

AGENDA



Recommendation for Council Action (CMD)

Austin City Council	Item ID:	25487	Agenda Number	11.
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Meeting Date:	August 8, 2013
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Department:	Contract Management
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Subject

Approve an ordinance amending Ordinance No. 20110629-003 (waiving certain development fees related to the construction of the J. W. Marriott at 2nd Street and Congress Avenue by White Lodging) to provide clarification and direction regarding amendment of the wage rate requirements, waive past non-compliance, and impose additional conditions.

Amount and Source of Funding

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Fiscal Note

There is no unanticipated financial impact. A fiscal note is not required.

Purchasing Language:	
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Prior Council Action:	June 29, 2011 – Council Adoption of original Development Fee Waiver Ordinance.
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Boards and Commission Action:	
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MBE / WBE:	
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Related Items:	
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Additional Backup Information

In June of 2011, Council considered and took action on the waiver of \$3.8 million in development fees for the J.W. Marriott Hotel being developed by White Lodging. Council conditioned the fee waiver upon compliance with the principals and standards of the City's MBE/WBE regulations and the City's prevailing wage policy with the condition that should White Lodging fail to comply, they were required to reimburse the City for any portion of the fee waivers that have been used and remaining unused fee waivers would expire.

Since the action in 2011, a former Assistant City Manager approved an alternate path of compliance with the Ordinance. This approval was given in response to a request for clarification from White Lodging and to potentially remedy a situation that was discovered when the developer had the time to quantify the impact of implementation of prevailing wage – namely, that it was more costly than the value of the development fees being waived. After staff notified White Lodging that its wages were not in compliance with Council's Ordinance, White Lodging requested that an item be placed on a City Council Agenda to clarify this issue.

Alternatives for Council consideration:

1. **Enforcement of the Current Ordinance** – By taking action to enforce the existing ordinance, Council can affirm their expectation that White Lodging pay workers in accordance with the City/Davis Bacon prevailing wage scale in exchange for stated development fee waivers. In this scenario, White Lodging will be expected to pay all workers on the job site in accordance with the City's Prevailing Wage Scale that was in place at the time the waiver was originally given (June 2011).

The City, by Ordinance, has defined prevailing wage as the wage specified in a Department of Labor (DOL) published wage determination for a particular construction trade in Travis County or as the result of a City of Austin wage survey conducted according to DOL established methodology, in effect at the time of solicitation for a construction project. White Lodging would have to maintain payroll records and will make the site accessible to CMD Staff as may be necessary to adequately monitor and enforce Prevailing Wage.

2. **Compliance through an Overall Average Wage Rate** – Council could choose to ratify the plan proposed by White Lodging and approved by the former Assistant City Manager. In this option, compliance is assessed at the end of construction. White Lodging would be required to submit certified payrolls showing all workers who have worked on the project. An overall average pay rate will be determined over all the workers and that amount will be compared to the wage rate calculated by averaging the prevailing wage rates listed for all trades on the City's Prevailing Wage Scale in place at the time of adoption of the original fee waiver ordinance. If the average amount paid by White Lodging is higher than the average of the City's wage rates, then White Lodging would be considered to be in compliance. If it is not, fees that were waived would be reimbursed to the City of Austin.
3. **Compliance through an Overall Average Wage Rate including Payment of a Living Wage (\$11/hour floor)** – This plan differs from option 2 above by adding a stipulation that White Lodging will not pay workers less than \$11/hour. White Lodging would be expected to pay each individual worker an amount not less than \$11/hour. This amount is expected to be their base pay, and fringe benefits would not factor into a calculation of this amount. The stipulations for compliance at the conclusion of construction would still be in place as outlined in option 2. White Lodging will maintain payroll records and will make the site accessible to CMD Staff as may be necessary to adequately monitor and enforce the Living Wage requirement.
4. **Compliance through Payment of a Living Wage (\$11/hour floor)** – Another option is to authorize the noted development fee waivers, with the condition that workers are paid not less than \$11/hour with no review or consideration of the overall average or comparison to prevailing wage. White Lodging would be expected to pay each individual worker an amount not less than \$11/hour. This amount is expected to be

their base pay, and fringe benefits would not factor into a calculation of this amount. White Lodging will maintain payroll records and will make the site accessible to CMD Staff as may be necessary to adequately monitor and enforce the Living Wage requirement.