitation to Bid for the City of Albany-Contract C08-28 for Polk Street and Madison Street Sewer Replacement Project.

## **Berkeley**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Resolution No. 54,533-N.S. This statement of policy concurs with the City of Oakland Port and Redevelopment Agency Prevailing Wage Ordinance.

## **Hayward**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Resolution 03-137-Reaffirming the City of Hayward Commitment to Upholding Prevailing Wage Law Requirements.

## **Oakland**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	City of Oakland California, Department of Contracting and Purchasing. <a href="http://cces.oaklandnet.com/ContComp/PrevailingWage.asp">http://cces.oaklandnet.com/ContComp/PrevailingWage.asp</a>

## **Piedmont**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption.
Notes	A \$133,000 road repair and resurfacing project exclusively financed by city sales taxes was awarded by the city on May 3, 2010 with a requirement that contractors submit to state-mandated construction wage rates.

## **San Leandro**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	City of San Leandro bid announcement 02.03-0.20.

## **Alpine County**

No Charter Cities

## **Amador County**

No Charter Cities

## **Butte County**

### **Chico**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Municipal Code of Chico Section 3.08.090.  In 2002, the Center for Economic Development at California State University, Chico, prepared a comprehensive Construction Industry Wage Survey for the Butte Economic Partnership on modal wage rates in Butte County for various construction trades. The survey showed that actual modal rates were lower than the modal rates determined by the California Department of Industrial Relations.

### **Oroville**

Prevailing Wage Policy	Oroville exempts itself from state-mandated prevailing wage law.
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Full/partial/no exemption

Full exemption

Notes

The City of Oroville did not require the winning bidder for the 2012 Sanitary Sewer Manhole Vandalism Prevention Project to submit to state-mandated construction wage rates.

## **Calaveras County**

No Charter Cities

## **Colusa County**

No Charter Cities

## **Contra Costa County**

### **Richmond**

Prevailing Wage Policy

The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption

No exemption

Notes

Resolution of the Council of the City of Richmond No. 4-96.

### **San Ramon**

Prevailing Wage Policy

The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption

No exemption

Notes

Public Works Contracts, of Chapter I, Contract Authority of Division A7-Section A7.

## **Del Norte County**

No Charter Cities

## El Dorado County

No Charter Cities

## Fresno County

### Fresno

#### Prevailing Wage Policy

City of Fresno Municipal Code Section 4-402, "Determination of Prevailing Wages," states "As often as he or she deems it advisable, the City Manager shall prepare and submit to the City Council, for its consideration, a resolution determining the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the city for each craft or type of worker needed to execute contracts for the construction, alteration, demolition, or repair of public works for the city. The Council's determination in fixing the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work shall be final. Section 1773.4 and 1773.5 of the Labor Code shall not apply to the city."

In addition, Section 4-404 lists exemptions from the payment of prevailing wages:

Nothing in this article shall require the payment of prevailing wages for construction, alteration, demolition, improvement or repair work of any public works under the following conditions:

- (a) The construction, alteration, demolition, improvement or repair work is either performed by or funded, in whole or in part, by an organization or entity that:
  - (1) Has either applied for or received an official ruling of tax exempt status from the United States Internal Revenue Service under Title 26, Section 501 of United States Code, or
  - (2) Is not organized and does not exist for the primary purpose of making a profit.
- (b) The construction, alteration, demolition, improvement or repair work is either performed on property owned by the City or on property that will be donated to

the City upon completion of the construction, alteration, demolition, improvement or repair work.

Full/partial/no exemption Partial exemption

Notes A motion made at city council on May 20, 2008 to repeal the prevailing wage requirement in Article 4 of the Municipal Code died for lack of a second.

### **Kingsburg**

Prevailing Wage Policy The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption No exemption

Notes Kingsburg California Improvement Standards.

### **Glenn County**

No Charter Cities

### **Humboldt County**

#### **Eureka**

Prevailing Wage Policy The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption No exemption

Notes Notice to Contractors-Bid No. 2007-17

#### **Fortuna**

Prevailing Wage Policy The Fortuna City Charter, Article IV – Cost Savings and Efficiencies, Section 400 - "Public Works" – states the following: "The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and perform

mance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work. The City shall also have the power to establish procedures, rules or regulations for collecting assessments from assessment and maintenance districts."

Fortuna Municipal Code Section 2.50.090 - "Public works projects" - states the following:

Prevailing Wages. As authorized by City Charter Section 400, Public Works, the city of Fortuna hereby exercises the right granted by the voters to establish a mechanism for determining wages to be paid on locally funded public works projects. The city manager is hereby directed to establish wages for all projects of municipal concern by council resolution.

Full/Partial/No exemptions

Full exemption

Notes

The City of Fortuna did not require the winning bidder for the 2012 Stewart Street Reservoir Replacement Project to submit to state-mandated construction wage rates.

## **Imperial County**

### **El Centro**

Prevailing Wage Policy

Article 3, Section 300 of the El Centro city charter - Public Works Contracts states the following: The City and its agencies, including, but not limited to El Centro Regional Medical Center, are exempt from the provisions of all California statutes regulating public contracting and purchasing except as provided by ordinance or by agreement approved by the City Council. The City shall establish all standards, procedures, rules or regulations to regulate all aspects of public contracting and purchasing.

Section 301 of the El Centro city charter - Prevailing Wages states the following: The City and its agencies shall require the payment of prevailing wages on City and its agencies' public works projects in the same manner as is required of general law cities in the State of California; provided, however, that the City Council may, by resolution or ordinance adopted by a four-fifths (4/5) vote, increase or decrease the minimum thresholds which trigger the requirement to pay prevailing wages for the individual projects, categories of projects or all City and its agencies' public works projects.

The El Centro Municipal Code establishes higher project cost thresholds for prevailing wage mandates than the \$1000 threshold set by the state, and it completely exempts certain classifications of construction from prevailing wage mandates:

Sec. 2-185.18. Prevailing wages.

Contracts for public works projects, as defined in section 1720, et seq. of the California Labor Code, which are undertaken by or on behalf of the City, its agencies or sub-agencies, shall be subject to prevailing wage law (California Labor Code, § 1770 et seq.). Public works projects considered to be of statewide concern, and public works projects funded in whole or in part by state or federal loans, grants or other funding or involvement, where payment of prevailing wages is required in order to receive the state or federal funding or involvement, also shall be subject to the prevailing wage law. Any notice inviting bids for such public works projects shall include notification of the provisions of this section. The requirements of this section shall not apply to the projects exempted under section 2-185.19 of this Code. (Ord. No. 10-05, § 1, 5-19-10)

Sec. 2-185.19. Exceptions to requirements for prevailing wages.

Public works projects which are within the realm of the city's municipal affairs, and undertaken by the city, its agencies and sub-agencies are exempt from the prevailing wage requirements of section 2-185.18 of this Code as follows:

- (a) Bond projects and contracts.
- (b) Measure "D" projects and contracts.
- (c) Seismic retrofit projects and contracts.
- (d) General maintenance projects and contracts under a total dollar amount of \$200,000.00.
- (e) Capital projects and contracts under a total dollar amount of \$1,000,000.00.

Full/Partial/No exemptions

Partial exemption

Notes

The state-mandated construction wage rate requirement unless there is a four-fifths (4/5) council vote for an exemption is the same language that appears in the Santee charter approved in 2008. It was included in the El Centro charter in part because of political pressure from construction union operatives.

The El Centro City Council established the city’s specific prevailing wage policy, as stated in its Municipal Code, as Ordinance No. 10-05 on a 4-1 vote on April 21, 2010.

## **Inyo County**

No Charter Cities

## **Kern County**

### **Bakersfield**

Prevailing Wage Policy                      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption                      No exemption

Notes    Notice to Contractors in the City of Bakersfield.

### **Shafter**

Prevailing Wage Policy                      California courts have held that charter cities are exempt from paying prevailing wages for public works projects under California Labor Code Section 1770 as long as the projects are within the realm of ‘municipal affairs.’ Shafter explicitly reserves itself full authority and control over all of its municipal affairs under City Charter Section 3.01:

Municipal Affairs.                              The City shall have full authority and control over its municipal affairs. The City shall effectuate such authority and control, shall make and enforce all ordinances and regulations with respect to municipal affairs, subject only to restrictions and limitations provided in this Charter and applicable State Constitutional provisions and decisions of courts with competent jurisdiction. As regards municipal affairs, this Charter shall supersede all laws inconsistent therewith.

Full/partial/no exemption                      Full exemption

Notes    City Charter Municipal Affairs Section 3.01.

## **Kings County**

### **Lemoore**

Prevailing Wage Policy                      The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption                  Full exemption

Notes    A September 3, 2010 memorandum from an administrative analyst for the Lemoore Redevelopment Agency Board explained the dilemma of paying for five road and traffic signal improvements with funding that would subject the projects to state-mandated construction wage rates. If the city used its own funds and exercised charter authority to bid these projects without state-mandated construction wage rates, the estimated cost would be \$2,810,486. With state-mandated construction wage rates, the estimated cost would be \$3,232,486.

As stated in the memorandum, "the use of traffic impact fees does not require the payment of prevailing wages in the construction of the improvements (due to Lemoore's status as a charter city); the use of RDA funding does not share this same advantage. Consequently, it would cost considerably more than the original cost estimates if RDA funding is used with no additional benefit to new development. For example, building the Traffic Signal at Bush/Semas today would cost \$345,000 if built with RDA funds, but would only relieve \$300,000 of the burden shared by developers through traffic impact fees. The RDA could pay for 100% of the cost of specific improvements as opposed to a small percentage of all improvements in the west side traffic impact fee area that directly benefit the RDA Project Area. Paying for a portion of all improvements would trigger the payment of prevailing wage for all projects, thus increasing the cost for all improvements by approximately 15%, and by extension, raise the amount of the traffic impact fees proportionally. Conversely, funding 100% of specific improvements with RDA funds segregates them from the remaining west side improvements, effectively insulating the remaining improvements from the need to pay prevailing wage in their construction."

## **Lake County**

No Charter Cities

## **Lassen County**

No Charter Cities

## **Los Angeles County**

### **Alhambra**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/No exemption	No exemption
Notes	Notice Inviting Sealed Bids-Bid ID N2M9-36.

**Arcadia**

Prevailing Wage Policy	Arcadia presently has no provisions of law mandating prevailing wage rate either in the City Charter or City Ordinances. The City has determined that it is in the best interest of the community to formally exempt itself from any prevailing wage requirements in those situations where this is legally authorized. Arcadia as a Charter City shall govern its own municipal affairs.
Full/partial/no exemption	Full exemption
Notes	Resolution No. 6063.

**Bell**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Notice Inviting Bids in the July 2, 2009 Los Angeles Wave newspaper for Curb Ramps at Florence Avenue et al. Project

**Burbank**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	<p>An article posted on April 11, 2010 on <a href="http://www.InsuranceDay.org">www.InsuranceDay.org</a> (Burbank Project Stalled by Prevailing Wage Ordinance) reported that the City of Burbank rejected the plan of Cusumano Real Estate Group to develop a vacant lot:</p> <p>“The Burbank-based Cusumano Group’s \$1 million bid to develop the land has been shelved because the city says the price is simply too low. But Cusumano says construction costs driven by a three-year-old local policy requiring wages higher than market to workers on projects involving community redevelopment agency funding make a higher offer impossible...Cusumano originally submitted two bids for the project last</p>

fall, one for \$4 million, if it were not forced to pay so-called prevailing wages, and the other for \$1 million with the prevailing wage requirement intact. The city was compelled by its own policy to consider only the lower bid.”

### **Cerritos**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	City of Cerritos notice to bidders.

### **City of Industry**

Prevailing Wage Policy	The city requires “Public Works” excluding maintenance and repair to comply with the state’s prevailing wage law.
Full/partial/no exemption	Partial exemption
Notes	Section A (page A-4) of “Notice Inviting Sealed Bids” for public improvement projects.

### **Compton**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Compton City Charter Section 1409-Contracts on Public Works.

### **Culver City**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	City of Culver City, Notice of Inviting Sealed Bids.

### **Downey**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Contract Agreement-Cash Contract No. 663.

## Glendale

Prevailing Wage Policy      The city requires compliance with the state’s prevailing wage law. From the City of Glendale’s Municipal Code:

### Chapter 4.16 WAGES ON PUBLIC WORKS

4.16.010 Applicability of state law: The construction by the city of its public works being a municipal affair, the provisions of Article 2, Chapter 1, Part 7, Division II of the State Labor Code shall apply to the city only to the extent that they are not in conflict with the provisions of this section and Sections 4.16.020 and 4.16.030.

4.16.020 Determination of prevailing wages: Once each year, or more often if he or she deems it advisable, the city manager shall prepare and submit to the council, for its consideration, a resolution determining the general prevailing rate of per diem wages and the general prevailing rate of holiday and overtime work in the city for each craft or type of worker needed to execute contracts for construction, alteration, demolition or repair of public works for the city. The council's determination in fixing the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work shall be final. Sections 1773.4 and 1773.5 of the State Labor Code shall not apply to the city.

4.16.030 Reference to prevailing wages in notice of contract: The notice calling for bids for construction, alteration, demolition and repair of public works, and the contracts for such work shall contain provisions referring to the most recent resolution determining the prevailing rate of per diem wages and the prevailing rate for holiday and overtime work and requiring payment of not less than the prevailing rates to all workers employed on the project.

Full/partial/no exemption      No exemption

Notes      E-mail from the City Manager of Glendale.

## Inglewood

Prevailing Wage Policy      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption      No exemption

Notes The City of Inglewood-RFQ-0028 - Office of Purchasing and Service Division.

## **Irwindale**

Prevailing Wage Policy On all public works projects that are local in nature (as determined by separate motion of the City Council), the City does hereby exempt itself, as an exercise of a municipal affair and is not bound by bid requirements, bond requirements, prevailing wage requirements, or other requirements or limitations.

Full/partial/no exemption Full exemption

Notes Ordinance of the City Council of the City of Irwindale No. 395 Section 2.

## **Lancaster**

Prevailing Wage Policy The city charter contains an explicit union-backed provision that mandates state prevailing wages on all city construction projects, locking in state-mandated construction wage rates.

Section 301. Prevailing Wages. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages as provided in California Labor Code section 1770 et seq., as now existing and as may be amended, shall be paid to all workers employed on public works projects. This section shall not apply to work that is performed which is not under contract, work that is performed by the City's own forces or on work performed under a declaration of a state of emergency, pursuant to the provisions of the California Emergency Services Act, Government Code section 8550.

Full/partial/no exemption No exemption

Notes Lancaster voters approved the charter with 71 percent of the vote on April 13, 2010.

As seen in the City of Buena Park in 2008 and the City of Palmdale in 2009, the Lancaster City Council chose to negate union opposition to the proposed charter by inserting a union-backed provision that mandates state prevailing wage rates, locking in state-mandated construction wage rates.

## Long Beach

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	The California Supreme Court issued a 6-1 decision on December 20, 2004 regarding the case <i>City of Long Beach v. Department of Industrial Relations</i> . In 1998, the City of Long Beach gave a private organization a grant for project development and preconstruction services on an animal shelter. Unions claimed that the grant made the animal shelter a public works project and therefore subject to state-mandated construction wage rates. The Davis Administration took the union position, which the City of Long Beach challenged. As the case proceeded through appeals, a union argument emerged claiming that charter cities such as Long Beach cannot exempt themselves from prevailing wage requirements on purely municipal projects because these wage rates are a “matter of statewide concern.” The Supreme Court chose to ignore the discussion on whether or not charter cities can exempt themselves from prevailing wage laws, instead simply ruling that under the laws at the time, the animal shelter was not a public works project. (The animal shelter would be a public works project if constructed today because of changes to Labor Code §1720 resulting from Senate Bill 975, signed into law by Governor Gray Davis in 2001.)

## Los Angeles

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Labor Compliance Manual from the Office of Contract Compliance.

## Palmdale

Prevailing Wage Policy	The city charter contains an explicit union-backed provision that mandates state prevailing wages on all city construction projects:  Article 3, Section 300 - Public Works Contracts.  Except as provided by City ordinance or by agreement approved by the City Council, the City of Palmdale, as a Charter City, is exempt from the provisions of the California Public
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Contracts Code and from the provisions of any other California statute regulating public contracting and purchasing. The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award, contract provisions and requirements and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work. The City shall have the power to accept gifts and donations, including donations of material and labor, in the construction of any public works project. The City shall have the power to perform any work of improvement by use of its own forces and is not required to contract for the construction of works of public improvement. The City may also contract with other public agencies for the construction of works of public improvement.

Section 301. Prevailing Wages.

The provisions of California Labor Code Section 1770 et. Seq. regarding the payment of prevailing wages on public works and related regulations as now existing and as may be amended, are accepted, reaffirmed and made applicable to the City.

Full/Partial/No exemptions

No exemption

Notes

Voters approved the charter on November 3, 2009.

Similar to the 2008 charter proposal in Buena Park, the inclusion of a prevailing wage requirement in the Palmdale charter largely reflected the threat of construction union operatives to campaign against the proposed charter unless state-mandated construction wage rates were explicitly included in it. The city's initial charter proposal included a provision that would have given the city council the power to exempt itself from state-mandated construction wage rates. On August 5, 2009, the Palmdale City Council voted 5-0 in a chamber full of alleged union activists to put a proposed charter before voters that included a provision requiring the city's contractors to comply with state-mandated construction wage rates. At the meeting, one city council member openly expressed his support for an exemption from state-mandated construction wage rates, but said he didn't want to "divide the community."

## **Pasadena**

Prevailing Wage Policy	Regarding "improvement assessments," Section 12.28.060 of the Municipal Code - "Wage agreements for workmen" - states the following "The per diem wages to be paid to laborers, workmen and/or mechanics employed in the execution of any contract awarded under proceedings taken under this chapter shall be determined by private agreement between the contractor or subcontractor and such laborers, workmen and/or mechanics and not otherwise."
Full/partial/no exemption	Full exemption
Notes	(Ord. 2937 § 2, 1931; Ord. 2242 § 6, 1924) An April 27, 2007 decision by a Superior Court of California, Courts of Los Angeles indicates Pasadena exempts municipal public works from state prevailing wage.

## **Pomona**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Department of Industrial Relations Public Works coverage determination (Public Works Case No. 2004-040).

## **Redondo Beach**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/Partial/No exemption	No exemption
Notes	An October 27, 2008 email from the City Clerk's Office indicates that the City's Engineering Department submits to state-mandated construction wage rates.

## **Santa Monica**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption

Notes Chapter 7 of the Santa Monica Municipal Code, Section 7.28.030 - Applicability of prevailing wage requirements.

### Signal Hill

Prevailing Wage Policy The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption No exemption

Notes Copy of a Public Works Contract provided by the Finance Director of the City of Signal Hill.

### Temple City

Prevailing Wage Policy The city does not have a written policy on prevailing wage.

Full/partial/no exemption Full exemption

Notes Ordinance No. 10-937, approved by the Temple City Council on September 20, 2010, amended the Temple City Municipal Code Section 2514, "Design/Build Contracts," to eliminate any references to prevailing wages and matters of statewide interest or concern.

The former language in the City of Temple City Municipal Code Section 2514, "Design/Build Contracts," had stated "Whenever the city enters into a public works contract which involves a project which is determined by the city council to be entirely local (parochial) in nature and involves no matter of statewide interest or concern, (as determined pursuant to the criteria set forth in the citations in ordinance 02-862 section 1, hereby incorporated by reference), then the city council may elect to proceed to contract therefor as a design/build project without compliance with the California Public Contracts Code including any and all matters relating to bidding, specifications, design/build (as set forth in section 14661 Government Code), any and all miscellaneous contract provisions that might otherwise be required by the Public Contracts Code, and including prevailing wages to the extent the payment of the same does not involve a matter of statewide interest. (Ord. 00-842; amd. Ord. 02-862)"

## **Torrance**

Prevailing Wage Policy                      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption                      No exemption

Notes    Director of Public Works.

## **Vernon**

Prevailing Wage Policy                      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption                      No exemption

Notes    The City of Vernon Public Works Department.

## **Whittier**

Prevailing Wage Policy                      The City of Whittier has no prevailing wage requirements for public works projects as set forth in the California Labor Code and they are exempt from the payment of prevailing wages for public works contracts.

Full/partial/no exemption                      Full exemption

Notes    Whittier City Council Resolution No. 7033.

## **Madera County**

No Charter Cities

## **Marin County**

### **San Rafael**

Prevailing Wage Policy                      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption

No exemption

Notes

San Rafael City Council Resolution 9482 and the Public Works Specifications.

## **Mariposa County**

No Charter Cities

## **Mendocino County**

No Charter Cities

## **Merced County**

### **Merced**

Prevailing Wage Policy

The City of Merced abides by the Charter in relations to public works contracts.

Section 1109 "Public Works" states the following: Pursuant to the authority contained in Section 200 of this Charter, the City Council may establish procedures to implement public works contracting processes through Ordinance or Resolution.

Full/partial/no exemption

Full exemption

Notes

City Charter Section 1109 - Contracts on public works.

## **Modoc County**

No Charter Cities

## **Mono County**

No Charter Cities

## **Monterey County**

## King City

Prevailing Wages Policy	King City exempts itself from state-mandated prevailing wage law.
Full/partial/No exemption	Full exemption
Notes	Voters in King City approved a charter on November 2, 2010.

## Marina

Prevailing Wages Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/No exemption	No exemption
Notes	Department of Public Works Memorandum.

## Monterey

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	The City of Monterey Resolution No. 06-132 C.S.

## Pacific Grove

Prevailing Wage Policy	Wage rates paid on public works projects undertaken by the City of Pacific Grove, by either its own forces or by contract, are not to be governed by the prevailing wage law found at California Labor Code 1770, et seq. This exemption notwithstanding, prevailing wages shall be appropriate when required by Federal or State grants and on other projects considered to be of statewide concern.
Full/partial/No exemption	Full exemption
Notes	City of Pacific Grove Council Policy-Policy No. 800-1 and Resolution No. 5874.

## **Salinas**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	The City of Salinas Municipal code Section 12 Article IV-Local Hiring for Public Works.

## **Sand City**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Disposition and Development Agreement Section 7.7 – Prevailing Wages.

## **Napa County**

### **Napa**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	E-mail from Public Works Department in the City of Napa.

## **Nevada County**

### **Grass Valley**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	The City of Grass Valley Redevelopment Agency.

## Truckee

Prevailing Wage Policy      On April 16, 2009, the Truckee Town Council voted 5-0 in favor of Resolution No. 2009-18, which establishes town prevailing wage rates at 87% of the most recently published prevailing wage rates as established by the California Department of Industrial Relations.

Full/partial/no exemption      Partial exemption

Notes      The current 87% figure was determined through a survey of contractors that recently performed work in the area. This is a change from the town's previous policy of requiring contractors to pay state-mandated prevailing wages. The purpose of the change is to encourage local contractors to bid on town public works contracts.

In 1995, the Town of Truckee became a charter city with the right under Article 2 of its charter to "establish standards, procedures, rules or regulations to define and control all aspects of the bidding, award, and performance of any public works contract, including, but not limited to, the compensation to be paid for the performance of such work." The town then established the prevailing wage as "the wages bid in the project bid response," with bidders required to list job classifications and their wages and benefits. Essentially, there was no prevailing wage requirement. In 2000, the town established its own prevailing wage rates by conducting a survey of local contractors. In 2007, the town did an "informal survey" of local contractors and concluded that local prevailing wages were the same as the state prevailing wage rates. The newly established rate terminates this 2007 policy.

On September 18, 2009, the union-oriented law firm of Weinberg Roger & Rosenfeld submitted to the California Department of Industrial Relations (DIR) a request from the Operating Engineers Union Local No. 3 for a determination regarding prevailing wage coverage for the Town of Truckee's Public Service Center/Corporation Yard project. The challenge is based on whether or not the project is a purely municipal concern.

## Orange County

### Anaheim

Prevailing Wage Policy      Bid Documents for the city indicate that according to Resolution No. 98R-94, the prevailing rates of wages do not apply to maintenance and repair.

Full/partial/no exemption

Partial exemption

Notes

City of Anaheim Purchasing Department.

### **Buena Park**

Prevailing Wage Policy

The city charter contains an explicit union-backed provision that mandates state prevailing wages on all city construction projects:

#### Article III – Public Contracting

Section 100. The provisions of California Labor Code Section 1770 et. seq. regarding prevailing wages on public works and related regulations, as now existing and as may be amended, are accepted and made applicable to the City, its departments, boards, officers, agents and employees.

Section 3.28.110 of the Municipal Code – Requirements for public projects – states the following:

- B. Exemption from General Law. The city is exempt from the provisions of all California statutes regulating public contracting and purchasing except those applicable to charter cities and as otherwise required by the city charter, by ordinance, by the requirements of a grant or other financial assistance or by specific action of the city council. The city shall establish all standards, procedures, rules, or regulations to regulate all aspects of contracting for public projects.

Full/partial/no exemption

No exemption

Notes

As reported in construction trade union newsletters, hundreds of union workers showed up at the May 12, 2008 meeting of the Buena Park City Council’s Charter City Exploratory Committee and the May 27, 2008 city council meeting to browbeat city council members into maintaining state-mandated construction wage rates on purely municipal projects. A top union official was quoted as saying, “This is not only about Buena Park; this is a virus certain interests want to spread all across the state. They are trying to undermine prevailing wages city by city.” The city council then “reversed course” and voted unanimously to insert union-proposed language in the charter, thus cementing the city’s conformity to

state-mandated construction wage rates on purely municipal projects. Buena Park voters approved the proposed charter with 58% of the vote on November 4, 2008.

## **Cypress**

Prevailing Wages Policy      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption      No exemption

Notes      Cypress Municipal Code Section 7-2.4.

## **Huntington Beach**

Prevailing Wage Policy      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption      No exemption

Notes      At a City Council/Finance Board Study Session on October 17, 2005, the Finance Board recommended that the City Council:

1. Adopt a policy to accept non-prevailing wage bids whenever possible.
2. Provide staff the option of sourcing funds in the budget that would maximize opportunities to obtain non-prevailing wage contracts.

On February 2, 2010, the Charter Review Commission of the City of Huntington Beach rejected on a 4-9-2 vote a union-backed proposal to amend the city charter to mandate that contractors on all municipal construction projects pay state prevailing wage rates. At the previous charter review commission meeting on January 21, unions brought 29 speakers to call for permanently locking in state prevailing wage rates through the city charter.

## **Irvine**

Prevailing Wage Policy      Nothing in the city charter specifically references prevailing wages. Section 6-10-216 of the Municipal Code, entitled “Prevailing wages and benefits,” states the following:

- A. Contracts for public works projects, as defined in section 1720 et seq. of the California Labor Code, that are undertaken or contracted for directly by the City, including without limitation contracts for development of the Orange County Great Park, and that are within the realm of the City's municipal affairs, shall be subject to prevailing wage law (Labor Code § 1770 et seq.), except as specified in subdivision (b) herein. Any notice inviting bids for such public works projects shall include notification of the provisions of this section.
- B. The provisions of subdivision (a) herein shall not apply to any public works project or public improvement that is privately-funded in its entirety, is privately-built in its entirety, and will be dedicated to the City upon completion unless the project or improvement is considered to be of statewide concern.

Section 2 of Ordinance 11-02 states this ordinance shall apply only to new projects undertaken by or contracted for by the City on and after July 1, 2011. This ordinance shall not apply to the amendment, renewal or extension of existing maintenance contracts that were originally executed prior to July 1, 2011. Nor shall this ordinance apply to projects that were required or authorized pursuant to development agreements or other agreements conferring vested rights that were executed prior to July 1, 2011.

Full/partial/no exemption

No exemption

Notes

On August 12, 2008, the City Council voted 3-2 to amend its ordinance exempting its purely municipal construction from state-mandated construction wage rates to require contractors to pay state-mandated construction wage rates on public works projects pertaining to the Orange County Great Park. On April 26, 2011, the City Council voted 3-2 to amend the same ordinance to require contractors to pay state-mandated construction wage rates for all city projects, including the Orange County Great Park.

## Los Alamitos

Prevailing Wage Policy

The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption

No exemption

Notes

Public Works Contract and Maintenance Contract from the City of Los Alamitos.

## Newport Beach

Prevailing Wage Policy      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption      No exemption

Notes      City of Newport Beach Request for Proposal RFP No. 5-12.

## Placentia

Prevailing Wage Policy      The city of Placentia believes the California law does not require the payment of prevailing wage in respect to the work and services hereunder, because the city is a charter city and therefore not funded under federal or state grants. The contractor shall be solely responsible for determining and effectuating with all federal and state laws, including prevailing wage laws.

Full/partial/no exemption      Full exemption

Notes      The City of Placentia Public Works Department.

## Santa Ana

Prevailing Wage Policy      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption      No exemption

Notes      City of Santa Ana Community Development Agency for the Downtown Façade Improvement Rebate Program-Terms and Conditions.

## Seal Beach

Prevailing Wage Policy      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption      No exemption

Notes      Notice for Inviting Bids from the Department of Public Works for Construction.

## **Placer County**

### **Roseville**

Prevailing Wage Policy                      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption                  No exemption

Notes    Roseville Municipal Code Section 4.15.050.

On October 26, 2009, the Charter Review Commission of the City of Roseville discussed amending the city charter to give the city a more explicit policy allowing the city to establish its own prevailing wage rates on purely municipal projects. The commission voted 6-0 to maintain the charter’s current silence on prevailing wage policies.

## **Plumas County**

No Charter Cities

## **Riverside County**

### **Desert Hot Springs**

Prevailing Wage Policy                      The City of Desert Hot Springs has the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work.

Full/partial/no exemptions                  Full exemption

Notes    City Charter of the City of Desert Hot Springs.

### **Indian Wells**

Prevailing Wage Policy                      The Indian Wells Charter and Municipal Code do not reference city prevailing wage

policies, but municipal projects are exempted from state-mandated construction wage rates under the authority of Section 100 of the City Charter, which states the following: “Section 100. Municipal Affairs. The City shall have full power and authority to adopt, make, exercise and enforce all legislation, laws, and regulations and to take all actions relating to municipal affairs, without limitation, subject only to such limitations and restrictions as may be provided in this charter and the Constitution of the State of California. Without limiting in any manner the foregoing power and authority, each of the powers, rights, and responsibilities described in this Charter is hereby declared to be a municipal affair, the performance of which is unique to the benefit and welfare of the citizens of the City of Indian Wells.”

Full/partial/no exemption

Full exemption

Notes

An October 17, 2008 letter from the City of Indian Wells states that “Indian Wells explicitly reserves for itself full authority and control over all of its municipal affairs under City Charter Section 100...Courts have also held that charter cities are not required to adopt an ordinance, resolution, or charter provision in order to fall under the purview of the prevailing wage exemption.”

### **La Quinta**

Prevailing Wage Policy

The City of La Quinta imposes no prevailing wage requirement.

Full/partial/no exemption

Full exemption

Notes

Ordinance 315 of the La Quinta Municipal Code.

### **Norco**

Prevailing Wage Policy

The California Prevailing Wage Law, Labor Code Section 1720, et. Seq. shall be inapplicable to the City of Norco works projects.

Full/partial/no exemption

Full exemption

Notes

The City of Norco Charter-Item No. 4 of the Charter.

### **Palm Desert**

Prevailing Wage Policy The City of Palm Desert requires that contracts for public work projects, including, but not limited to, those defined in Section 1720 of the Labor Code, and in Section 20161 of the Public Contracts Code, shall not be subject to prevailing wage law. Any notice of inviting bids for such public works projects shall include notification of this subdivision.

Full/partial/no exemption Full exemption

Notes Ordinance of the City Council of the City of Palm Desert-Ordinance No. 927.

### **Palm Springs**

Prevailing Wage Policy The city of Palm Springs does not require its contractors for purely municipal public works projects, as defined in Section 1720 of the California Labor Code, to be subject to prevailing wage law.

Full/partial/no exemption Full exemption

Notes Chapter 7.06.030 Prevailing wage and benefits.

### **Rancho Mirage**

Prevailing Wage Policy Contracts for municipal public works projects, including but not limited to those defined in Section 1720 of the Labor Code, and in Section 20161 of the Public Contracts Code, are not subject to prevailing wage law.

Full/partial/no exemption Full exemption

Notes The City of Rancho Mirage Ordinance No. 689.

### **Riverside**

Prevailing Wage Policy The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption No exemption

Notes A Resolution of the City Council of the City of Riverside-No. 13346.

## Sacramento County

### Folsom

Prevailing Wage Policy            The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption        No exemption

Notes                                    The August 24, 2010 Folsom City Council meeting agenda included a resolution on the consent calendar that would have established a city policy for exemptions from state-mandated construction wage rates. The staff report described the policy as follows:

This resolution amends the Standard Specifications to provide that the City shall determine when prevailing wages are required and “Prevailing wages shall not be required to be paid on contracts for or on behalf of the City when the contract relates to a municipal affair, is not a matter of statewide concern or is not otherwise legally required by state or federal law or terms of funding.” Additionally, the amendment provides that the bid documents and contract shall specify whether prevailing wages are required or not required. While a contractor always has the ability to pay prevailing wages, the purpose of this amendment is to specify when the City will require it and when it is not required.

The staff report also indicated that “In those cases where the law permits the City to solicit bids on a non-prevailing wage basis, it is estimated that the City could save 15-30% on the cost of labor and could increase the potential pool of contractors that might be interested in bidding on City work. The number of potential contracts to which this amendment would apply may not be significant, but in these economic times, staff continues to look for ways to do more with available resources.”

The item was removed from the agenda altogether after a large number of union representatives showed up at the meeting.

On November 14, 2010, the Folsom City Council considered a resolution that would have exempted purely municipal public works construction from state-mandated construction wage rates. Speaking against the proposal were 23 unionized construction association executives and union officials, including the head of the State Building and Construction Trades Council of California. One Folsom-based developer spoke in support of the resolution and noted it was a good option to get people back to work and get projects built. The Sacramento County Taxpayers’ League and the Howard Jarvis Taxpayers Association sent letters supporting the resolution. The proposal failed due to lack of a second.

## **Sacramento**

Prevailing Wage Policy	<p>Any person performing labor shall be paid not less than the general prevailing rate wages in private employment for similar work in the city. The foregoing provisions as to payment of the general prevailing rate of wages shall not apply to contracts for any public project originally awarded or executed in an amount of \$25,000.00 or less.</p> <p>The general prevailing rate of wages is determined by the director of the Department of Industrial Relations</p>
Full/partial/no exemption	No exemption
Notes	Chapter 3.60.180 of the Sacramento City Code. The City of Sacramento complies with certain contracting conditions under California Labor Code Section 1771.55 that authorize it to have a construction project cost threshold of \$25,000 (higher than the state's \$1000 threshold).

## **San Benito County**

No Charter Cities

## **San Bernardino County**

### **Adelanto**

Prevailing Wage Policy	The city is exempt in its contracts for public works projects, as defined in Labor Code Sections 1720 and 1720.3 from the prevailing wage requirements of state law, and Labor Code Sections 1770 et seq., except where the public project is a state concern or funded by state or federal grants.
Full/partial/no exemption	Full exemption
Notes	This provision is adopted pursuant to and in accordance with subdivision (j) of Section 607 of the Charter of the City, as an exercise of the City's municipal affairs and as exercise of authority under and by virtue of the State constitution, statutes and court decisions.

### **Big Bear Lake**

Prevailing Wage Policy	On August 22, 1990, the Big Bear Lake City Council voted 4-0-1 in favor of Resolution No. 90-59, which establishes town prevailing wage rates.
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Full/partial/no exemption

Partial exemption

Notes

The August 4, 2010 Notice Inviting Bids for Adjustment of Manhole Covers to Grade 2010 indicates that as a charter city, the City of Big Bear Lake determines local prevailing wage rates.

### **Loma Linda**

Prevailing Wage Policy

The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption

No exemption

Notes

Notice of Inviting Bids.

### **Needles**

Prevailing Wage Policy

Sec 1-10. Prevailing wages not required for public works within the sphere of "municipal affairs." Except as provided in this section, payment of prevailing wages as required by Labor Code Section 1771 is not required on public work projects of the city. Payment of prevailing wages is required only when required by federal or state grants or when the public work projects are of "state concern." Also, the city council may require the payment of prevailing wages on other public works projects of the city upon determination that such a requirement would be in the public interest.

Full/partial/no exemption

Full exemption

Notes

The City of Needles Ordinance 353-AC.

### **San Bernardino**

Prevailing Wage Policy

The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption

No exemption

Notes

Resolution of the City of San Bernardino No. 90-358.

## Victorville

### Prevailing Wage Policy

Article 4, Section 400 – Public Works Contracts states the following: “The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work.”

On April 7, 2009, the Victorville City Council voted unanimously for Ordinance No. 2235, which amended the Victorville Municipal Code to state the following:

2.28.260 Prevailing wages.

Public works projects shall not be subject to state prevailing wage laws except when such projects are determined not to be municipal affairs, or are funded in whole or in part by state or federal loans, or grants, and payment of prevailing wages is required in order to receive such state or federal funding. Each notice inviting bids shall specify whether or not a public works project is subject to state prevailing wage law. For guidance regarding what constitutes a municipal affair, see subsection 2.28.170(b).

Subsection 2.28.170(b)-(d)(1) states the following:

- (b) With respect to guidance regarding what public works projects constitute municipal affairs, the city shall consider the following:
  - (1) The extent of the city's control over the public project;
  - (2) The extent to which the city is the source of the funds used to finance the public project; and
  - (3) The extent to which the public project is local in nature and scope.
- (c) Exemption from Public Contract Code. Pursuant to section 1100.7 of the California Public Contract Code ("Public Contract Code"), the city council declares that the definitions and provisions pertaining to contracting for public works projects set forth in Article IV and elsewhere in this chapter, shall govern the notice, publication, cost of public works projects triggering formal or competitive bidding (and exceptions thereto), payment of prevailing wages, method of awarding of contracts and contracting during an emergency with respect to public works projects constituting municipal affairs. The city is expressly exempt from provisions of the Public Contract Code which conflict with the provisions of its charter, this chapter or this code.

(d) Exceptions.

- (1) When public works projects or other applicable contracts are funded by state or federal sources, including but not limited to, loans or grants, the city shall comply with any contract solicitation, bidding, evaluation and award rules or regulations required in order to receive such state or federal funds.

Full/Partial/No exemptions

Full exemption

Notes

Voters approved the charter on June 3, 2008.

## **San Diego County**

### **Carlsbad**

Prevailing Wage Policy

Section 404 of the City Charter, titled "Contracts," states "The City Council shall have the power to establish standards, procedures, rules or regulations relating to all aspects of the award and performance of contracts, including contracts for the construction of public improvements, including, but not limited to, compensation paid for performance of such work."

On August 11, 2009, the city council voted 5-0 to approve Ordinance No. CS-047, which amended Section 3.28.130 of the Municipal Code, entitled "Prevailing Wages," to state the following:

#### 3.28.130 Prevailing Wages

- A. Unless specifically ordered otherwise by the City Council, contracts for public works projects, as defined in section 1720, et seq. of the California Labor Code, which are undertaken by or on behalf of the City of Carlsbad or its agencies, and which are the City's municipal affairs, shall not be subject to prevailing wage law (section 1770, et seq. of the California Labor Code), except as specified in subdivision (b) below. Any notice inviting bids for such public works projects shall include notification of the provisions of this section.

B. The provisions of subdivision (a) above shall not apply to any public works project undertaken by or on behalf of the City (i) which is considered to be of statewide concern as determined by the City Attorney, (ii) which is funded in whole or in part by state or federal loans, grants or other funding or involvement, where payment of prevailing wages is required in order to receive the state or federal funding or involvement.

Full/partial/no exemption

Full exemption

Notes

Voters approved the city charter on June 3, 2008. The city council then used a prevailing wage policy for individual projects giving the city manager or the city council the authority to "...determine whether or not it is in the city's best interest to require prevailing wages for the project..." That initial policy was changed with Ordinance No. CS-047.

### **Chula Vista**

Prevailing Wage Policy

The City of Chula Vista shall not require the payment of prevailing wages on municipal projects unless payment of the prevailing wage is authorized by resolution of the city council.

Full/partial/no exemption

Full exemption

Notes

Chula Vista Municipal Code Section 2.58.070.

### **Del Mar**

Prevailing Wage Policy

The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption

No exemption

Notes

E-mail from the Department of Public Works in Del Mar.

### **El Cajon**

Prevailing Wage Policy

The City Charter contains an explicit provision exempting purely municipal construction from state-mandated construction wage rates.

On June 5, 2012, 58 percent of El Cajon voters approved Proposition D, a charter that includes this provision in Article 4 – Fiscal Matters, Section 400 – Purchasing and Contracts:

No City Public Works Contract or Other Public Contract shall require payment of the prevailing wage schedule unless: the prevailing wage is legally required and constitutionally permitted to be imposed by the requirements of federal grants, state grants,

redevelopment law, or other federal or state law; or the project is considered by the City Council not to be a municipal affair of the City; or payment of the prevailing wage schedule is authorized by resolution of the City Council. Payment of the prevailing wage schedule, if authorized hereunder, shall use the pertinent rates published by the State of California.

Full/partial/no exemption

Full exemption

Notes

The city council, which voted 5-0 to propose this new charter to voters, intends to invite bids soon for an animal shelter.

## Oceanside

Prevailing Wage Policy

The City Charter contains an explicit provision exempting purely municipal construction from state-mandated construction wage rates.

On June 8, 2010, 54 percent of Oceanside voters approved Proposition K, a charter that includes this provision:

Section 302. Prevailing Wage.

No City contract shall require payment of the prevailing wage schedule unless: the prevailing wage is legally required, and constitutionally permitted to be imposed, by federal or state grants pursuant to federal or state law; or the project is considered by the City Council not to be a municipal affair of the City; or payment of the prevailing wage schedule is authorized by resolution of the City Council. Payment of the prevailing wage schedule, if authorized hereunder, shall use the pertinent rates published by the State of California.

Full/partial/no exemption

Full exemption

Notes

In a July 8, 2010 memorandum to the city council, the city manager reported his intention to issue bid addenda removing prevailing wage mandates from the bid specifications for three upcoming city projects with an original total estimated bid cost of \$4,035,000. He estimated the removal of the prevailing wage mandates would save the city a total of \$540,000.

A memorandum from the Oceanside City Manager to the city council dated September 7, 2010 indicated that the city saved \$147,604 (25.4%) when it rebid the contract for the Oceanside Civic Center Library Renovation Project without state-mandated construction wage rates in the bid specifications. The memo reported that the original low bid under state-mandated construction wage rates was \$580,930, and the new low bid without state-mandated construction wage rates was \$433,326. "There is \$147,604 in savings which is primarily based on labor."

A memorandum from the Oceanside Senior Civil Engineer to the city council dated September 15, 2010 indicated that the city saved \$822,751 (18.9%) when it rebid the contract for the Oceanside Harbor Aquatics Center without state-mandated construction wage rates in the bid specifications. The memo reported that the original low bid under state-mandated construction wage rates was \$4,353,000, and the bid was not awarded because "it exceeded the City's budget at the time." The new low bid without state-mandated construction wage rates was \$3,530,249. The Senior Civil Engineer wrote that the reduction in the low bid was the result of "a combination of depressed conditions in the current construction market" and "no prevailing wages on the current bid." The memo cites an email from the winning contractor indicating a savings of 12 to 18 percent without state-mandated construction wage rates.

## San Diego

Prevailing Wage Policy No requirement, except contractors shall pay prevailing wage on water and sewer projects above \$10 million.

Full/partial/no exemption Partial exemption

Notes The city council voted 8-1 on July 14, 2003 for a resolution stating that "prevailing wages will be paid on the city's sewer and water public works projects, which are municipal affairs projects, with an estimated value over \$10 million, and to direct the city manager to bring these projects on a case-by-case basis to the city council to make the requisite findings of economic benefit."

No action was taken at a September 22, 2010 Rules Committee meeting of the San Diego City Council at which Councilman Ben Hueso proposed reducing the project cost threshold for state-mandated construction wage rates on city water and sewer projects from \$10 million to \$1 million. In a September 17 memorandum, Hueso decried how only 22 of 74 city water and sewer projects in 2009 required contractors to pay state-mandated construction wage rates. Hueso was elected to the California State Assembly six weeks later, and the proposal faded away.

## San Marcos

Prevailing Wage Policy San Marcos does not require prevailing wages on municipal public works projects.

Full/partial/no exemption Full exemption

Notes San Marcos Municipal Code Section 2.30.070 Public Works.

## Santee

Prevailing Wage Policy	Section 302 of the City Charter, entitled "Prevailing Wages," states that "The City shall require the payment of prevailing wages on City public works projects in the same manner as is required of general law cities in the State of California; provided, however, that the City Council may, by a resolution or ordinance adopted by a four-fifths (4/5) vote of the City Council, increase or decrease the minimum thresholds which trigger the requirement to pay prevailing wages for individual projects, categories of projects or all City public works projects."
Full/partial/no exemption	Partial exemption
Notes	Voters approved the city charter on November 4, 2008. As of October 13, 2010, the city was requiring contractors to pay prevailing wage rates as established by the State of California, Director of Industrial Relations for any public works project per California Labor Code Section 1720.

## Vista

Prevailing Wage Policy	<p>On June 5, 2007, voters approved a charter for the City of Vista. The charter includes Article 3, Section 300 – Public Works Contracts: "The City is exempt from the provisions of all California statutes regulating public contracting and purchasing except as provided by ordinance or by agreement approved by the City Council. The City shall establish all standards, procedures, rules or regulations to regulate all aspects of public contracting."</p> <p>On June 26, 2007, the Vista City Council adopted by consent Ordinance No. 2007-9, which amended the Vista Municipal Code to state the following:</p> <p>Section 3.08.160 City Labor Code Compliance</p> <p>A. Payment of prevailing wage. No City contract shall require payment of the prevailing wage schedule unless:</p> <ol style="list-style-type: none"><li>1. The prevailing wage is legally required, and constitutionally permitted to be imposed, by federal or state grants pursuant to or state law; or</li><li>2. The project is considered by the City Council not to be a municipal affair of the City; or</li><li>3. Payment of the prevailing wage schedule is authorized by resolution of the City Council.</li></ol>
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Payment of the prevailing wage schedule, if authorized hereunder, shall use the pertinent rates published by the State of California.

B. California Labor Code Compliance. Unless otherwise required by law or the provisions of this Code, the City is not subject to the provisions of Articles 1, 1.5, or 2 of Chapter 1, Part 7, Division 2 of the California Labor Code, or with any provisions of the California Administrative Code enacted pursuant to those Articles.

C. Volunteer Services. The provisions of Section 1720.4 of the California Labor Code, excluding Subsection 1720.4(1)(C), shall be applicable in the City.

Full/partial/no exemptions Full exemption

Notes On July 2, 2012, the California Supreme Court issued a decision upholding the right of the City of Vista and other charter cities to establish their own policies concerning government-mandated construction wage rates. See on pages 8-9 for more details.

## **San Francisco County**

### **San Francisco**

Prevailing Wage Policy The city requires compliance with the state's prevailing wage law.

Full/partial/no exemption No exemption

Notes Section 6.22. (E)(3) of the Municipal Code, entitled "Determination of the Prevailing Wage" states "It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the prevailing rate of wages as follows:

On or before the first Monday in November of each year, the Civil Service Commission shall furnish to the Board of Supervisors data as to the highest general prevailing rate of wages of the various crafts and kinds of labor as paid in private employment in the City and County of San Francisco, plus "per diem wages" and wages for overtime and holiday

work. The Civil Service Commission shall provide the Board of Supervisors data for "per diem wages" pursuant to California Labor Code sections 1773.1 and 1773.9, as amended from time to time. The Board of Supervisors shall, upon receipt of such data, fix and determine the prevailing rate of wages. The prevailing rate of wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the highest general prevailing rate of wages paid in private employment for similar work, until the same is changed by the Board of Supervisors. In determining the highest general prevailing rate of wages per diem wages and wages for overtime and holiday work, as provided for in this section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.

In the event that the Board of Supervisors does not fix or determine the highest general prevailing rate of wages in any calendar year, the rates established by the California Department of Industrial Relations for such year shall be deemed adopted.

## **San Joaquin County**

### **Stockton**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Instruction to Bidders from the City of Stockton Public Relations Department.

## **San Luis Obispo County**

### **San Luis Obispo**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Section 3.36.010 of the San Luis Obispo Municipal Code.

## **San Mateo County**

### **Redwood City**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Redwood City October 13, 2003 City Council Agenda-11.B-1&2.

### **San Mateo**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Notice Inviting Sealed Proposals in the City of San Mateo.

## **Santa Barbara County**

### **Santa Barbara**

Prevailing Wage Policy	The city requires compliance with the state’s prevailing wage law.
Full/partial/no exemption	No exemption
Notes	City of Santa Barbara Vendor Information Booklet, Standards of Purchasing Practice.

## **Santa Maria**

Prevailing Wage Policy	The City of Santa Maria has the power to establish standards, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work. The City is able to pay market wages and cost for public works projects, rather than the artificially higher wages and costs which are now required to be paid by State Law.
Full/partial/no exemption	Full exemption
Notes	The Charter of the City of Santa Maria Article VI Section 600. Public Works Contracts.

## **Solvang**

Prevailing Wage Policy	Except as provided by ordinance or by agreement approved by the City Council, the City of Solvang, as a Charter City, is exempt from the provisions of the California Public Contract Code. The City shall have the power to establish standards, procedures, rules or regulations to regulate all aspects of the bidding, award and performance of any public works contract, including, but not limited to, the compensation rates to be paid for the performance of such work. The City shall have the power to accept gifts and donations, including donations of material and labor, in the construction of any public works project. The City shall have the power to perform any work of improvement by use of its own forces and is not required to contract for the construction of works of public improvement. The City may also contract with other public agencies for the construction of works of public improvement.
Full/partial/no exemption	Full exemption
Notes	The City of Solvang Charter-Article II Section 200.

## **Santa Clara County**

### **Gilroy**

Prevailing Wage Policy	The City of Gilroy does not have a written policy on prevailing wage. They do follow the prevailing wage requirement for any Federally or State funded grant funds.
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Full/partial/no exemption

Full exemption

Notes

Office of the City Clerk of the City of Gilroy.

On March 17, 2010, the Gilroy City Council voted 6-1 to not exercise its authority as a charter city to establish its own prevailing wage policy for a new \$25 million library project. A staff report indicated labor cost savings between \$1,570,000 and \$2,826,000, depending on whether prevailing wage rates were 20 percent or 30 percent higher than market rates and on whether labor costs were 50 percent or 60 percent of the project's total costs. Union representatives attended the meeting in force to oppose the proposal to exempt the project from state-mandated construction wage rates.

## Mountain View

Prevailing Wage Policy

Contractors must pay prevailing wage for capital improvement projects but not for maintenance and repair.

Full/partial/no exemption

Partial exemption

Notes

On June 22, 1982, the city council voted 5-2 to require contractors to pay prevailing wages only when required by federal or state grants or on projects considered a matter of statewide concern. On December 12, 2000, the city council voted 4-2 to require contractors to pay prevailing wages for capital improvement projects.

On June 22, 2010, the Mountain View City Council approved a 51-unit affordable rental housing project to be built by ROEM Development Corporation and Pacific Housing, Inc. with a city subsidy of \$7,321,070. The city's subsidy comes from Federal Community Development Block Grant (CDBG) funds, the city's Below Market Rate (BMR) housing funds, Housing Impact fees, and Revitalization District Housing Set Aside funds.

A legal brief prepared for the city indicated that federal and state prevailing wage requirements would not be triggered by these types of public funds. According to the staff report, if the city council made a decision to require contractors to pay state prevailing rates, the city would need to provide an additional \$1,061,825 in funding for the project. ROEM provided specific estimates for the increased cost of using prevailing wage:

The Council decision on prevailing wages will affect the project budget. ROEM is estimating that for the downtown family development the prevailing wage requirement would increase the project budget by about 10 percent (\$2.3 million) from \$23.0 million to \$25.3 million. A portion of this increased cost (about \$1.13 million) would be paid for by the receipt of additional tax credits, and \$1.05 million plus \$70,000 for a prevailing wage consultant (for a total increase of \$1.12 million) would need to be covered by a higher City subsidy. The City subsidy would increase from a total of \$8.17 million to \$9.29 million ... ROEM estimates that prevailing wage rates for the project would be 15 percent to 35 percent higher than non-prevailing wage rates. Based on ROEM's experience, prevailing wage rates have not come down as a result of the current economic downturn and some rates (i.e. cement masons, carpenters, electricians, etc.) have been increased every six months.

Representatives of the Santa Clara Building and Construction Trades Council attended the meeting to demand prevailing wage rates, but the city council voted 5-2 to reject a proposal to impose prevailing wage requirements.

## Palo Alto

**Prevailing Wage Policy** On December 14, 1981, the City Council voted 8-0 for Resolution No. 5981, which states that "it is appropriate to use the Davis-Bacon Act or State Department of Industrial Relations Wage Determinations only when required by federal or state grants and on other jobs considered to be of statewide concern."

**Full/partial/no exemption** Full exemption

**Notes** On December 9, 2008, the City Council Policy and Services Committee directed staff to develop a new policy that would require contractors to pay prevailing wage for capital improvement projects and almost all other repair and maintenance work. An Ad-Hoc Committee on Prevailing Wage met on March 10, 2009 and made a similar recommendation to City Council. On June 29, 2009, the Palo Alto City Council's Policy and Services Committee voted 3-0 to delay for a year any changes to the city's prevailing wage policy while more study is done on the impact of any changes.

At its March 8, 2010 meeting, the city council deliberated on conducting a study in which certain municipal construction projects would be bid with and without prevailing wage

requirements. The study would have cost \$175,000 to implement. Staff reported that there are seven union-backed studies showing prevailing wage does not increase construction costs, five Merit Shop-backed studies showing prevailing wage does increase construction costs, and five government-backed studies showing prevailing wage does increase construction costs. After numerous parliamentary maneuvers, lengthy discussion, and suspense about the outcome, the city council voted 5-4 to reject a motion to conduct a prevailing wage study. Palo Alto remains the one San Francisco Bay Area charter city that exempts all construction from state-mandated construction wage rates.

### **San Jose**

Prevailing Wage Policy            The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption        No exemption

Notes                                    San Jose Resolution-Resolution Number 61144.

### **Santa Clara**

Prevailing Wage Policy            The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption        No exemption

Notes                                    Resolution No. 2679 of the City Council of the City of Santa Clara, December 22, 1970.

### **Sunnyvale**

Prevailing Wage Policy            There are no references in the city charter or Municipal Code regarding prevailing wage. Contractors are not required to pay prevailing wage on maintenance and repair projects.

Full/partial/no exemption        Partial exemption

Notes                                    The city council held study sessions on prevailing wage on December 7, 1999 and April 4, 2000. On July 18, 2000, the city council voted 5-2 to continue to retain the State-defined prevailing wage on public works projects and not on maintenance and repair contracts.

## **Santa Cruz County**

### **Santa Cruz**

Prevailing Wage Policy            The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption        No exemption

Notes                                    Ordinance of the City of Santa Cruz No. 2000-25.

### **Watsonville**

Prevailing Wage Policy            The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption        No exemption

Notes                                    The City of Watsonville Municipal Code Title 7-Public Works, Chapter 15-Local Hiring-Contractors Providing Public Works and Public Improvements.

## **Shasta County**

No Charter Cities

## **Sierra County**

No Charter Cities

## **Siskiyou County**

No Charter Cities

## **Solano County**

### **Vallejo**

Prevailing Wage Policy            The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption

No exemption

Notes

Development Agreement by & between the City of Vallejo and Triad Downtown Vallejo-Section 4.04.

## **Sonoma County**

### **Petaluma**

Prevailing Wage Policy

The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption

No exemption

Notes

Public Works Department of the City of Petaluma.

### **Santa Rosa**

Prevailing Wages Policy

The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption

No exemption

Notes

Ordinance No. 3598, Santa Rosa City Code Section 3-44-160 & 3-44-180.

## **Stanislaus County**

### **Modesto**

Prevailing Wage Policy

Nothing in the city charter or Municipal Code specifically references prevailing wages.

Full/partial/no exemption

Full exemption

Notes

On September 19, 1995, the City Council voted 4-2 to establish the following policy through Resolution No. 95-458: “Prevailing wages, as that term is used in Labor Code Section 1770 et seq., shall hereafter be required only on construction contracts which are funded in whole or in part by State or Federal funds where the receipt of such funding by the City is conditioned upon a prevailing wage requirement, or where the construction contract is for a project which has statewide concern.”

## **Sutter County**

No Charter Cities

## **Tehama County**

No Charter Cities

## **Trinity County**

No Charter Cities

## **Tulare County**

### **Dinuba**

Prevailing Wages Policy

The City of Dinuba is a charter city and operates under its charter and not the Public Contracts Code. It is the City's position that if indeed they are just City funded then there are no state or federal prevailing wage laws applicable to the City funded projects.

Full/partial/no exemption

Full exemption

Notes

Chapter 2.42 of the City Charter of Dinuba-Prevailing Wages for Public Works.

### **Exeter**

Prevailing Wage Policy

The City of Exeter appears to exempt contractors from state-mandated construction wage rates.

Full/partial/no exemptions

Full exemption

Notes

Senate Bill 1110 (2005), Sections 29-30 and a Department of Industrial Relations Public Works Coverage Determination (Public Works Case No. 2005-042) issued on April 19, 2006 indicate that the City of Exeter was exercising its right as a charter city to exempt public works improvement projects from state-mandated construction wage rates.

## Lindsay

Prevailing Wage Policy      Section 8.11 (K) of the Lindsay City Charter states the following: “Bidding and Wages: The City Council may by ordinance or resolution adopt prevailing wage, geographic boundaries and other guidelines and restrictions, including local bidding preference, governing public works and other City contracts.”

Section 3.04.210(A) and (B) of the Lindsay Municipal Code states that “(A) Unless otherwise specified, all City Public Works, purchasing and acquisition contracts shall make no provision for payment of so-called prevailing wages, City bid documents to stipulate that whatever wages as may be necessary for the bidder to submit a reasonable bid may be utilized by the bidder. (B) In such bids as the City shall by grant contract be obligated to require as a precedent to the retention of such grant contract that California State Department of Labor-determined “prevailing wage” rates shall be utilized, or Federal Davis-Bacon Act wage rates shall be utilized, then, in that event, subsection A of this Section shall be suspended and not applicable.”

Full/partial/no exemption      Full exemption

Notes      Lindsay became a charter city on April 17, 1996. Municipal Code Section 3.04.210 was approved on a 5-0 vote of the city council through Ordinance No. 482 on September 16, 1996.

## Porterville

Prevailing Wage Policy      The Porterville Charter and Municipal Code do not reference city prevailing wage policies. The city is exempting at least some municipal projects from state-mandated construction wage rates.

Full/partial/no exemption      Full exemption

Notes      In 2008, the City stated that it did not have any documents responsive to a Public Records Act request for any documents related to prevailing wage policies and practices. A Bid Notice from the City of Porterville dated July 24, 2010 states that “this project is wholly funded by local revenues and is therefore exempt from prevailing wage requirements.”

## **Tulare City**

Prevailing Wage Policy      The City of Tulare states that prevailing wage rates required by the Davis-Bacon or State Department of Industrial Relations Wage Determinations shall be paid on public works projects only when required by Federal or State grants and on other jobs considered to be State concern.

Full/partial/no exemption      Full exemption

Notes      The City of Tulare Resolution No. 3021.

## **Visalia**

Prevailing Wage Policy      Resolution No. 83-02 (approved January 3, 1983) authorizes the city council to vote on exempting specific projects from state-mandated construction wage rates.

Full/partial/no exemption      Full exemption

Notes      A January 17, 2006 staff report for the Visalia City Council indicated that anticipated savings from a prevailing wage exemption on two police substation construction projects estimated to cost \$6.3 million did not occur because all of the bidders were “either union or hired a majority of union subcontractors, and therefore the wages were similar to prevailing wages.” The low bid was \$7.2 million, or 13 percent higher than the estimate.

## **Woodlake**

Prevailing Wage Policy      The city requires compliance with the state’s prevailing wage law.

Full/partial/no exemption      No exemption

Notes      Department of Public Works for the City of Woodlake.

## **Tuolumne County**

No Charter Cities

## **Ventura County**

### **Port Hueneme**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	The City of Port Hueneme Blanket Contract No. 1 for Construction and Maintenance Services.

### **Ventura**

Prevailing Wage Policy	The city requires compliance with the state's prevailing wage law.
Full/partial/no exemption	No exemption
Notes	Purchasing Department of Ventura.

## **Yolo County**

No Charter Cities

## **Yuba County**

### **Marysville**

Prevailing Wage Policy	This City exempts itself from state-mandated construction wage rates.
Full/partial/no exemption	Full exemption
Notes	On April 3, 2001, the Marysville City Council voted 4-1 to require contractors to pay state-mandated construction wage rates. On January 7, 2003, the Marysville City Council voted 3-2 to end that requirement.

# POLITICAL ANALYSIS AND CONSIDERATIONS



## 1. Ten Categories of Cities Recently Involved with Decisions Involving Charters and Government-Mandated Construction Wage Rates

### General Law Cities

#### 1. City Council of General Law City Proposes a Charter That Allows the City to Establish Its Own Government-Mandated Construction Wage Rates, and Voters Approve It

- Vista (June 5, 2007)
- Carlsbad (June 3, 2008)
- Victorville (June 3, 2008)
- Oceanside (June 8, 2010)
- King City (November 2, 2010)
- El Cajon (June 5, 2012)

#### 2. City Council of General Law City Proposes a Charter That Allows the City to Establish Its Own Government-Mandated Construction Wage Rates, but Union Opposition Leads to a Compromise Provision Allowing the City Council to Establish a Policy for Government-Mandated Construction Wage Rates on Individual Projects with a 4/5 Supermajority Vote

- Santee (November 4, 2008)
- El Centro (November 3, 2009)

#### 3. City Council of General Law City Proposes a Charter That Allows the City to Establish Its Own Government-Mandated Construction Wage Rates, but Voters Reject It

- Rancho Palos Verdes (March 8, 2011)
- Auburn (June 5, 2012)

#### 4. City Council of General Law City Considers a Charter That Allows the City to Establish Its Own Government-Mandated Construction Wage Rates, but Proposal Derails at the Charter Commission Level, in Conjunction with Union Opposition

- Elk Grove (2009-2010)
- Redding (2011)

5. City Council of General Law City Considers a Charter That Allowed the City to Establish Its Own Government-Mandated Construction Wage Rates, but Proposal Stalls at the Council Level, in Conjunction with Union Opposition
  - South Lake Tahoe (2011)
  - Colusa (2011)
  - Paradise (2012)
  
6. City Council of General Law City Initially Considers a Charter That Allows the City to Establish Its Own Government-Mandated Construction Wage Rates, but Union Opposition Intimidates the City Council to Instead Include a Provision in Its Proposed Charter Permanently Locking the City into State-Mandated Construction Wage Rates, and Voters Approve It
  - Buena Park (November 4, 2008)
  - Palmdale (November 3, 2009)
  - Lancaster (April 13, 2010)
  
7. City Council of General Law City Places a Proposed Charter on the November 6, 2012 Ballot That Allows the City to Establish Its Own Government-Mandated Construction Wage Rates
  - Escondido
  - Costa Mesa
  - Grover Beach

Grover Beach has a proposed charter on the November ballot that includes explicit language to exempt the city from state-mandated construction wage rates.

[http://www.grover.org/archives/36/PR-CouncilPlacesCharterMeasureOnNovemberBallot\\_07-25-12.pdf](http://www.grover.org/archives/36/PR-CouncilPlacesCharterMeasureOnNovemberBallot_07-25-12.pdf)

## Charter Cities

8. Charter Cities Where a City Council Considered Establishing Its Own Policies Concerning Government-Mandated Construction Wage Rates, but Proposal Stopped at the City Council Level, in Conjunction with Union Opposition
  - Huntington Beach (2005)
  - Folsom (2010)
  
9. Charter Cities Where Unions Tried to Convince a City Council to Rescind Policies Establishing Its Own Government-Mandated Construction Wage Rates and Instead Submit to State-Mandated Construction Wage Rates, but the City Council Chose Instead to Maintain Its Own Policies Concerning Government-Mandated Construction Wage Rates
  - Palo Alto (March 8, 2010, on 5-4 vote of the city council)

## 10. Charter Cities Where a City Council Revoked Its Policies Establishing Its Own Government-Mandated Construction Wage Rates and Instead Submitted to State-Mandated Construction Wage Rates, in Conjunction with Union Support for Rescinding the City Policies in Favor of the State-Mandated Construction Wage Rates

- Irvine (April 26, 2011, on 3-2 vote of the city council)

## 2. Recent Political Dynamics of Charter Consideration at the City Level

Since 2007, more than a dozen cities in California have considered bringing robust, assertive proposed charters before their citizens for a vote. The vast majority of these proposals attracted immediate and aggressive opposition from construction trade union officials.

There are certain circumstances under which voters end up approving a charter that includes a provision allowing their city council to establish a policy regarding government-mandated construction wage rates for purely municipal projects. Conviction is the most critical component.

**1. Character and Personalities of City Council Members:** The most obvious element of successful charter movements is a city council whose members are willing and prepared to absorb relentless political attacks from unions and their coalition allies, risk their personal and professional reputations in their community, and possibly attract union political attacks during the next competitive election campaign.

A city council with at least two members fiercely and genuinely dedicated to providing adequate government services at a reasonable, competitive price to taxpayers is likely to withstand the withering public criticism and advance a meaningful charter for citizens.

On the other hand, a city council is unlikely to propose or amend a charter if it includes a few members who are comfortable in their public offices and want to avoid divisive controversy stirred up by well-funded, well-organized, out-of-town special interest groups. It comes down to the fundamental issue of why someone chooses to serve in public office.

*Wild Card:* The willingness of a city council to take risks is complicated by whether or not certain city council members have ambitions to run for higher offices such as county supervisor or state legislator. The constant churning of state legislators because of term limits means that a city council nowadays often includes someone calculating how a charter campaign could help or hurt his or her future candidacy for more prominent offices.

**2. Character and Personalities of Top City Executives:** City council members who are considering a charter are often influenced by the views and approaches of top city executives, including the city manager, the city attorney, and the city public works director. These appointed administrative leaders may be cautious and risk-averse, or they may be aggressive and dedicated to the concept of getting work done at the most competitive price. Top government executives generally understand that state-mandated construction wage rates increase the cost of city construction contracts, but that doesn't necessarily mean that they want to do something about it.

- 3. Willingness of Political, Business, and Community Leaders to Support the Proposed Charter with Their Reputations and Their Campaign Contributions:** In both recent examples in which voters rejected proposed charters (March 2011 in the City of Rancho Palos Verdes and June 2012 in the City of Auburn), out-of-town unions and union-affiliated organizations used significant campaign expenditures and professional campaign consultants to roll over the local grassroots campaigns for charters, despite the city councils placing the charters on the ballot with 5-0 votes. In Auburn, three union-affiliated organizations combined expenditures to spend \$56.40 per vote against the charter, and there were no other contributors to the campaign against the charter. (This should leave no doubt that establishing a city prevailing wage policy has significant financial benefits for taxpayers.)

Charters are now one of the few options available to cities to reduce the costs of operations, services, and contracts, and every proposed charter that includes meaningful provisions will attract significant campaign funds and professional campaign operations. Unions spend hundreds of millions of dollars in lobbying and elections for the state government, and they aren't inclined to squander the resulting acquired influence by letting local governments circumvent the state government.

### **3. Who Opposes Charters, and What Are Their Messages and Tactics?**

**1. Nature of the Opposition:** Typically, building and construction trade councils (regional umbrella groups for construction unions) are the primary opponents of charters. They sometimes work with union-affiliated labor-management cooperation committees; one such example is [www.SmartCitiesPrevail.org](http://www.SmartCitiesPrevail.org), an organization affiliated with the [Northern California Regional Carpenters Council](#) and funded by employer payments mandated in certain collective bargaining agreements with the union.

In some cases the city's public employee unions have weighed in against a charter; in other cases they are absent from the debate. Often, unions find vocal home-grown community allies among activists in the local Occupy movement and the customary gadflies at city council meetings.

**2. Opposition Message:** The typical opposition message to a proposed charter involves using public comments at city council meetings, glossy union-funded educational and campaign literature (door hangers and mailers), and relentless letters to the editor accusing city council members (often referred to in the letters as "politicians") of seeking more power for themselves. Not surprisingly, charter opponents are fairly oblique about the specific issue of state-mandated construction wage rates, as it rarely works in their favor to highlight these fairly obscure but costly union-backed laws.

The opposition message regularly evokes corrupt local governments, in particular the City of Bell, whose city council and staff sneakily enacted a charter through an unpublicized special election in 2005 and proceeded to abuse and exploit the provisions of the charter for personal enrichment. Accusations from charter opponents about potential corruption continue even when strong provisions are included in the proposed charter to prevent the abuses that happened in the City of Bell.

**3. Opposition Tactics:** Charter opponents in various cities have tried to derail the process of developing a charter at several stages, most effectively through winning appointments to the city’s charter commission (if the city council chooses to appoint one) and stopping the proposal there. This strategy is well-known, but city councils that do not appoint a charter commission are still cynically accused by opponents of ignoring the people.

If the proposed charter comes before the city council, opponents will lobby to eliminate any meaningful provisions, in particular any provision that gives the city authority to determine its own policies concerning government-mandated construction wage rates. In some cities, unions have successfully lobbied for insertion of a provision into the charter that locks the city into permanently submitting state-mandated construction wage rates – in effect defeating one of the primary benefits of a charter.

#### **4. Using the Current Political Context to Anticipate the Next State Legislative Attack on Charter City Rights**

Union leaders have exhausted their obvious legal options to restrain the ability of California’s charter cities to exercise their constitutional rights to establish their own policies concerning government-mandated construction wage rates for city-funded and city-assisted projects. Therefore, it’s probable that union officials and their professional strategists will shift their strategies from the judicial branch to the legislative branch.

Unions could simply use their substantial financial resources and relationships with top state government officials to pursue a ballot measure amending the California Constitution to explicitly restrict or eliminate the right of charter cities to circumvent state laws concerning state-mandated construction wage rates. However, unions in California have generally been on the political defense since late 2009, and it seems unlikely that California voters would approve such a brazen and dramatic union-instigated thrust to consolidate state power.

Recent union-backed legislative efforts to clip the wings of local governments suggest that the union response to this court decision will be more subtle. Top union officials may simply push a bill through the California State Legislature that imposes legally-questionable financial disincentives against charter cities that don’t submit to state-mandated construction wage rates.

An obvious precedent for this strategy is the union response to a rash of local governments enacting Fair and Open Competition ordinances prohibiting governments from entering into contracts that require construction companies to sign Project Labor Agreements with unions. In fact, the dissenting opinion in *State Building Trades Council v. City of Vista* included a footnote directly addressing this issue. (See page 18, footnote 8 of the [decision](#).)

## 5. How Unions Used Senate Bill 922 in 2011 and Senate Bill 829 in 2012 to Suppress the Home Rule Authority of Charter Cities

The State Building and Construction Trades Council of California initiated “gut-and-amend” legislation ([Senate Bill 922](#)) in the last two weeks of the 2011 legislative session to stop the statewide movement to prohibit government-mandated Project Labor Agreements at local governments.

Demonstrating the close political relationship of the State Building and Construction Trades Council of California with the majority leadership in the California State Legislature, the gutted and amended Senate Bill 922 (originally a bill about tuberculosis screening) was commandeered by Assembly Speaker John Pérez and Senate Pro Tem Darrell Steinberg. It became a bill to nullify Fair and Open Competition charter provisions and ordinances in counties and general law cities. It also attempted to cut off state funding for construction projects in charter cities with Fair and Open Competition charter provisions and ordinances.

Senate Bill 922 sailed through the legislature on a pure party-line vote (Democrats in support, Republicans opposed) despite immediate and aggressive opposition from organizations representing local governments, business groups, and construction trade associations. Governor Jerry Brown signed it into law and issued an unusual signing statement claiming that the bill “[seems fair to me – even democratic.](#)” Other political observers (including numerous newspaper editorial boards) regarded Senate Bill 922 as a brazen usurpation of local government authority as well as the democratic will of the voters (as reflected in voter approval of multiple Fair and Open Competition ballot measures).

In spite of the wild enthusiasm for Senate Bill 922 among the state’s governing leaders, that bill was so poorly and hastily drafted that the legislative majority had to whip another union-backed bill through the legislature in early 2012 to amend the language implemented by Senate Bill 922. Supposedly this new language in [Senate Bill 829](#) closed numerous loopholes allowing charter cities to evade the threat of losing state funding.

In reality, the concepts in Senate Bill 922 and Senate Bill 829 remain constitutionally ambiguous and fail to recognize the broad spectrum of policy decisions that a charter city or other local government can make regarding whether or not its construction contractors have to sign Project Labor Agreements. It is unclear whether or not union officials actually believe these laws can be utilized, but similar to the lawsuit against the City of Vista, their strategy had a more immediate political purpose.

## 6. Voters Were Not Intimidated by the Union Threats Delivered Through These New Laws

As the June 5, 2012 election approached, unions cited these laws repeatedly in their campaign literature and media advertising as a prime argument to convince voters in the City of San Diego to vote against a Fair and Open Competition ballot measure ([Proposition A](#)) that would enact an ordinance prohibiting the city from entering into contracts that

require construction companies to sign Project Labor Agreements with unions. The union campaign warned voters that the City of San Diego would lose state funding if they dared to approve it.

Internal polling and focus group research conducted by the campaign in support of Proposition A accurately indicated that this union argument would be ineffective in affecting the positions of undecided voters. In fact, the argument only confirmed the worst impressions voters already had about unions and their political power in California. The average voter correctly surmised that the unions were responsible for passing these laws in order to threaten local governments.

In the June 5, 2012 election, [58% of voters](#) in the City of San Diego ignored the union threats and voted for Proposition A. It is now law. It remains to be seen how the State Building and Construction Trades Council of California will demand that the State of California cut off funding to the City of San Diego (as well as the City of Chula Vista, the City of Oceanside, the City of Fresno, and perhaps the City of El Cajon under its new charter). No regulations have been promulgated to establish a procedure.

## **7. There Is Considerable Risk for the California State Legislature If It Continues to Work on Behalf of Unions to Suppress the Authority of Local Governments**

During its 2011-2012 session, the California State Legislature has dissolved redevelopment agencies of local governments, nullified Fair and Open Competition policies of general law cities and counties, punished charter cities for having Fair and Open Competition policies, and proposed interfering with municipal bankruptcy procedures. Legislative leaders have discussed overriding locally enacted public employee pension reforms, including reforms enacted in charter cities. Amazingly, they have actually considered a bill that would establish a statutory framework for the state legislature to terminate the incorporation of a city.

The California State Legislature would be taking a strategic risk with possible implications for the November 2012 election results if it proceeds to enact a new state law suppressing the right of charter cities to establish their own policies concerning government-mandated construction wage rates. How far can legislative leaders go in usurping local government authority on behalf of unions before voters are repelled enough to jeopardize the quest of legislative leaders to control two-thirds of at least one house of the legislature after the November 2012 elections?

A [May 2012 poll](#) conducted for the Public Policy Institute of California indicated a 25% overall approval rating for the California State Legislature, dropping to a 20% approval rating from registered voters and a 17% approval rating from likely voters. (In contrast, President Obama has a 56% approval rating overall and a 54% approval rating with both registered voters and likely voters.) How will these low approval ratings affect the decision on whether or not to undermine local governments yet again?

## 8. Strategies for Exempting Your Charter City from State-Mandated Construction Wage Rates

At a time when California is focused on the need for job creation and economic growth, state-mandated construction wage rates unnecessarily increase the costs of construction. Inflated government-mandated construction wage rates reduce the amount of public works construction and discourage developers from new commercial, industrial, and residential construction. This costs jobs!

In addition, state-mandated construction wage rates divert funding from essential services at a time of severe budget constraints. Exempting city construction from state-mandated construction wage rates means budget savings for charter cities.

The problem with California's laws concerning government-mandated construction wage rates is not necessarily the existence of the laws, but the absurd methodology required in state law for determining those wage rates. Perhaps a modal rate and the inclusion of all employer payments in union collective bargaining agreements might have produced an accurate prevailing wage in 1968, but certainly not in 2012, when unions have represented less than 20 percent of California construction workers for many years.

### Percentage of California Building Trades Workers Belonging to a Union, by Year

<b>2011</b>	<b>16.9%</b>
<b>2010</b>	<b>15.7%</b>
<b>2009</b>	<b>17.6%</b>
<b>2008</b>	<b>20.2%</b>
<b>2007</b>	<b>16.5%</b>
<b>2006</b>	<b>17.5%</b>
<b>2005</b>	<b>16.3%</b>
<b>2000</b>	<b>23.8%</b>
<b>1995</b>	<b>22.1%</b>
<b>1990</b>	<b>25.0%</b>
<b>1983</b>	<b>39.2%</b>
<b>1968</b>	
<b>1963</b>	<b>Near 100%</b>
<b>1956</b>	

Sources: Union Membership and Coverage Database, available at [www.unionstats.com](http://www.unionstats.com) – an Internet data resource providing private and public sector labor union membership, coverage, and density estimates compiled from the Current Population Survey (CPS), a monthly household survey, using U.S. Bureau of Labor Statistics methods; Ruth Milkman and Kent Wong, "Organizing the Wicked City: The 1992 Southern California Drywall Strike," *Organizing Immigrants: The Challenge for Unions in Contemporary California*, Ruth Milkman, ed., Cornell University Press, 2000, p. 174.

If the state determined a prevailing wage by surveying contractors and then determining a weighted average, then there would be much less disparity between prevailing wages and market wages. For example, the federal government uses a weighted average to determine federal prevailing wages (Davis-Bacon wages) when less than a majority of workers for the same classification in the same geographic area are paid the same wage.

It is extremely unlikely that the state legislature will change government-mandated construction wage rate laws anytime soon. Because of political considerations, the state government would rather cut programs, social services, and funding to local governments than change state law to more accurately determine prevailing wage rates for construction workers.

By exempting themselves from state-mandated construction wage rates, charter cities can free themselves from a flawed methodology largely established in law by Governor Gray Davis and the state legislature under pressure from construction union lobbyists in Sacramento. Charter cities have the constitutional right to exempt themselves all together from state-mandated construction wage rates, adopt a percentage of the state-mandated construction wage rates as their own prevailing wage, or even conduct their own surveys of contractors to determine a prevailing wage. It is a matter of local control over municipal affairs.

A charter city can exempt itself from state-mandated construction wage rates through an initial charter or charter revision, an ordinance, or a resolution. The “City Policy Summaries” in this report show that charter cities use all three methodologies.

A cogent argument for an exemption can be made based on the “Charter Cities, Public Works Construction and California’s State-mandated Construction Wage Rates” at the beginning of this report. There are two recent independent studies on the cost impact of prevailing wages on construction in California. In addition, the costs for the city of collecting and maintaining certified payroll records and taking enforcement actions should be incorporated into any cost estimate of savings.

A comprehensive list of prevailing wage studies from across the country is available (with links to the studies) at the Associated Builders and Contractors web site:

[www.abc.org/Government\\_Affairs/Issues/ABC\\_Priority\\_Issues/Davis\\_Bacon\\_Act\\_Prevaling\\_Wage/Prevailing\\_Wage\\_Studies\\_and\\_Davis\\_Bacon\\_Act\\_Studies.aspx](http://www.abc.org/Government_Affairs/Issues/ABC_Priority_Issues/Davis_Bacon_Act_Prevaling_Wage/Prevailing_Wage_Studies_and_Davis_Bacon_Act_Studies.aspx)

Organizations that might support a city policy for government-mandated construction wage rates for your charter city include Associated Builders and Contractors (a construction trade association), local business associations, the local home builders or developers’ association, local low income housing advocates, local taxpayer associations, and various local non-profit organizations that receive city grants used for construction purposes. Remember, state law requires developers and non-profit organizations to have their construction contractors pay state-mandated construction wage rates on projects that receive any sort of government assistance.

## 9. Waiting for the California State Legislature to Reform State-Mandated Construction Wage Laws Is a Futile Exercise – It Is Not Going to Happen

Here are the two major comprehensive, technically-precise bills and also the minor bill introduced in 2011 and considered in 2012 to reform laws concerning state-mandated construction wage rates. These serve as a guide to the problematic issues in current law and also as a roadmap to needed reforms. They were all rejected in the Assembly Labor and Employment Committee.

[Assembly Bill 987](#) (introduced by Assemblywoman Shannon Grove, R-Bakersfield) was meant to reform how the state defines “public works” for purposes of state-mandated construction wage rates. This bill would have resolved almost all of the ambiguities and controversies surrounding state-mandated construction wage rates on projects built by private owners, as well as construction fabrication and assembly performed off-site. The Senate Industrial Relations Committee considered and rejected an identical bill, Senate Bill 727 (introduced by Senator Bill Berryhill).

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Date of Hearing: January 4, 2012

SUBJECT: Public works: prevailing wages.

SUMMARY: Makes various changes to existing law related to the payment of prevailing wages on public works projects, including repealing various provisions of current law. Specifically, this bill:

- 1) Raises the threshold on public works projects exempt from prevailing wage requirements from \$1,000 to \$100,000.
- 2) Provides that specified public works and prevailing wage requirements shall not apply to contracts for which the state or any political subdivision pays a cumulative amount of less than 50 percent of the total payment under the contract.
- 3) Exempts from prevailing wage requirements any school district construction, reconstruction or rehabilitation projects except as required by federal law.
- 4) Limits the application of prevailing wage law applicable to specified irrigation, utility, reclamation, improvement district, street, sewer and other improvement work, by requiring that such projects be paid for in whole or in part with public funds in order to be covered (current law does not have a public funds requirement for these types of projects).

- 5) Revises various provisions of public works law to apply only to work done "in the execution of a contract."
- 6) Revises provisions of existing law related to the applicability of the law to private residential projects and works on private development projects required as part of regulatory approval of a project, as specified.
- 7) Revives exemptions for specified residential and low-income housing projects that (under current law) apply only to projects before December 31, 2003.
- 8) Eliminates the requirement in existing law that projects financed under the Bergeson-Peace Infrastructure and Economic Development Bank Act comply with prevailing wage laws.
- 9) Provides that "public works" does not include work performed during the design and preconstruction phases of construction.
- 10) Deletes provisions of current law that specify that "public works" includes the hauling of refuse from a public works site to an outside disposal location.
- 11) Eliminates the sunset date on an exemption for specified volunteers, volunteer coordinators and conservation corps members.
- 12) Provides that the requirement to pay prevailing wages does not apply to fabrication or prefabrication work that is done at permanent offsite facilities of contractors.
- 13) Provides that the requirement to pay prevailing wages does not apply to a public work project of a local agency that adopts a resolution or ordinance that provides that prevailing wage requirements shall apply to any public work of that local agency only if required by a state or federal grant.
- 14) Provides that workers employed on a hospital seismic retrofitting project are not required to be paid prevailing wages.
- 15) Specifies that workers must be employed "directly at the site of the work" to be deemed to be employed upon a public work.
- 16) Extends the contract threshold for certain apprentice requirements on public works projects from contracts of \$30,000 to contracts of \$100,000 or more.

17) Makes other related and conforming changes.

[Assembly Bill 988](#) (introduced by Assemblywoman Shannon Grove, R-Bakersfield) was meant to reform how the state calculates or determines state-mandated construction wage rates, so that those wage rates would be reasonably accurate and reflective of local market conditions. The Senate Industrial Relations Committee considered and rejected an identical bill, Senate Bill 725 (introduced by Senator Bill Berryhill).

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Date of Hearing: January 4, 2012

SUBJECT: Prevailing wages.

SUMMARY: Abolishes the "modal rate" for determining prevailing wage rates and establishes an alternative "weighted average" methodology. Specifically, this bill:

- 1) Eliminates the "modal rate" methodology for determining the prevailing wage rate, which defines the prevailing wage as the hourly wage rate being paid to a majority of workers in a particular craft within a given locality. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers is the prevailing rate.
- 2) Replaces the "modal rate" methodology with an "weighted average" methodology which requires the Director of the Department of Industrial Relations (DIR) to do the following:
  - a) Conduct a survey of the wages paid for work performed in each locality in which the public work is to be performed for each craft, classification or type of worker needed.
  - b) Use an average of the wage rates surveyed, weighted by the total employed for each craft, classification, or type of work.
- 3) Deletes the requirement that the Director of DIR consider wage rates established by collective bargaining agreements and federal prevailing wage rates in determining the prevailing wage.
- 4) Deletes provisions of existing law that specify what types of employer payments are included in determining the prevailing wage rate.

- 5) Provides that addresses of individual employees shall be deleted from copies of certified payroll records provided to joint labor-management committees under existing law.
- 6) Makes other conforming changes by deleting related provisions of existing law.

[Assembly Bill 1958](#) (introduced by Assemblywoman Shannon Grove, R-Bakersfield) was meant to make the project cost threshold for government-mandated construction wage rates consistent between federal and state laws. It would have adopted an inflation index that legislative leaders are seeking to implement for minimum wage laws.

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Date of Hearing: March 28, 2012

SUBJECT: Public works: prevailing wages.

SUMMARY: Increases the monetary threshold for public works projects subject to the prevailing wage law and indexes this threshold for inflation, as specified. Specifically, this bill:

- 1) Requires the prevailing wage rate to be paid to all workers on "public works" projects over \$2,000 (as opposed to \$1,000 currently).
- 2) Specifies that on October 1 of each year, the Department of Industrial Relations (DIR) shall adjust this level (to be effective January 1 of the following year) by an amount equal to the percentage change in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

## 10. Understanding the Debate Over State-Mandated Construction Wage Rates

Below are three press releases from the California Department of Industrial Relations in 1995 and 1996 concerning the agency's regulatory attempt to change how prevailing wages are determined. This will give you an idea of the issues surrounding state-mandated construction wage rates.

<http://www.dir.ca.gov/DIRnews/1995/ir95-22.html>

FOR IMMEDIATE RELEASE

IR # 95-22

Thursday, October 12, 1995

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DIR Issues Modified Prevailing Wage Regulations;  
Historic Change Will Save Taxpayers' Money and Makes  
Prevailing Wage Reform in California a Reality

SAN FRANCISCO -- In a historic reform to California's prevailing wage requirements at the direction of Governor Pete Wilson, the Department of Industrial Relations (DIR) today proposed regulations reforming certain prevailing wage requirements.

"In the interest of government efficiency, the Governor asked us to review California's prevailing wage requirements with an eye toward saving taxpayers' money on both the state and local levels," Director Lloyd W. Aubry, Jr. said.. "We must face the fact that artificially inflated wage levels cost taxpayers money and work against competition. Taxpayers have not been getting the best use of their money. While most prevailing wage reforms would require legislation, the two changes today can be accomplished through the regulatory process."

The state Labor Code requires that contractors on public works projects pay workers the "prevailing wage" for a particular occupational classification in a geographic area, usually a county. State law generally defines a public works project as construction, alteration, demolition, repair or maintenance work performed under contract with a state or local agency and paid for in whole or in part by public funds. The project must have a value over \$1,000. Common types of public works projects are school, highway, hospital, and jail construction. Under the state constitution, charter cities can exempt themselves from prevailing wage requirements when projects are funded entirely by municipal funds.

In his January budget message, the Governor requested that DIR review existing prevailing wage requirements for any needed regulatory or legislative changes. At that time, the Governor stated, "The state must reconsider the requirement that bidders pay prevailing wage. Competition is about getting the best available service at the lowest cost. Artificial barriers to competition, including specified wage requirements, work against government efficiency and eliminate otherwise qualified providers -- including minority- and women-owned businesses -- from competing for state contracts."

Prevailing wage reform reducing costs to taxpayers is needed in California because the state's capital and infrastructure

needs are so large while state and local governments continue to face limited resources. In its most recent annual 10-year forecast, the Department of Finance identified \$74.4 billion in projected needs. These demands could increase at any time as a result of an earthquake or any other natural disaster.

The regulatory reforms make two changes:

- New method of calculating the prevailing wage. The new regulations change the method for determining the prevailing wage to a 50 percent or weighted average from the present modal method. The proposed method is the same approach used by the federal government under the federal Davis-Bacon Act. Under this method, the prevailing wage rate will be the single rate paid to a majority of workers or a weighted average of the rates paid if there is no majority. This has been the federal rule since the early 1980's.

The repealed modal method inflated wages by causing wages to be considered prevailing even if they were significantly higher than the wages paid to a majority of workers in a locality. The modal approach required that the most frequently occurring wage rate be considered prevailing. This method often resulted in the wage rate under collective bargaining agreements qualifying as the prevailing wage. These rates will usually not be representative of the wages earned by a majority of workers in many areas. Union representation in construction has been declining in California. According to the Bureau of National Affairs, only 25.4 percent of construction workers in California were unionized in 1993. While difficult to quantify, savings under this provision could approach \$200 million.

Other than California, only Minnesota and Wisconsin use the modal method.

- Repeal of “double asterisk” provision triggering an automatic increase in wage rates. Current prevailing wage regulations contain the predetermined “double asterisk” provision. This rule requires that prevailing wage rates must automatically increase when a collective bargaining agreement rate used as the basis for the prevailing wage determination contains an increase. In addition to an automatic escalation of wages, the provision has led to confusion for public agency awarding bodies and contractors. In some cases, this provision has led to changes in wage rates in the middle of a project, leaving contractors uncertain as to the proper rate and sometimes subject to civil penalties for paying a wage rate which was later revealed to be too low. In other cases, the parties to the collective bargaining agreement have rescinded the automatic increase, leaving the contractor and, in effect, the taxpayers to pay a rate which actually is higher than the prevailing wage rate under the collective bargaining agreement used as the basis for the determination.

The reform repeals the “double asterisk” requirement entirely. The federal Davis-Bacon Act contains no similar requirement. The California Department of Transportation estimates that the elimination of the rule will reduce labor costs by at least 1.6 percent on a project.

"No one should assume that these reforms are the only changes in the prevailing wage law that we would like to accomplish," Aubry said. "There are other requirements that are outmoded and result in an inefficient use of tax dollars. The Administration continues to support AB 138 by Assemblyman Goldsmith to make further changes that cannot be accomplished through the regulatory process."

AB 138, sponsored by the Department of Industrial Relations, is pending in the Assembly Labor and Employment Committee. Most of the changes would conform California's prevailing wage requirements with the federal Davis-Bacon Act. In addition to the two changes ordered by the Governor, AB 138 would:

- Require payment of prevailing wages on projects over \$100,000 rather than the current \$1,000 threshold. In his 1993 reinventing government plan, Vice President Al Gore proposed an identical threshold change in the Davis-Bacon Act. The current Davis-Bacon coverage threshold is \$2,000.
- Limit prevailing wage coverage to workers directly employed on the public works worksite.
- Eliminate the inclusion of travel and subsistence payments to covered workers under the prevailing wage.
- Under specified conditions, authorize a local agency, by a majority vote of its governing board, to adopt a resolution exempting its public works projects from prevailing wage requirements. Under the state constitution, charter cities currently can exempt themselves from prevailing wage requirements if a project is funded entirely by municipal funds.

AB 138 enjoys broad support from local governments in California, including the League of California Cities, the Association of California Hospital Districts, the California School Boards Association, and the Association of California Water Agencies, and the Community College League. The California Taxpayers' Association also supports AB 138. Despite support by local governments, AB 138 stalled on a 4-4 party line vote in the Assembly Labor and Employment Committee. Assemblyman Goldsmith has made the bill a two-year bill so that it will be considered again when the Legislature returns from recess.

Aubry added that these prevailing wage reforms must be kept in the proper perspective. "These reforms simply are not a wholesale attack on the prevailing wage law," he said. "What California actually is doing is working to bring its own prevailing wage requirements in line with the federal Davis-Bacon Act. These changes are in the interest of taxpayers and will not affect the quality of work. They will save tax dollars at a time when California's infrastructure needs are great while state and local governments face limited resources to meet these needs. These reasonable prevailing wage reforms will help us to make our tax dollars stretch further while still maintaining a prevailing wage in accordance with national standards."

Reform of prevailing wage requirements has gained increasing focus on the federal, state, and local levels. Committees

in both houses of Congress have approved legislation repealing the Davis-Bacon Act. Last spring, voters in the Town of Truckee overwhelmingly approved an initiative to incorporate the town as a charter city in order to avoid prevailing wage requirements. Truckee estimated that the charter city exemption will save \$3.2 million over the next few years on a major street repair project. In November, San Francisco voters will consider an initiative to allow the San Francisco Board of Supervisors to suspend prevailing wage requirements in some cases in which public funds are used to provide job training and work experience for disadvantaged youths. As a charter city, San Francisco can decide to exempt itself or modify its prevailing wage requirements.

DIR has filed official notices of these regulatory changes with the Office of Administrative Law (OAL) to open the formal rule making process. This process involves publishing new draft regulations for public review and comment and scheduling public hearings on the proposed regulations.

<http://www.dir.ca.gov/DIRNews/1996/ir96-01.html>

FOR IMMEDIATE RELEASE

IR # 96-01

Friday, January 5, 1996

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Historic Reform of California's Prevailing Wage Rules Proceeds --  
Public Hearings Slated for February In Los Angeles and San Francisco

SAN FRANCISCO -- The California Department of Industrial Relations (DIR), proceeding with Governor Pete Wilson's order to amend the state's prevailing wage requirements for the benefit of state and local taxpayers, has scheduled public hearings to be held in Los Angeles and San Francisco during the last two weeks of February.

"The two changes that we have proposed will bring important components of California's prevailing wage regulations in line with federal requirements and those of all but two of the other states which have prevailing wage laws" said DIR director Lloyd W. Aubry, Jr. "Furthermore, our initial economic analyses conducted on these issues indicate that the proposed changes have the potential for saving the state and hard-pressed local governments and California taxpayers millions of dollars in the state's infrastructure needs during coming years."

In his January 1995 budget message, the Governor requested that DIR review existing prevailing wage requirements for any needed regulatory or legislative changes. In budget documents, the Governor noted, "The state must reconsider the requirement that bidders pay prevailing wage. Competition is about getting the best available service at the lowest cost. Artificial barriers to competition, including specified wage requirements, work against government efficiency and eliminate otherwise qualified providers -- including minority- and women-owned businesses -- from competing for state contracts."

The regulatory reforms to be discussed at the public hearings include a new method for calculating the prevailing wage and repeal of a rule that requires an automatic increase in prevailing wages which are not in effect, but only scheduled in union contracts.

The proposed regulations change the method for determining the prevailing wage from the modal approach to a modified weighted average, which is the same approach used by the federal government. In other words, the prevailing rate will be the rate paid to a majority of the workers or, if no single rate is paid a majority, a weighted average will be used. This has been the federal rule since the early 1980's.

The modal approach required that the most frequently occurring wage rate be considered prevailing, taking no account of wages above and below that rate, even if paid to many more workers. This method often resulted in the wage rate under collective bargaining agreements qualifying as the prevailing wage, even if they were significantly higher than the wages paid to a majority of workers in a locality. Other than California, only Minnesota and Wisconsin use the modal method.

<http://www.dir.ca.gov/dirnews/1996/ir96-06.html>

FOR IMMEDIATE RELEASE

IR # 96-06

Wednesday, February 14, 1996

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Statement by John Duncan, Chief Deputy

Department of Industrial Relations

Prevailing Wage Reform: Truth vs. Fiction

SACRAMENTO -- Governor Wilson's move to reform California's restrictive, unfair and outdated prevailing wage regulations is being met with stubborn resistance by organized labor and certain signatory contractors which have a vested interest in maintaining the status quo. Unfortunately, those who fear that reform will threaten their market share of public works programs and taxpayer dollars by allowing public agencies to pay the true prevailing rates of the marketplace are reduced to employing subterfuge and outright misstatement of facts in presenting their case against reform.

A news release issued today by The State Building and Construction Trades Council is a case in point.

Fiction: "Governor Wilson's Department of Industrial Relations is seeking to gut the regulations and replace them with a system that will reduce worker pay by an average of 20 percent."

Fact: DIR has proposed regulations that will bring the method of calculating prevailing wages in California into conformance with the federal government's Davis Bacon Act, which is the same method used in most other states of the Union that have prevailing wage laws. To state that this change will reduce worker pay by an average of 20 percent is incorrect. The fact is that labor costs average about 20 percent on public works projects and any reduction in per capita income to those currently employed on public works projects would probably not exceed four percent. On the other hand, the change may permit thousands of other workers the opportunity of employment on publicly funded construction projects.

Fiction: "The fundamental issue here is an honest day's pay for an honest day's work...They (the Wilson administration) want to replace that with the survival of the cheapest."

Fact: The fundamental issue is indeed an honest day's pay for an honest day's work. However, the element of fairness must also be part of this issue and the current prevailing wage regulations are unfair to the taxpayers in that they essentially ensure the highest costs for labor and exclude many capable workers from public works projects.

Fiction: "That's bad for middle class construction worker families and everyone who uses California's roads, bridges, freeways and public buildings. It will result in skilled workers being replaced by unskilled workers, especially undocumented workers who take cash and don't even pay income tax."

Fact: In California over the past several years, virtually every state agency has shared in the loss of tax revenue as a result of the past recessionary fiscal environment. Prevailing wage rules have insulated those who work on publicly funded projects from declines in the hourly rates of pay during those years. Although some construction workers may see a very minimal decrease in earned income from taxpayer funded projects, many others who will have the opportunity to work on these projects and will likewise have the opportunity to become part of the middle class.

The argument that skilled workers will be replaced by unskilled workers is without foundation. Public works contracts

require that levels of quality in construction be maintained and changes to the prevailing wage rules have nothing to do with the quality of construction. The idea that undocumented workers will be employed on public works projects and paid in cash is equally absurd. Governor Wilson's position on the employment of undocumented workers is well known and the California Labor Commissioner vigorously enforces state laws against payment of wages in cash.

The users of California's freeways, public buildings and other taxpayer funded projects should benefit from the same quality of construction while seeing perhaps a larger number of projects built at somewhat less expense.

Fiction: "...the 3 to 4 percent savings the governor projects would be more than offset by a decrease in income and sales tax revenue and the inevitable shifting of health care costs from private insurers to Medi-Cal and county hospitals."

Fact: There is in reality no factual, reliable data to support this statement. Evidence may actually show that by opening the market to a broader base of workers, those who must rely on public health care from time to time will be forced to do so less often. Many times, in fact, those workers who are members of construction trade unions must themselves rely on public health care because they are unable to put in enough hours on the job to qualify for union-provided medical benefits.

Fiction: "States where prevailing wage laws have been eliminated, such as Utah, have experienced severely negative results..."

Fact: The "University of Utah Study" was funded by the AFL-CIO and other unions, which have a vested interest in the outcome of the working paper. The study is widely criticized both for its methodology and conclusions. Nevertheless, common sense will tell us that the reform of prevailing wage regulations should have no impact on other areas of public works projects bound by contract and subject to enforcement by local, state and federal agencies.

Fiction: "Last year, a coalition of unions and contractors met with the Republican legislative caucus and the Department of Industrial Relations in an effort to reach a reasonable modification of existing prevailing wage rules."

Fact: It is true that a series of meetings did convene, however the term "reasonable" is subject to interpretation. The fact is that the meetings did not produce significant reform and legislative efforts were stalled in the Democrat controlled committees.

The Department of Industrial Relations will move forward with public hearings to reform California's prevailing wage regulations. The hearings will be held February 20 and 22 in San Francisco and on February 26 and 27 in Los Angeles.

Pursuant to the Governor's direction, the Department of Industrial Relations has proposed two regulatory changes to

achieve reforms which will be the subject of the hearings. The first change would repeal the current “modal” method for determining the prevailing wage, in which the most frequently occurring wage rate for a job classification in a county is considered the prevailing wage. Other than California, only Minnesota and Wisconsin use the modal method. Our proposal would replace the modal method with the same method used under the Davis-Bacon Act, in which the prevailing wage is the rate earned by 50 percent or more of the workers in a survey group. If 50 percent or more do not earn the same wage rate, then a weighted average of all rates is the prevailing wage. In 92 percent of the determinations, the "modal" method has resulted in collective bargaining-scale wage rates considered prevailing. These wages do not reflect the marketplace in California, where only 25 percent of construction workers are union.

A recent survey by the Department of Industrial Relations illustrates how the modal method does not produce prevailing wages reflecting the marketplace. In Kern County, the Department found 44 surveyors earning hourly rates ranging from \$12.50 to \$30.63. Seven workers earned \$27.16 and one received \$30.63. The wage rates paid to the other 36 surveyors ranged from \$12.50 to \$25.47. Based on the modal method, the prevailing rate was \$27.16 since it was the most frequently occurring. The mean average under the Davis-Bacon Act methodology would have been \$21.62. Thus, seven out of 44 workers -- or only 16 percent -- set the prevailing wage at essentially the highest rates in the county.

The second regulatory change proposed would repeal the “double asterisk” rule. This provision mandates an automatic increase in prevailing wage rates whenever a collective bargaining agreement used as the basis for the prevailing wage contains a provision for an increase.

In many cases, the parties to an agreement have rescinded or reduced an increase, resulting in contractors still having to pay a higher rate which is no longer prevailing and causing confusion to contractors, awarding bodies, and investigators as to which rate actually is prevailing. The federal Davis-Bacon Act does not contain a similar provision.

It is estimated that changing the methodology from the modal method to the Davis-Bacon method will save state and local taxpayers up to \$200 million annually. Given that state and locally-funded construction in California totals about \$5 billion annually, the methodology change would reduce taxpayers' construction costs about 4 percent. The California Department of Transportation estimated that repeal of the “double asterisk” provision will reduce labor costs by 1.6 percent."

For more information about this report, how your city can take advantage of Charter City autonomy or for more information about California Construction Compliance Group and its efforts to promote fairness in public works contracting, please contact:

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