

Title: APPLICATION AND ENFORCEMENT OF PREVAILING WAGE & LIVING WAGE	
CREO Policy #: 2022-02	Approved by: Andrea C. Dorch, Director
Effective Date: January 1, 2022	Supersedes: N/A

1. Policy Statement

The application of prevailing wages on all projects for public use or benefit and certain projects receiving economic development incentives allows workers in the construction trades to receive minimum wages typical in the industry. Application of prevailing wages prevent abuse of workers which includes the prevention of economic injury to workers irrespective of workers ability to collectively bargain with any particular employer.

2. Purpose

The intended goal of this policy is to provide the process and procedure for implementing the local, state and federal prevailing wage laws on projects that are publicly funded. The City of Kansas City implements federal, state and local prevailing wage laws. The City finds that workers on projects procured with public funds are subject to minimum prevailing wages in certain occupational titles as defined by 8 CSR 30-3.010 to 30-3.060.

3. Background

The City, like many communities around the nation, is experiencing abuse of workers on publicly funded projects where no prevailing wage requirements are present. Such abuses include failure to promptly pay workers minimum wages, provide for appropriate benefits, create unfair and harsh working conditions, encourage unsafe and hazardous work conditions that harm individual worker, effect families and damage the community economy as a whole. At the same time, the City is mindful that individuals at pre-apprentice and apprenticeship levels may have a need for additional services that may help to mitigate the cost to developers and construction employers while preserving the human and civil rights of each individual.

4. Definitions

- 4.1 “Agency” shall mean the Tax Increment Financing Commission, Planned Industrial Expansion Authority, Land Clearance for Redevelopment Authority and any other agency which receives at least sixty six percent (66%) of their funding from the city.
- 4.2 “Board” shall mean the Fairness in Construction Board.
- 4.3 "City" means the City of Kansas City, Missouri, including its officials, officers, employees, agents, or any contractors and sub-contractors.

- 4.4 “City Funds” means fiscal means taken from the general fund of the City of Kansas City, Missouri.
- 4.5 “Living Wage” under this policy is only in reference to contracts entered into by the city for services, including construction services and shall require the contractor to pay the living wage established by this article pursuant to Sec. 38-202(c) of the City Code.
- 4.6 “Prevailing Wage Rate” means the prevailing hourly rate of wages for workers as set forth in Missouri Annual Wage Order as determined by the State of Missouri for the locality or as set forth in the Davis-Bacon Wage Decision for the locality at the time of the contract.
- 4.7 “Prevailing Wage Rules” shall mean the prevailing wage rules set forth in 8 CSR 30-3.010 to 30-3.060.
- 4.8 “Public Works” are all fixed works that includes works constructed for public use or benefit or paid for wholly or in part out of public funds. It also includes any work done directly by any public utility company when performed by it pursuant to the order of the public service commission or other public authority whether or not it be done under public supervision or direction or paid for wholly or in part out of public funds when let to contract by said utility.
- 4.9 “Wage Theft” shall mean the withholding or denial of wages or employee benefit rights rightfully owed to a worker or employee.

5. Application of Prevailing Wage

5.1 GENERAL

- 5.1.1 Prevailing wage only applies to construction work. It does not include professional services or maintenance work. Construction includes the building, reconstruction, improvement, enlargements, alteration, painting and decorating, demolition with planned post-demolition building, or major repair.
- 5.1.2 **Kansas City Living Wage:** Applies to any of the following: (1) all contracts involving professional or construction services to which the city has contracted; (2) any projects on property owned by the city; or (3) any supplemental workforce contracts which do not include apprentices in a bona fide apprenticeship program.
- 5.1.3 **Kansas City Prevailing Wage:** Applies to any of the following: (1) all contracts involving building, construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair entered into by the city for which the total project cost exceeds \$75,000; (2) any projects on property leased by the city for which the total project cost exceeds \$75,000.00; (3) any new development plan that seeks real and/or personal property tax abatement, exemption or redirection in excess of \$75,000 that requires council approval; (4) any new development plan approved by the planned industrial expansion authority (PIEA), land clearance for redevelopment authority (LCRA), enhanced enterprise zones (EEZ), or port authority (PA) when total project cost exceeds \$75,000; (5) any substantially modified existing

plan already approved by PIEA, LCRA, or PA when total project cost exceeds \$75,000.

5.1.4 **Missouri Prevailing Wage:** Applies to all public works projects constructed by or on behalf of state and local public bodies for public works projects in Missouri valued over \$75,000. Examples of public works projects include bridges, roads and government buildings. This means all fixed works constructed for public use, public benefit or *paid for* wholly or in part out of public funds which includes tax increment financing, sales taxes, and city general funds.

5.1.5 **Davis Bacon Act (DBA) and Davis Bacon and Related Acts (DBRA):** Applies to Prime contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works (as defined in the DBRA). DBRA applies to all CDBG and HOME grants. The contractors or subcontractors must pay their laborers and mechanics employed under the contract no less than the locally determined prevailing wages and fringe benefits for corresponding work on similar projects in the area. Staff must retrieve a SAM.gov wage decision for Davis Bacon and compare to local prevailing wages under the Missouri Annual Wage Order. The higher of the wage decision or annual wage order for prevailing wages for each trade/classification/occupational title shall be applied to the contract. If the notice to proceed is provided to a Prime more than 90 days after the original wage decision was submitted, a new wage decision must be retrieved and applied to the contract.

a. **Copeland Act.** The Copeland Anti-Kickback Act applies to all federally funded and assisted contracts, including HUD projects. The Copeland Act prohibits contractors and subcontractors from requiring payment of any portion of a worker's wages to a contractor or subcontractor unless certain requirements for legitimate withholdings are met. Legitimate withholdings are codified in the U.S. Department of Labor's Fair Labor Standards Act (FLSA). CREO enforces the provisions of the Copeland Act. Contractors and subcontractors that are found to violate the provisions of the Copeland Act are susceptible to criminal prosecution and civil penalties. CREO refers all findings of violations of the Copeland Act to the appropriate federal agency's Office of Inspector General (OIG) for enforcement.

b. **Categories of Construction:** Application of DBA and DBRA Prevailing Wage is based on the type of construction involved. The following categories must be applied to all federally funded or assisted projects, including CDBG and HOME funds where the value of the total project cost exceeds \$2,000:

- i. Heavy: all work related to the construction or repair of roads, appurtenant sidewalks, and storm sewer.
- ii. Highway: all work related to the construction or repair of highways, bridges, appurtenant sidewalks and exits, causeways,
- iii. Building: all work related to the construction, alteration, etc.... or repair of buildings including for the residential use of single or multi-family dwelling, over 4 stories and the plumbing, fixtures, HVAC and any work within a 15 foot radius of the building (e.g. sidewalks, parkways, parking lots, etc.). Parking garages under buildings are included in the story count. For example, if there are 4 stories of mixed use and 1 story of parking, the

building is considered 5 stories and building category of construction shall be applied.

- iv. Residential: all work related to the construction, alteration, etc...or repair of single or multi-family dwelling 4 stories or less.

5.1.6 **Workers:** Prevailing wages apply individually to laborers and mechanics on public works projects. Occupational titles are used to define the trades, classifications and scopes of work to which specific laborers and mechanics are tied. Occupational titles are defined in 8 CSR 30-3.010 to 30.060 and are included herein by reference. Where occupational titles differ from “Classifications/Trade” under the Davis Bacon Act (DBA) or the Davis Bacon and Related Acts (DBRA) and associated federal regulations, the occupational titles of the State of Missouri shall apply.

5.1.7 **Supervisors/Superintendents:** Prevailing wages do not apply to workers whose sole duty on a construction site is limited to the supervision, management or control of a project.

5.2 If any person working in a defined occupational title is working on a public works project, the person is entitled to receive prevailing wages and if qualified, fringe benefits.

5.2.1 **Trucking exception.** Workers that are hauling and/or dump trucking shall be excluded when the work on a job site is less than 60 minutes or involves only pick-up or drop-off of material.

5.2.2 **Supervision Exception.** Workers that perform only the task of supervision are not entitled to prevailing wages.

5.3 In the case of a multi-financed or assisted project that includes federal funds, the wage decision of the U.S. Department of Labor and the wage order of the State of Missouri shall be compared and the greater prevailing wage in each Occupational title shall be paid. Should a wage decision fail to have a rate of prevailing wages for a particular occupational title, a request for a wage determination shall be submitted through CREO prior to any construction work beginning. Failure to request a proper determination shall result in penalties being assessed against the offending firm per day the violation continues pursuant to RSMo. 290 et seq.

6 Responsibilities of Prime Contractors and Subcontractors.

6.1.1 **Worker Pay, Prevailing Wage:** Journeyperson rate of pay shall be paid to all workers employed on public works construction except entry-level workers or apprentices registered and participating in apprentice programs registered with the United States Department of Labor, Employment and Training Administration; and apprentices registered and participating in programs certified by the Secretary of the United States Department of Transportation as promoting equal opportunity in connection with federal-aid highway construction programs. Such workers shall be paid at least fifty percent (50%) of the applicable wage rate for a journeyperson worker under the appropriate Occupational title for a

specific

locality (county in which the work is performed). In calculating the applicable wage rate for a journey person, fringe benefits must be included.

- 6.1.2 **Worker Pay, Living Wage:** Where prevailing wage is less than the living wage, the minimum of the two shall be paid to workers where such wages apply. As of January 2022, the living wage shall be at least \$15.00 per hour pursuant to Sec. 38-204.
- 6.1.3 **Nonpayment of wages, Penalty:** Workers that file complaints of nonpayment of wages may sue under Missouri law for double wages. A poster or other conspicuous document must be posted in plain view of workers on a construction site that lists this information in bold print. The poster or other conspicuous document shall be in plain language detailing workers' rights under all applicable laws. CREO investigates complaints of nonpayment under local prevailing wage law and Missouri prevailing wage law. Complaints under federal law are investigated by CREO. CREO will attempt to conciliate substantiated complaints on federal projects. In the event conciliation efforts fail, CREO will refer the complaint to the appropriate federal agency Office of General Counsel (OGC) or Office of Inspector General (OIG) for enforcement.
- 6.2 Prime contractor is responsible for proper classification of its workforce. Occupational titles are defined in 8 CSR 30-3.010 to 30.060 and should be used to determine proper wage rates for workers by cross reference with the applicable annual wage order (AWO) or wage decision pursuant to Section 5.3.
- 6.3 Prime and subcontractors are required to submit weekly certified payroll records on all prevailing wage projects and any other construction projects that the City deems necessary in the administration of its construction contracts.
- 6.4 Prime Contractor is responsible for reviewing all certified payroll records (CPRs) prior to submitting to CREO for auditing in the city's online payroll management system, eComply, or other online payroll management system adopted by the City. The Prime is responsible for clearing any rejected/incomplete CPRs and any discrepancies prior to submission to CREO. Submitting falsified CPRs on federally funded projects are punishable under
- 6.5 **Overtime Calculation:** Overtime and holiday pay are based on each trade so it is important to review the annual wage order as overtime is applied on prevailing wage projects differently than non-prevailing wage projects. The link to the prevailing wage <https://labor.mo.gov/prevailing-wage> for Missouri and a summary of the changes to prevailing wage which took effect in August 28; you will have to refer to link for the complete prevailing wage rules. (do not forget to the 8 CSR 30-3 Prevailing Wage Rules as this applies to the various trades scope of work and the annual wage order reflects the payment of wages. Additionally, the RD110 form for payment of earning taxes). The KC earnings tax is required to be paid on all prevailing wage projects within the city of Kansas City limits. If the DBA or DBRA applies, the Federal Wage Decision and overtime and holiday schedules will be applied.

- 6.6 **Restitution:** Underpayments and non-payments to workers are immediately due to the worker upon discovery that such underpayment or non-payment has occurred. Restitution calculation is based on both wage and fringe benefit and any overtime required during the period. CREO applies penalties and liquidated damages for each worker per day the restitution is not paid pursuant to the minimum rate set by Missouri law. The restitution worksheet, revised earnings statement and worker affidavit shall be submitted prior to any release of payment due to a contractor or subcontractor.
- 6.7 **Payroll Errors:** Clear payroll errors are not subject to penalties and liquidated damages.
- 6.8 **Final Pay Application:** At substantial completion, the contracting department may release a partial final payment to the Prime upon an approved Labor Clearance Request from CREO. Labor Clearance Requests for partial payment are to be submitted through eBuilder or other authorized online platform prior to partial final payment.
- 6.5.1. Prior to final payment, the contracting department shall submit a final compliance clearance request to CREO through eBuilder or other authorized online platform. The contracting department is responsible to submit all close out documents to CREO with the request including final lien waivers, final pay application indicating final value of the contract and retention, and any required affidavits. The contracting department may not release any payment until a final compliance clearance is approved by CREO.
- 6.5.2. The Prime contractor is responsible to submit a final CPR for itself and ensure that all subcontractors have submitted a final CPR prior to a compliance clearance being approved by CREO. The Prime contractor is responsible for clearing all rejected/incomplete CPRs. Failure to comply will delay final payment and may be subject to penalties under RSMo. 290.010 et seq.
- 6.5.3. The Prime contractor shall include with its final CPR an official City of Kansas City, Missouri Finance Department/Revenue Division clearance statement that all E-Tax has been paid. Failure to provide this document will delay final payment.
- 6.9 **Daily Labor Force Reports:** A Daily Labor Force Report (DLFR) is required to be submitted to CREO on Monday for the previous week worked by the prime contractor only. DLFRs must be uploaded into eComply project document folder following the technical instructions in the eComply manual. DLFRs are used to check veracity of CPR data and ensure that onsite interviews are with workers.
- 6.9.1 To upload DLFR to eComply: Select “daily labor force report” under the drop-down list for “document type” and under “name” label it as “[Contractor’s Name] [DLFR] [WE] [mmddyy]” and set the permission to “public”.
- 6.9.2 Prime contractor is responsible to ensure sub-contractors are preparing and retaining the sub-contractor’s DLFRs on file for review, as needed. The project manual includes samples of DLFRs. DLFRs may be digitized with appropriate digital verification and signature of a foreperson or superintendent daily. Any digital forms must include all the

information required by the paper form:

- (1) Daily Weather Report
- (2) Work Day and Date
- (3) Work Day Type (e.g. 5 day/8 hours; 4 day/10 hours, etc.)
- (4) Legal Full Name of each worker onsite (no nicknames, aliases, etc.)
- (5) Occupational title for each worker onsite
- (6) "Clock-in" and "Clock Out" time for each worker onsite
- (7) Ethnicity
- (8) Sex

NOTE: The ethnicity and sex requirement is used as cross-reference for compliance with the Construction Employment Program codified at City Code 130041 as amended and federal workforce requirements on federally funded or assisted contracts.

6.10 Pre-Apprenticeship Documents: Reserved.

6.11 Apprenticeship Documents: To ensure every apprentice working on the project is properly paid and that proper ratios for journeyman/apprentice is followed pursuant to U.S. DOL requirements for apprenticeship, proof of apprenticeship documents must be uploaded to the individual employee document folder in eComply or the designated electronic portal. In the event the eComply system is down, the contractor must submit postmarked documents no later than the second week of the start of construction.

NOTE: Employee document folders will ensure apprentice documents follow the employee and that the Prime and Subcontractors do not have to repeatedly upload apprenticeship documents.

6.11.1 Apprenticeship Ratios: A one-to-one journeyman/apprentice ratio is applicable under Missouri law and adopted by CREO in determining journeyman rates. When apprenticeship ratio standards are specified in the U.S. DOL standards for apprenticeship for a specific Occupational title, a Ratio Deviation Request (RDR) will need to be submitted to CREO on Form 1. The RDR must attach a copy of the U.S. DOL standard supporting the RDR and submitted to CREO for review. If denied, CREO will provide a response in writing stating the reason for its denial.

6.11.2 Ratio Supervision: Direct supervision between journeyman/apprentice (or entry-level worker) must be maintained throughout the work day. When a journeyman responsible for an apprentice (or entry-level worker) has completed work for the day, the apprentice must also cease work for the day. The apprentice will be paid at journeyman scale during the absence of a journeyman. For example, if the journeyman stops working at 4:00pm, the apprentice must stop working at 4:00pm. If the apprentice continues work until 5:30pm, the apprentice shall be paid the journeyman scale for 1.5 hours past 4:00pm. This will include overtime at the journeyman rate for the apprentice.








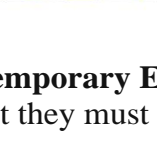






6.11.3 Apprenticeship Verification: The documents used to support an apprentice must specify the percentage of journeyman scale for the period of work performed and level of

experience. For example, if the apprentice is in its first year and paid 50% of journeyman rate, the supporting documentation will list the Occupational title/Trade/Classification, 1st Year Apprentice, and 50% Journeyman scale.

6.11.4 Any contractor employing pre-apprentices are to be paid journeyman scale for the work performed while on a prevailing wage project unless there is a documented pre-apprenticeship program in place prior to the start date of the project on which the pre-apprentice is employed. Pre-apprenticeship is allowed under the U.S. DOL and Missouri Division of Labor Standards. Pre-apprenticeship programs must follow the minimum requirements of the Missouri Division of Labor Standards to be approved for lower wages. Failure to provide proper documentation of a pre-apprenticeship program prior to the start of the project will require the payment of journeyman scale to the pre-apprentice. A contractor may not enact a pre-apprenticeship program to intentionally circumvent the prevailing wage requirements. If CREO finds that a contractor has intentionally attempted to evade the requirements of local, state or prevailing wage, CREO will file a human rights complaint with the Missouri Commission on Human Rights.

IMPORTANT: The Attorney General may take action independent of CREO and file its own lawsuit against any contractor subject to the prevailing wages.

6.12 **Independent Contractors:** Workers that receive IRS Form 1099 are to be classified as either an employee or subcontractor (independent contractor). Independent Contractors must be treated as either an employee and/or subcontractor (i.e. written contract) for payroll purposes. CREO uses the following test to determine whether an employee is a bona fide employee or subcontractor:

 EMPLOYEE	OR	INDEPENDENT CONTRACTOR
 Working for someone else's business		Running their own business
 Paid hourly, salary, or by piece rate		Paid upon completion of project
 Uses employer's materials, tools and equipment		Provides own materials, tools and equipment
 Typically works for one employer		Works with multiple clients
 Continuing relationship with the employer		Temporary relationship until project completed
 Employer decides when and how the work will be performed		Decides when and how they will perform the work
Employer assigns the work to be performed		Decides what work they will do

6.13 **Temporary Employees:** Temporary employees are allowed on prevailing wage projects, but they must be paid the appropriate prevailing wage for the work performed on the

specific project and a copy of the earning statement and cancelled check will need to be upload into eComply for review; no deduction of fees to the temporary agency is allowed from employee's payroll. Temporary agencies will be treated as a sub-contractor to the project and will need to register and submit certified payroll reports.

- 6.14 **Kansas City Earnings Tax (E-Tax):** All contractors are required to deduct the Kansas City earnings taxes from wages earned on projects performed within the Kansas City boundaries. Owner/operators working on projects must pay E-Tax from weekly payroll. Form RD110 must be uploaded for review approval. Please note that failure to submit the RD110 will result in holding of payment on subsequent pay applications until this requirement is satisfied.

Requests for Waiver; Extraordinary Qualifications.

- 1.1 Developers and project owners that have incentives through any of the herein defined economic development agencies may request a waiver of the requirements of the Kansas City Prevailing Wage. Waivers do not apply to Missouri Prevailing Wage or DBA or DBRA.
- 1.2 Request for waivers must be based on one or more of following reasons and include supporting documentation from the Developer or project owner:
- 1.1.1 Projects located in a severely distressed census tract. The Developer must show that a census tract is severely distressed for at least 10 years immediately prior to the date of the project approval. The Developer or project owner must submit the documentation to the applicable agency or in the event City Council approval is required, to the City Council. The agency or City Council retains the ability to waive the requirements of City Code Ch. 3 Division 5.
- 1.1.2 Projects for the construction of affordable housing and extremely affordable housing that meet the requirements of City Ord. 201038. The Developer or project owner must show that the project meets the definition of City Ord 201038. The Developer or project owner must submit the documentation to the applicable agency or in the event City Council approval is required, to the City Council. The agency or City Council retains the ability to waive the requirements of City Code Ch. 3 Division 5.
- 1.1.3 Projects involving restoration (renovation or rehabilitation) that are designated as local or national historic landmark. The Developer or project owner must submit a record that the project is recorded in the local or national historic registry. The Developer or project owner must submit the documentation to the applicable agency or in the event City Council approval is required, to the City Council. The agency or City Council retains the ability to waive the requirements of City Code Ch. 3 Division 5.
- 1.1.4 Projects that have applied and obtained approval through the National Parks Service to be designated on the National Register of Historical Places. The Developer or project owner must submit the application to the National Parks Service and the approval documentation (if the project is not yet registered for public viewing). The Developer or

project owner must submit the documentation to the applicable agency or in the event City Council approval is required, to the City Council. The agency or City Council retains the ability to waive the requirements of City Code Ch. 3 Division 5.

- 1.1.5 Projects that provide mass public transportation to residents living in distressed census tracts. The Developer is responsible for proving that the project will provide mass public transportation to residents and may do so by providing a architectural plans, road maps, or other similar documentation. The Developer or project owner must submit the documentation to the applicable agency or in the event City Council approval is required, to the City Council. The agency or City Council retains the ability to waive the requirements of City Code Ch. 3 Division 5.
- 1.1.6 Projects that are located in established high-frequency transit corridors. The Developer is responsible for documenting and providing proof that the project is located in high frequency transit corridors which may include KCATA data, MoDOT data, or other recognized transit data collection agencies. The Developer or project owner must submit the documentation to the applicable agency or in the event City Council approval is required, to the City Council. The agency or City Council retains the ability to waive the requirements of City Code Ch. 3 Division 5.
- 1.1.7 Projects that provide at least 100 new entry-level jobs to Kansas City. Entry level jobs must be at least (1) \$32,000 wage-only compensation or (2) \$42,000 wage and fringe benefits. The Developer must provide a sworn affidavit of compliance with this provision, include such provisions in tenant leases, and develop an outreach plan to inform workers of opportunities. The Developer or project owner must submit the documentation to the applicable agency or in the event City Council approval is required, to the City Council. The agency or City Council retains the ability to waive the requirements of City Code Ch. 3 Division 5.

1.2 Process for submission of exemption/waiver to City Council:

- 1.2.1 A developer shall submit a request in writing to CREO through the eBuilder process or other approved online platform with appropriate documentation outlined in 1.1.1 through 1.1.7 (above). CREO will provide a recommendation to City Council through the Fact Sheet associated with a Resolution to exempt/waive the requirements of City Ord. 210179.
- 1.2.2 Approved Resolutions to exempt/waive the requirement of City Ord. 210179 as amended shall be added to the permanent project file.

1.3 Process for submission of exemption/waiver to economic development agency:

- 1.3.1. A developer shall submit a request in writing directly to the economic development agency for which they are seeking an incentive. The economic development agency shall hear the matter publicly and either exempt or deny the request. The economic development agency head shall notify CREO of whether the waiver/exemption was approved. Proof of approval shall either be by board or commission

minutes or a memo signed by the board or commission contract compliance chair.

Boards and Commissions—other than defined agencies.

- 1.4 Application of Kansas City Prevailing Wage shall be applied through contract provisions if the board or commission is responsible for the administration of a city program but not a defined agency under this policy.
- 1.5 A board or commission that is not administering a city program or using direct city funds is highly encouraged to incorporate Missouri Prevailing Wage orders into contracts with developers, contractors and subcontractors. CREO is not responsible for enforcing contract-based prevailing wage. CREO will provide an opinion on whether there is a violation of any of the provisions of Missouri or Kansas City wage laws upon request from the contracting agency. Requests for opinions shall be submitted through the eBuilder process or other approved online portal. Final determination of failure to comply with contractual provisions are the sole purview of the agency administering the contract.
- 1.6 Sales tax use is subject to Missouri Prevailing Wage.
- 1.7 The Attorney General may take action independent of CREO and file its own lawsuit against any contractor subject to the prevailing wages.