

**City of West St. Paul
Open Council Work Session Minutes
March 9, 2020**

1. Roll Call

Mayor Napier called the meeting to order at 5:00 p.m.

Present: Mayor Dave Napier
Councilmembers Wendy Berry, Lisa Eng-Sarne,
Anthony Fernandez, John Justen, Bob Pace and Dick Vitelli

Absent: None

Also Present: City Manager Ryan Schroeder
City Attorney Kori Land
Police Chief Brian Sturgeon
Fire Chief Mark Juelfs
Parks & Public Works Director/City Engineer Ross Beckwith
Community Development Director Jim Hartshorn
Finance Director Char Stark
Human Resources Director Debra Gieseke
City Clerk Shirley Buecksler

Kari Gill, Deputy Executive Director & Director of Housing
Development, Dakota County Community Development Agency
Michael McLaughlin, Consultant, Urban Works

2. Review and Approve the OCWS Agenda

Motion was made by Councilmember Eng-Sarne and seconded by Councilmember Berry to approve the OCWS agenda, as presented.

All members present voted aye. Motion carried.

3. Review the Regular Meeting Consent Agenda

Motion was made by Councilmember Vitelli and seconded by Councilmember Eng-Sarne to approve the Consent Agenda, as presented.

All members present voted aye. Motion carried.

4. Agenda Item(s)

A. Prevailing Wage Ordinance Review

In December 2019, during deliberations regarding the Dominion affordable housing project proposed on the former Kmart site it was asked if there was a prevailing wage requirement for the project. At that time, the developers responded that they did not include the costs of a prevailing wage requirement within their project pro forma and such a requirement would likely cause the developer to remove their entitlement request due to the project cost increase they asserted would occur.

The question created a review of projects since the 2007 adoption of the local prevailing wage ordinance, whether similar requirements exist elsewhere, impacts, and thoughts about how best to administer the ordinance.

West St. Paul's ordinance is the only ordinance of this type that currently exists within Dakota County. The County itself has a prevailing wage policy, as does the City of Hastings. However, neither of these policies relate to private development projects. No other city within the County has a prevailing wage policy at all.

The City has been involved in a number of projects for which prevailing wage is a component of the project. With any project including State, Federal, or Metropolitan Council grants there is a prevailing wage requirement. Included have been such as Robert Street reconstruction, the County Wentworth reconstruction, and the Marie/Oakdale trail project. The river to river tunnel, for 2020 construction, also has such a requirement. Council should be apprised that the most significant financial tools for some private development projects, which are housing tax credits and availability of housing revenue bonds, do not include a prevailing wage provision.

The City Attorney has provided to Council a compendium of private development projects since ordinance adoption. A few of these projects were recipients of either Federal, State, or Metropolitan Council grants and, as such, these projects included a prevailing wage requirement because of that funding. Other projects did not meet threshold requirements. Others appear to have met thresholds but if, in fact, they paid prevailing wage, the City did not monitor nor require ordinance compliance within project approvals and development agreements. The City Attorney has opined that a post agreement compliance requirement would not be timely.

The net of the above is straight forward. The larger policy discussion regards future implications and fiscal impact to City project investments going forward. For instance:

- With Tax Increment Financing (TIF) developments, we must provide a finding that “but for” the investment of future increments the project would not go forward. For the project at hand, it has been suggested that the project would not generate increments sufficient to cause the project to proceed under a prevailing wage requirement.

- If alternatively, there would be increment capacity to overcome purported cost increases, the result is a generalized property taxpayer impact of the increased subsidy that may be beyond the positive economics created for the public of the project in the first place.
- It is well established that in a redevelopment community the need for investment in projects is significantly greater than is the case in greenfield development. The TIF required for the Dominion project has been suggested to be entirely due to the cost of the real estate versus the valuation of that real estate in the project. In other words, the increment reduces the land cost closer to the economic value of the land. This same requirement does not exist within greenfield development parcels with which most West St. Paul projects compete. This land cost write down is required in this case regardless of the construction cost of the project.
- A future development taken on by a private entity “may” be expansion of the Ice Arena. The project proposers have suggested that they believe they will receive, in part, donated labor. However, under the current ordinance it “may” be the case that their project would be subject to the prevailing wage ordinance.

What we are suggesting, Schroeder said, is that the current ordinance may be too broad in its effect. Staff would recommend the ordinance be amended in order to provide Council with the opportunity to conduct a case-by-case analysis of application of the ordinance to future individual projects.

City Attorney Land also provided a memo regarding development projects since just prior to establishment of the prevailing wage ordinance, as well as a 2007 memo from the City Attorney’s office regarding the ordinance proposal and a copy of the ordinance itself.

Schroeder said there are four to six projects which prevailing wage could have applied but, for one reason or another, we did not administer the ordinance against the project. LA Fitness and Rooftop 252 projects just barely met the qualifications because there was a minimum floor on subsidies and they just exceeded the minimum floor by a few thousand dollars. The Hy-Vee and Darts projects. A Community Development Agency (CDA) demolition grant on the parcel that we’re going to talk about a little later where the EDA granted a \$60,000 subsidy to the CDA. Schroeder said we may not have talked about it at the Council or EDA tables, but the CDA paid prevailing wage on that.

The second question, Schroeder said, is whether the City audited prevailing wage. Typically, we have not provided for an audit. The ordinance provides us the opportunity to audit but I do not believe we have, typically, over the years.

There are two questions at this point. What happens about past and what happens going forward. Schroeder recommended that, while we may not have appropriately administered the ordinance, for anything we have a development agreement on, it would be difficult to go back. For us to go back and tell them it needs to be revisited

would be difficult. The pro forma on those development projects would change. As represented by Dominion, they believe for their project, if they're subject to the prevailing wage ordinance, their metrics would change, as they represented to this group in December or January. Their project would not proceed under the prevailing wage ordinance. We believe this provides some opportunity to revisit the ordinance, to talk about what's intended by the ordinance, what might not have been intended, and if there are ways to improve that ordinance in some manner.

Schroeder said one suggestion is that there is value for Council to have some flexibility. The ordinance, as the City Attorney would state, does not provide the flexibility that a Council might want, as that policy drafted in a different form might provide to the Council.

City Attorney Land added that the list prepared for Council is not exhaustive. There were other projects that were not meeting the threshold. We tried to include the ones that, in hindsight, should have triggered the ordinance but for one reason or another we didn't apply it.

Mayor Napier said the memo was really good and laid out well where we're at.

Councilmember Fernandez asked, if we have this prevailing wage, how do we state this to those who have development agreements now, with money spent on development. Councilmember Fernandez said he would assume they would have a strong case in court.

Attorney Land said we have contracts for certain development agreements that both sides have already bargained for. To open that negotiation, they would have to agree voluntarily. I don't think we can impose the ordinance on them unilaterally. It may end up with them terminating the contract or in litigation.

Councilmember Fernandez said, with Dominion's project in front of us, it is a balancing act. It's work force house and, if we don't do something with this ordinance, we could potentially be denying something that is greatly needed and the first of its kind in the county.

Mayor Napier said this ordinance was developed in 2007 and none of us were here. It would be interesting to go back and find out the intent of it. He said he thinks the intent is we are letting projects and we are subsidizing with tax abatement. It's their dollars paid pretax and we got them down to 12 years. He said he is struggling with this one.

Councilmember Justen commented that this ordinance was passed in 2007 but we never enforced it.

Mayor Napier said we've enforced it on our projects.

Councilmember Justen said the ordinance isn't about our projects. With this ordinance, specific to us giving City assistance, we have never enforced it. Whose responsibility would this have fallen under?

To provide some context, Attorney Land said in the 2007 timeframe when everything was in a downturn economically, the prevailing wage ordinance wasn't at the top of our list of things. It was how do we help the developer get the project done. While this was on the books, it did not come back to the surface between the group of people that were working on the development projects. It wasn't an intentional omission. We were more focused on getting projects to the table and to the EDA to help the city.

Councilmember Justen said if we are more focused, then we are choosing to ignore it. If it's more important to get things to the EDA. He said he is frustrated because now we are in a situation with a better economy and, now when there's reason to use prevailing wage, we're pulling back from it. He said he feels like we are changing an ordinance midstream, simply to make one project work. The project we have has the problems that the land cost is too high. The TIF is to offset the land cost. We are providing a way for them to underpay workers. He said he is totally uncomfortable with that idea. He doesn't know the quality of the contractors if they're not paying prevailing wage. Everything about this he finds really problematic, he said.

Councilmember Vitelli said he was not here in 2007. When he brought it up, he thought it was when the City built something like garages or a new City Hall or an ice arena, of that nature. That's the impression he was under about the intent of the ordinance. His understanding was that it was always something we built, not something we contributed to. Attorney Land disagreed.

Councilmember Vitelli said he agrees with what Councilmember Justen said. You're not going to find a non-union electrical contractor that isn't paying close to the prevailing wage in this market. Dominion built those big ones in Cottage Grove. Did they have any labor problems with the unions there? Attorney Land said no. Councilmember Vitelli said for the majority of the large contractors, he assumes they would build with the prevailing wage. He said he doesn't know how we fix this.

Mayor Napier said there is a reason other Cities in Dakota County don't have it.

Councilmember Fernandez said St. Paul went against their prevailing wage to build Cossetta's. It happens in bigger cities. It's unfortunate, but the reality of it.

Councilmember Vitelli asked the City Attorney how to wordsmith this so it only applies to a new City Hall, ice arena, or something our taxpayer dollars are paying for.

Attorney Land said if you want to retool the ordinance, the intent was if we give financial assistance to a developer, they would have to pay prevailing wage. She said it could be retooled.

Councilmember Vitelli said it's unfair for us to try and enforce it at this point. We have no recourse other than to retool it, unless you want to risk that Dominion will do prevailing wage and won't walk away.

Councilmember Pace said he agrees with the City Manager. Even though the ordinance is from 2007, a lot of things have changed to bring us up to date and he thinks it's antiquated. He doesn't like changing it for one project but thinks we need to be real here. They're in a money pinch because of a land deal, but they are also building low income housing. Don't think we can have it both ways, but he thinks it should be retooled to give the Council freedom to do more with developers.

Councilmember Justen said he is not saying to retroactively go back to existing development agreements. He doesn't think the lack of enforcement sets a precedence going forward. Without a development agreement with Dominion, he said that's the point for him. We need to figure this out now. He's still uncomfortable that it is somehow invalid. We failed to enforce it but that doesn't change the fact that we should have been enforcing it. He doesn't think there would be much of an argument that we didn't enforce it before.

Councilmember Berry asked about the people who didn't use prevailing wage and if those workers would be able to go back and ask for prevailing wage. Attorney Land said there is a statute of limitations.

Councilmember Vitelli asked Ms. Gill what the CDA would do. She said they will do both – they do one or the other.

Councilmember Pace said, following up with Councilmember Berry, we don't know if we didn't enforce prevailing wage on previous agreements.

To comment on Councilmember Justen's statement, Councilmember Fernandez said he understands, but the one thing is if we find out this ordinance is nuanced in modern times, we might want to look at some different variations of this ordinance to be fair and just. And how we are going to massage this into a more nimble process so we can move some projects forward.

Mayor Napier said he likes what Councilmember Justen said. Once we're made aware of it, we have to deal with it. This project is hinging on this right now. If we uphold the ordinance, the project goes away, so we need to decide soon. We either revisit the ordinance or we enforce it. We need to make that decision tonight.

Councilmember Justen said getting workforce housing and such built, the CDA is building workforce housing and using prevailing wage. Mayor Napier said that is with full taxpayer money. Councilmember Vitelli agreed that it's different.

Councilmember Vitelli said he is in favor of suggesting that the City Attorney go back and address this ordinance and get some flexibility into it. Attorney Land said we can still apply it to CDA projects but “when” it’s applied.

Councilmember Berry said that makes her nervous about the flexibility. Is it a dollar cut-off? What would the recommendation be? Attorney Land said that’s a great question.

Schroeder said, as we’ve talked about, this is the only ordinance in the county that applies to private sector projects. An answer to the question might be to tweak it so that it only applies to public sector projects. The second would be rather a dollar threshold, put language in the current ordinance that the City has the right to waive the requirement. Third, in our system, we haven’t had anything to tell us about this ordinance. He said he heard about it for the first time in November and he has been here for three years. It has not been a point of discussion. What we’ve talked about is, to the extent that the building wage requirement tends to exist, in our templates, we need to put prevailing wage in so that it causes us to notice it.

Councilmember Justen said, with the threshold changing to \$150,000, that doesn’t get us anywhere to \$3M for Dominion. If we rework it, the fourth bullet on donated labor – he thinks he would be comfortable if we had an organization that used donated labor. It could be a clarification clause.

Councilmember Berry asked how it would be enforced. And what else is out there that we don’t know about? It makes her really nervous that we are missing these. Schroeder said the folks that do development here. And we need it in the template to provide an answer for.

Councilmember Pace said he would like to see us be on the same playing field as cities around us. He would like to see the ordinance applied to public development only, not private. He said we’ve been praying that people come in and develop on our street and doesn’t want to go backwards. Councilmembers Vitelli and Fernandez agreed.

Councilmember Vitelli said he thinks that’s the cleanest way to do it. Prevailing wage versus non-prevailing wage, just look at Rooftop 252. They tried to do it themselves and he didn’t see any contractor signs. It took forever to get done and they spent a lot of time building it, when they could have had tenants in it. That’s the choice a private developer makes. He said he agrees with Councilmember Pace. That was his intent years ago that it only applies to City projects.

Councilmember Berry asked how do we know it doesn’t happen with this one? Schroeder said he has talked with others and they’re not much different.

Councilmember Vitelli said he knows there is a study at the University of Minnesota that could tell us. Schroeder stated that said there are studies on both sides. Councilmember Vitelli said the prevailing wage law was created by the Republican

administration to keep contractors from going from Mississippi to Minnesota to bring in cheap labor. Three of us want to go that route, he said.

Councilmember Eng-Sarne said she appreciates hearing Councilmember Vitelli's perspective. The City can enforce certain things on buildings we build but cannot on private development. She said she associates this with environmental issues we cannot enforce on them, either. She appreciates the method Councilmember Vitelli described.

Councilmember Justen said he doesn't like walking away from prevailing wage. We've talked about us being the forward looking City. It's something to be proud of that we kept prevailing wage. He's aggravated that we didn't do anything with it and are now walking away from it. He doesn't want to explain this to someone from a union household in West St. Paul that might not work on that project because of it.

Councilmember Berry said she doesn't love it and hopes they pay the right amount of money. Here we are with the biggest development project we have. Mayor Napier said it is a private development. Councilmember Vitelli said, if there is any comfort, Dominion did the project in Cottage Grove and it must have gone pretty good.

Mayor Napier said we have 20,000 people in this community who we also have to answer to as to why we told that development to go away. We have one developer who is motivated and made the numbers work. It's a reason to look at this ordinance to see what we're doing so we don't get in this bind again.

Councilmember Vitelli said if a developer goes with a ratty contractor, the building trades will be all over them and make their lives miserable.

Councilmember Eng-Sarne asked if anyone feels that someone like Hy-Vee would have gone away if we had shown them this ordinance. Schroeder said he hasn't talked with them specifically. Councilmember Vitelli said they are a big company and have all chosen contractors. He said they have their favorite contractors that they use who do it right and usually don't even bid them.

B. Special Services District Discussion

At OCWS workshops on August 12 and November 12, 2019, as part of the 2020-21 Budget review, Council deliberated over what, if anything, to dedicate toward startup costs of a proposed Special Services District (SSD) in the Robert Street area. Ultimately, no consensus occurred on the matter. However, in order to leave the door open for future discussions on December 6, 2019 Council was informed that the Budget document proposed for consideration at the December 9, 2019 meeting would include a \$25,000 allocation into the Innovation Fund. This fund does not have a designated budget expenditure in 2020 and exists in order to allow funding for mid-year initiatives should they occur. While the budget is not allocated toward the

SSD, the SSD would be an expense that would be appropriate from this fund. The 2020 Budget was approved on December 9.

On February 26 and 27, 2020, members of Council had the opportunity to meet with Michael McLaughlin from Urban Works, a consultant specializing in creation and administration of SSD's within Minnesota.

The suggestion from community members advocating for creation of an SSD is that the City allocate up to \$20,000 in order to provide startup funds toward creation of an SSD. It has been suggested that should the City provide such an allocation that there be check in points at which Council can determine if the effort is bearing fruit or not. The request at this time is to discuss a possible allocation and any other requirements.

Provided in the Council's packet this evening is a prior proposal from Urban Works, a memo from the City Attorney on the matter, and the district map that has been proposed in the past.

Schroeder said he needs to know if the Council would allocate up to \$20,000 towards the upfront requirement to go down a path of creation of a Special Service District for the Robert Street area. Councilmembers Vitelli and Pace said yes.

Mayor Napier asked first if everyone had a chance to meet with Mr. McLaughlin. Most said they met with him for two to three hours. Mayor Napier said Mr. McLaughlin is a very passionate person for what he does. He has helped many cities in a very effective way. It's a win for our City.

Councilmember Vitelli commented that he thought the amount was \$40,000. Schroeder said Mr. McLaughlin's proposal is \$40,000 but we have talked for quite a while that many of those things we can do ourselves. For instance, the data that goes with the district, the market values of the parcel, that's included in the proposal and we don't need him to do that.

Councilmember Justen asked what the legal aspect is of us doing the work. Attorney Land said you're just offering seed money and then a hands off approach.

Councilmember Vitelli said he can make this presentation to the South Robert Street Business Association (SRSBA).

Councilmember Berry asked if the consultant will go to SRSBA. Schroeder said he wouldn't be the one going door-to-door to talk to managers. That would be other folks. Mr. McLaughlin would be doing the high value stuff.

Councilmember Berry said Mr. McLaughlin is brilliant when it comes to SSD's and he did a good job describing how it would be executed. When we've talked to folks from SSD, she said she doesn't know if they have ideas on how to do it. Would phase

2 or 3 cost more? What we've heard is they're going to do shoveling that we already do.

In that process, Schroeder said he thinks we will get some of those answers. There is a small group of folks that have been talking about this and they don't know how widespread it is right now. Part of the process is to figure out to what extent they agree.

Councilmember Justen said the amount we're looking at is a lot more significant than the initial idea. To put flower pots around the light poles was \$150K or \$300K. This could be \$500K or \$600K a year that would come from the property owners and passed through to the renters. The other thing is that business owners who are not property owners – this will be passed on to them, but they have no vote on this and that concerns him, he said. It's only the landowners. When we are talking to every tenant, it goes through the 25% margin, every business owner that rents in there will have this assessed to them and there is nothing they can do about it. There are a lot of rented versus owned properties.

Councilmember Vitelli said his position is we have spent upwards of \$40M on Robert Street. If SRSBA doesn't do anything, then we are going to do something about it to keep it looking nice.

Councilmember Fernandez said that's the simple economics of it. If a business owner chooses to buy and invest, it may push some people out, which is unfortunate, but that's how things potentially grow.

Councilmember Vitelli compared it to Red Wing, White Bear Lake, and others.

Councilmember Berry said it speaks to us of charging smaller businesses and forcing them out. Councilmember Fernandez said it could also increase their business. Councilmember Justen said if we pick up trash and shovel snow, it doesn't increase business.

Mayor Napier said Mr. McLaughlin will know by the feasibility study if this will work or not. We need to do phase 1 if we want to maintain our investment. We have a great leader in him. He has produced areas around the metro area that are very impressive.

Councilmember Eng-Sarne said the question is if you trust Mr. McLaughlin and Urban Works. Essentially, we just need to give him the green light to figure out if the business community will agree. Looking at his list, Chaska, Edina and Bloomington also work with him.

Councilmember Pace said the money is in the budget. If it turns out with the feasibility study that it will cost my neighbor's business too much, it may change people's opinion. We have to at least find out. The money is there, let's do it and see what happens.

Councilmember Justen said he has total faith in Mr. McLaughlin and has learned a lot from him. One thing to mention is, if there is any sign that it won't go forward, we pull the plug. If we do one of these and it fails, we're done for 10 years before we can try doing it again, according to him. In fairness, if the plug gets pulled and we're not going to get the 25%, it's better to pull the plug before we go around for the vote, than lose the vote, according to Mr. McLaughlin. It's a one-time shot, Councilmember Justen said.

Councilmember Vitelli said he would much rather go to Pace's in the summer, compared to Midas Muffler or other businesses. His business looks appealing and customer friendly. It would keep the street and sidewalks looking nice, power washed, and new banners and flowers.

Mayor Napier said he doesn't see us out there power washing the sidewalks, but they will.

Schroeder asked if the Council's consensus is to at least allocate the \$20,000? Everyone agreed.

5. Adjourn

Motion was made by Councilmember Justen and seconded by Councilmember Eng-Sarne to adjourn the meeting at 5:48 p.m.

All members present voted aye. Motion carried.

David J. Napier
Mayor
City of West St. Paul