

1 **AN ORDINANCE AMENDING**
2 **[INSERT] OF THE FAIRFAX COUNTY CODE,**
3 **RELATING TO PAYMENT OF PREVAILING WAGE FOR WORK PERFORMED**
4 **ON CONSTRUCTION CONTRACTS**

5 ...

6
7 **Draft of October 26, 2021**
8

9 **AN ORDINANCE to amend the Fairfax County Code by adding Section [INSERT**
10 **SECTION]**

11 **Be it ordained by the Board of Supervisors of Fairfax County that:**

12 1. Section [INSERT SECTION] is adopted to read as follows:

13 **Section [INSERT]. Payment of prevailing wage for work performed on construction**
14 **contracts.**

15 (a) For purposes of this Section:

16 1. *Construction* has the meaning set out in the Fairfax County Purchasing Resolution. For the
17 purposes of this ordinance, construction does not include maintenance work to a County Public
18 Body's infrastructure or work performed by a County Public Body's forces directly.

19 2. *County Public Body* means those public bodies described in Article 1 of the Fairfax County
20 Purchasing Resolution that procure Construction services paid for with Fairfax County funds.
21 Specifically, the Fairfax County Board of Supervisors, the Fairfax County School Board, the
22 Fairfax County Park Authority, or the Fairfax County Redevelopment and Housing Authority.

23 3. *County Construction Contract* means a contract for construction (1) to which a County Public
24 Body is a party; and (2) is solicited through competitive sealed bidding, on a design-build basis, or
25 construction manager at risk basis.

26 4. *Prevailing wage rate* means the rate, amount, or level of wages, salaries, benefits, and other
27 remuneration prevailing for the corresponding classes of mechanics, laborers, or workers
28 employed for the same work in the same trade or occupation in the locality in which the public
29 facility or immovable property that is the subject of construction is located, as determined by the
30 Commissioner of Labor and Industry on the basis of applicable prevailing wage rate
31 determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act,
32 40 U.S.C. § 276 et seq., as amended.

33 (b) Any contractor or subcontractor who employs any mechanic, laborer, or worker to perform work
34 contracted to be done under a County Construction Contract at a rate that is less than the
35 prevailing wage rate (i) is liable to such individuals for the payment of all wages due, plus interest
36 at an annual rate of eight percent accruing from the date the wages were due; and (ii) will be
37 disqualified from bidding on public contracts with any public body until the contractor or
38 subcontractor has made full restitution of the amount described in clause (i) owed to such
39 individuals. A contractor or subcontractor who willfully violates this section is guilty of a Class 1
40 misdemeanor.

41 (c) Upon the award of any County Construction Contract, the contractor to whom such contract is
42 awarded must certify, under oath, to the Commissioner of Labor and Industry the pay scale for

1 each craft or trade employed on the project to be used by such contractor and any of the
2 contractor's subcontractors in determining compensation for work to be performed under such
3 County Construction Contract. This certification will, for each craft or trade employed on the
4 project, specify the total hourly amount to be paid to employees, including wages and applicable
5 fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit,
6 and list the names and addresses of any third-party fund, plan or program to which benefit
7 payments will be made on behalf of employees. Within five (5) days of certifying to the
8 Commissioner of Labor and Industry, the contractor must provide a copy of the certification to the
9 County Purchasing Agent or County organization with responsibility for the County Construction
10 Contract as identified in the Fairfax County Purchasing Resolution, Article 1, Section 3.

11 (d) Each contractor or subcontractor subject to the provisions of this section must keep, maintain, and
12 preserve (i) records relating to the wages paid to and hours worked by each individual performing
13 the work of any mechanic, laborer, or worker and (ii) a schedule of the occupation or work
14 classification at which each individual performing the work of any mechanic, laborer, or worker on
15 the public works project is employed during each workday and week. The contractor or
16 subcontractor must preserve these records for a minimum of six years from contract expiration or
17 termination and make such records available to the Department of Labor and Industry or the
18 County Public Body within 10 days of a request and shall certify that records reflect the actual
19 hours worked and the amount paid to its workers for whatever time period they request.

20 (e) Within ten (10) days of a Notice to Proceed, contractors and subcontractors performing
21 construction services pursuant to a County Construction Contract must post the general prevailing
22 wage rate for each craft and classification involved, as determined by the Commissioner of Labor
23 and Industry, including the effective date of any changes thereof, in prominent and easily
24 accessible places at the site of the work or at any such places as are used by the contractor or
25 subcontractors to pay workers their wages. This posting must be made in those languages
26 determined by the Purchasing Agent, in consultation with the American Community Survey, that
27 provide meaningful access to the information in the posting to workers with limited English
28 proficiency. Within 10 days of such posting, a contractor or subcontractor shall certify to the
29 Commissioner of Labor and Industry its compliance with this subsection.

30 (f) Any interested party, which is a bidder, offeror, contractor, or subcontractor, shall have standing to
31 challenge any bid specification, project agreement, or other public contract for public works that
32 violates the provisions of this section. Such interested party shall be entitled to injunctive relief to
33 prevent any violation of this section. Any interested party bringing a successful action under this
34 section shall be entitled to recover reasonable attorney fees and costs from the responsible party.

35 (g) The provisions of this section do not apply to County Construction Contracts:

36 1. valued at less than **[\$[INSERT AMOUNT]; [NOTE: For reference, the enabling legislation**
37 **establishes a minimum project value of \$250,000.]**

38 2. subject to Federal prevailing wage law;

39 3. solicited and awarded before July 1, 2022, including any renewals; or

40 4. exempt or excluded from the Virginia Public Procurement Act.

41
42 (h) The Purchasing Agent has the authority to establish additional departmental procedures, not
43 inconsistent with the provisions of this Section, designed to administer and enforce this Section.
44

45 **2. That the provisions of this ordinance are severable, and if any provision of**
46 **this ordinance or any application thereof is held invalid, that invalidity shall not**
47 **affect the other provisions or applications of this ordinance that can be given**
48 **effect without the invalid provision or application.**

49
50 **3. That this Ordinance is effective July 1, 2022.**

1
2
3
4

GIVEN under my hand this day of _____ 2021.

Clerk to the Board of Supervisors