



LEE HARRIS
COUNCILMAN - District 7

CITY COUNCIL
Lee.Harris@memphistn.gov

January 29, 2014

Bryan Carson, Chair
Shelby County Democratic Party
3170 N. Trezevant
Memphis, TN 38127

Dear Chairman Carson:

There are two pieces of legislation before the city council that are of a vital importance to this community.

1. New Prevailing Wage Ordinance

The first item expands the City of Memphis' prevailing wage ordinance. Prevailing wage ordinances require governmental entities to pay the market (or prevailing) wage rates in effect for any government contract. Along with the eight-hour workday, equal pay for women, and minimum wage requirements, prevailing wage laws have been an integral part of the progressive movement for more than a 100 years.

Prevailing wage laws at the federal, state, and local level ensure that workers on government contracts, like construction contracts, receive the going market rate for their work. Without prevailing wage rules, the government's massive spending ability might destabilize labor markets and lower the wage rate workers receive in a particular area.

In Memphis, our prevailing wage requirement applies to any contract above \$500,000. As a consequence, contractors have significant incentive to parcel out their work into small enough subcontracts to fit under the \$500,000 threshold. When contractors are able to divide up construction work into smaller contracts and each smaller contract is for an amount under \$500,000, they are able to evade our prevailing wage law and the Council's intent in adopting the legislation in the first place. The proposed legislation (see attachment) expands the class of contracts that are subject to the City's prevailing wage law. If the proposed legislation is passed, contracts for \$50,000 and above will be subject to the prevailing wage requirement.

2. Resolution in Support of 220 Kellogg's Workers

The second item is a resolution sponsored by me, Councilwoman Janis Fullilove, and Councilwoman Wanda Halbert in support of the 226 locked out Kellogg's workers. As you know, workers at the Kellogg's cereal plant in Memphis have been locked out by management

and barred from returning to work until they concede to changes in their labor contract. Many of the workers who have been prevented from returning to work until they agree to a new contract have been working at the South Memphis facility for more than 30 years. Despite their service to the company, it appears that Kellogg's workers have been forced to go without pay or healthcare for several months. This is a form of economic duress and an extreme tactic in a labor negotiation. The resolution calls on the parties to end the lockout as soon as practicable. The resolution takes no position on the items in dispute as part of the labor negotiation. Instead, my co-sponsors and I have taken the position that the Kellogg's employees should be allowed to return to work. At that time, Kellogg's management and its employees can resume their negotiation.

As such, I'm asking the Democratic Party to support these measures by resolution. For your consideration, I have attached copies of both these items for your consideration. I would be happy to attend the next Party meeting (or anytime that is convenient to you) to discuss these items in more detail.

All the best,

A handwritten signature in black ink, appearing to read "Lee Harris". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lee Harris
Councilman, District 7,
Memphis City Council

Enclosures: (2)

Cc: Ron Baker, Bakery, Confectionery, Tobacco Workers and Grain Millers'
International Union
Dave Cambron Vice-Chair, Shelby County Democratic Party
Diane Withers, Shelby County Democratic Party
Reginald Milton, Shelby County Democratic Party
Horace Andy Reid, Memphis City Council Staff Intern
Chris Bell, Memphis City Council Staff Intern

**RESOLUTION IN SUPPORT OF BRINGING TO AN END THE ONGOING DISPUTE
BETWEEN KELLOGG WORKERS AT THE KELLOGG MEMPHIS PRODUCTION
FACILITY AND THE KELLOGG COMPANY AND TO END THE LOCKOUT OF KELLOGG
WORKERS**

WHEREAS, since October 22, 2013, more than 200 workers at Kellogg's primary cereal plant in Memphis, Tennessee have been locked out and prevented from returning to work;

WHEREAS, it has created an irreparable hardship on the 200 workers and their families, all of whom live in the Memphis metropolitan area, to be out of work for nearly three months;

WHEREAS, the City Council of the City of Memphis is willing to assist these 200 workers and their families by whatever means possible to resolve this lockout;

WHEREAS, thirty percent of the workers who have been locked out have been working at the Memphis Kellogg facility for more than 30 years;

WHEREAS, on average, locked out employees have been working at the Memphis Kellogg facility for more than 20 years;

WHEREAS, the Memphis Kellogg facility, along with facilities in Battle Creek, Michigan, Omaha, NE, and Lancaster, PA, is one of the primary cereal production facilities in the nation;

WHEREAS, the Kellogg Company, according to its most recent Corporate Responsibility Report, recognizes the importance of the company's workforce to its business success;

WHEREAS, the Kellogg Company, like all highly regarded major American companies, has an interest in treating its employees fairly, since fair treatment helps enhance the company's reputation and protect the integrity of its brand-names;

WHEREAS the Kellogg Company and the City of Memphis have an on-going interest in retaining middle-class jobs, creating work opportunities that offer a decent standard of living, and a stabilizing the local tax base.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Memphis respectfully requests that the Kellogg Company find a way to end the lockout of 200 workers at the Memphis facility as soon as reasonably possible and permit the 200 workers to return to their jobs so that they can continue to provide for their families.

IN ADDITION, BE IT RESOLVED that the provisions of this Resolution are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Resolution shall continue in full force and effect.

FINALLY, BE IT RESOLVED that this Resolution shall take effect from and after the date it shall have been passed by the City Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

Lee Harris
Council Member

Janis Fullilove
Council Member

Wanda Halbert
Council Member

Date of Last update: January 17, 2014

Attest:
Patrice Thomas, Comptroller

AN ORDINANCE TO EXPAND THE CLASS OF CONTRACTS COVERED UNDER THE PREVAILING WAGE ORDINANCE, ALIGN CITY OF MEMPHIS PREVAILING WAGE ORDINANCE WITH STATE-LEVEL PREVAILING WAGE REQUIREMENTS, AND AMEND SECTION 5-4-12(A) AND 5-4-12(F-1).

(PREVAILING WAGE)

*****Summary of Proposed Ordinance**

Under the current prevailing wage ordinance, firms that contract with the City of Memphis are required to pay local prevailing wages for workmen, mechanics, and other laborers on City projects. However, the current ordinance requires that firms pay prevailing wages only for contracts in excess of \$500,000. As a consequence, one problem is that under the current ordinance, firms that contract with the City of Memphis could possibly avoid paying the prevailing wage by piecing out work into sections of just under \$500,000.

The Proposed Ordinance expands the class of contracts that are required to comply with the City's current Prevailing Wage Ordinance. The Proposed Ordinance requires that firms receiving contracts in excess of \$50,000 pay prevailing wages. In addition to setting a lower threshold for contracts subject to the prevailing wage, the Proposed Ordinance updates some language in the City's Prevailing Wage ordinance. It is also worth noting that the Proposed Ordinance matches the State threshold for contracts subject to the State requirement for Prevailing Wage, which is also set to apply for state contracts in excess of \$50,000.

ORDINANCE NO. _____

AN ORDINANCE TO EXPAND THE CLASS OF CONTRACTS COVERED UNDER THE PREVAILING WAGE ORDINANCE, ALIGN THE CITY OF MEMPHIS PREVAILING WAGE ORDINANCE WITH STATE-LEVEL PREVAILING WAGE REQUIREMENTS, AND AMEND SECTION 5-4-12(A)/AND 5-4-12(F-1) (PREVAILING WAGE)

WHEREAS, the existing City Code of Ordinances, Chapter 5, Article 4, Section 12(A), commonly known as the "Prevailing Wage," regulates the minimum wage of construction workers associated with City projects; and

WHEREAS, the "Prevailing Wage" establishes the requirement that city of Memphis construction contracts pay the local prevailing wage for laborers, workmen, mechanics or other listed classifications for Memphis, Tennessee; and

WHEREAS, the "Prevailing Wage" applies to any construction project involving city funds in excess of \$500,000; and

WHEREAS, as a consequence of the high \$500,000 requirement for the prevailing wage to apply, there is a real potential for abuse; and

WHEREAS, the State of Tennessee has dealt the potential for abuse by greatly expanding the range of state contracts that are subject to state prevailing wage requirements; and

WHEREAS, Tennessee Code Annotated, Title 12, Chapter 4, Section 402-415, the "Prevailing Wage Law" for the state of Tennessee provides that the state prevailing wage requirement shall apply to contractors who perform a state contract in excess of \$50,000;

NOW THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that the Code of Ordinances Chapter 5, Article 4, Sections 12(A) and 12(F-1) are hereby amended to read as follows:

Sec. 5-4-12. Prevailing wage.

- A. Any firm, individual, partnership, corporation, contractor, or subcontractor that is awarded a contract in excess of fifty thousand dollars (\$50,000) by the city for the construction of, improvement, enlargement, alteration or replacement of a public work or any project involving city funds in excess of fifty thousand dollars (\$50,000) (hereinafter referred to as "recipient"), shall be required to pay local prevailing wages for laborers, workmen, mechanics or other listed classifications for Memphis, Tennessee.
- B. Contracts for the construction of, demolition, improvement, enlargement, alteration or replacement of a public work or project shall not be deliberately divided into multiple contracts for the sole purpose of circumventing the

prevailing wage ordinance.

- C. The term "wage(s)" and "prevailing wage(s)" shall be defined as the rate of pay as determined according to the provisions of this section.
- D. There shall be a prevailing wage commission composed of nine members, including the city finance director or his or her designee, who shall serve as chairperson of the committee, and the city public works director or his or her designee. The chairperson of the city council or another councilmember designated by the city council chairperson shall also serve on the commission. Six members shall be appointed by the mayor and approved by the city council and shall serve terms of two years (two shall be representatives of the Memphis Building and Construction Trades Council, two shall be representatives of the West Tennessee Chapter of the Associated Builders and Contractors, Inc. or their designees, and two shall be representatives of a local minority contractor association). The commission shall meet as required and shall have oversight responsibility for the prevailing wage ordinance to ensure it is properly and fairly enforced. The commission shall have no authority in the establishment of wages or job descriptions.
- E. Determination of local prevailing wage. For purposes of this section, the prevailing wage rate shall be determined as follows:
 - 1. The prevailing wage rate for the city shall be the most current State of Tennessee prevailing wage rates established for Region 1, which includes Memphis and Shelby County, plus benefits as described in the published schedule issued by the Memphis and Shelby County Building Trades Council in effect on the date this subdivision is adopted by the council.
- F. Filing scheduled wages; employment of apprentices.
 - 1. It shall be required that any recipient performing under the terms of this section file with the city a schedule of the wages to be paid to such laborers, workmen, mechanics or employees working other classifications.
 - 2. The schedule shall not be less than the state prevailing wages for the class of work being performed by each laborer, workman or mechanic. Such schedule of prevailing wages shall be clearly posted on the job site during construction. (Any construction, improvement, enlargement, alteration or replacement of a public work project, as provided hereof, shall require that a contractor employs apprentices who are properly indentured into a joint labor management apprenticeship training program or an equivalent program that is registered and certified with the U.S. Department of Labor, Bureau of Apprenticeship Training.)

3. Pre-apprentices/helpers may be utilized if indentured apprentices are not available.
- G. Proof of compliance. The city and/or its authorized representative shall have the power and authority to request and receive information which would substantiate proper compliance under this section. The recipient of the contract shall supply the requested documents or information to the city or its designee within 30 working days of receipt of this request. Failure to comply with the request shall result in a fine equal to the maximum amount allowable under the law after the 30 working days response period has elapsed. If determination is made by the city that the recipient is not in compliance with the prevailing wage ordinance, the recipient will be provided seven working days to begin and to diligently pursue rectifying the compliance violation. If recipient fails to comply with this request within 21 working days, then documentation will be forwarded to the prevailing wage commission for final disposition. A majority vote of members present will be final, with a minimum of five members in attendance.
- H. Violations, penalties and sanctions. Any recipient which knowingly or willfully fails to comply with the provisions of the ordinance as determined by the prevailing wage commission shall be fined not less than the maximum amount allowable under the law for each violation. Any recipient which is found to have committed two violations of this section in any 24-month period shall be prohibited from being awarded a contract by the city for any public work or project for a period of 24 months of adjudication of the second violation.

SECTION 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect from and after the date it shall have been passed by the City Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

Lee Harris
Council Member

Attest:
Patrice Thomas, Comptroller

*****CURRENT ORDINANCE:**

Sec. 5-4-12. Prevailing wage.

- A. Any firm, individual, partnership or corporation that is awarded a contract by the city for the construction of, improvement, enlargement, alteration or replacement of a public work or any project involving city funds in excess of \$500,000.00 and any subcontractors of such public work or project involving city funds in excess of \$50,000.00 (hereinafter referred to as "recipient"), shall be required by the city to pay local prevailing wages for laborers, workmen, mechanics or other listed classifications for Memphis, Tennessee.
- B. Contracts for the construction of, demolition, improvement, enlargement, alteration or replacement of a public work or project shall not be deliberately divided into multiple contracts for the sole purpose of circumventing the prevailing wage ordinance.
- C. The term "wage(s)" and "prevailing wage(s)" shall be defined as the rate of pay as determined according to the provisions of this section.
- D. There shall be a prevailing wage commission composed of nine members, including the city finance director or his or her designee, who shall serve as chairperson of the committee, and the city public works director or his or her designee. The chairperson of the city council or another councilmember designated by the city council chairperson shall also serve on the commission. Six members shall be appointed by the mayor and approved by the city council and shall serve terms of two years (two shall be representatives of the Memphis Building and Construction Trades Council, two shall be representatives of the West Tennessee Chapter of the Associated Builders and Contractors, Inc. or their designees, and two shall be representatives of a local minority contractor association). The commission shall meet as required and shall have oversight responsibility for the prevailing wage ordinance to ensure it is properly and fairly enforced. The commission shall have no authority in the establishment of wages or job descriptions.
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F. Filing scheduled wages; employment of apprentices.

1. It shall be required that any contractor or subcontractor performing under the terms of this section file with the city a schedule of the wages to be paid to such laborers, workmen, mechanics or employees working other classifications.
2. The schedule shall not be less than the state prevailing wages for the class of work being performed by each laborer, workman or mechanic. Such schedule of prevailing wages shall be clearly posted on the job site during construction. (Any construction, improvement, enlargement, alteration or replacement of a public work project, as provided hereof, shall require that a contractor employs apprentices who are properly indentured into a joint labor management apprenticeship training program or an equivalent program, that is registered and certified with the U.S. Department of Labor, Bureau of Apprenticeship Training.)
3. Pre-apprentices/helpers may be utilized if indentured apprentices are not available.

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H. Violations, penalties and sanctions. Any recipient which knowingly or willfully fails to comply with the provisions of the ordinance as determined by the prevailing wage commission shall be fined not less than the maximum amount allowable under the law for each violation. Any recipient which is found to have committed two violations of this section in any 24-month period shall be prohibited from being awarded a contract by the city for any public work or project for a period of 24 months of adjudication of the second violation.