

ORDINANCE NO. 2024 -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, ADDING CHAPTER 2.78 – TRAFFIC CONTROL WORKER PREVAILING WAGE TO TITLE 2 OF THE NATIONAL CITY MUNICIPAL CODE TO ESTABLISH A TRAFFIC CONTROL WORKER PREVAILING WAGE.

WHEREAS, the City of National City (the "City") may adopt ordinances in accordance with its police powers to ensure the public health, welfare, and safety of its residents, including the police powers vested in the City pursuant to article XI, section 7, of the California Constitution and California Labor Code section 1205; and

WHEREAS, construction and maintenance activities in public rights of way may create health and safety risks to the public, including drivers, pedestrians, bicyclists and workers, if proper traffic control measures are not implemented; and

WHEREAS, traffic control workers perform a critical role in ensuring public safety during construction and maintenance work in the City's public rights of way; and

WHEREAS, traffic control workers are exposed to health and safety hazards, including the risk of serious injury and death; and

WHEREAS, traffic control workers who work on public works projects for the City must be paid the prevailing wages required by the California Labor Code for public works projects; however, employers on non-public works projects currently may pay traffic control workers significantly less for the same type of work performed in the City's public rights of way; and

WHEREAS, the California Department of Industrial Relations generally describes the prevailing wage rate as the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification, or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate) and, if there is no single rate paid to the majority, then the single or modal rate being paid to the greatest number of workers is prevailing; and

WHEREAS, the payment of an applicable prevailing wage rate supports a safe working environment and can reduce the rate of injury and death among workers as workers who are paid prevailing wages generally are more qualified, based on factors such as skill, training, and experience; and

WHEREAS, the City desires to limit health and safety risks to the public and traffic control workers associated with construction and maintenance activities in the City's public rights of way by requiring all employers or contractors authorized to perform work in the City's public rights of way to pay no less than the prevailing wage rate paid for the same type of work on public works projects in San Diego County.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

Section 1: That Chapter 2.78 is added to the National City Municipal Code to read as follows:

Chapter 2.78

TRAFFIC CONTROL WORKER PREVAILING WAGE

2.78.010 Purpose and Intent

The purpose of this chapter is to address the unique safety risks confronted by workers and users of City public rights of way by ensuring that, except in limited circumstances, all traffic control workers are paid a wage at least equivalent to the prevailing wage they would receive if they were working on a City public works project. Traffic control workers are responsible for stopping, slowing, and safely guiding, directing, or controlling traffic through construction and maintenance work in public rights of way. Unexpected and difficult driving conditions in these areas can present a significant risk of harm to motorists, other users of the City's public rights of way, and the traffic control workers themselves. Traffic control workers employed on public works projects are paid a prevailing wage while the same workers employed on private construction projects may be paid significantly less to perform the same work. Low wages, less qualified workers, and difficult working conditions can present a significant risk of harm to workers and users of the City's public rights of way that can be mitigated by ensuring the most qualified, well-trained and sufficiently paid workers are employed to provide traffic control work in public rights of way.

2.78.020 Definitions

When used in this chapter, the following words and phrases shall have the meanings ascribed to them below. Words and phrases not specifically defined below shall have the meanings ascribed to them elsewhere in this Code, or shall otherwise be defined by common usage. For definitions of nouns, the singular shall also include the plural; for definitions of verbs, all verb conjugations shall be included.

"City" means the City of National City.

"City Manager" means the City Manager of the City of National City, or designee.

"Code" means the City of National City Municipal Code.

"Employee" has the same meaning as California Labor Code section 2775.

"Employer" means any Person, including a corporate officer or executive, who directly or indirectly, or through any other Person, including through the services of a temporary service, staffing agency, or similar entity, employs or exercises control over the wages, hours, or working conditions of any Employee.

"Permit" means a permit issued by the City for work in the public right of way requiring Traffic Control Work.

"Person" means any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination of Persons acting as a unit.

"Prevailing Wage" means the prevailing rate of per diem wages as determined by the California Director of Industrial Relations in accordance with California Labor Code section 1720 *et seq.*, as may be amended, to be paid to a laborer within San Diego County on a public works project.

"Public Works Project" shall have the same meaning as applicable to the payment of prevailing wages under Labor Code section 1720, *et seq.* and includes the construction, reconstruction, or repair of public buildings, streets, utilities, and other public works.

"Traffic Control Work" means the stopping, slowing or otherwise guiding, directing, or controlling of traffic pursuant to a Permit, including installation and removal of traffic control devices.

"Traffic Control Worker" means any Person engaged in Traffic Control Work, excluding public agency Employees performing traffic control for a public agency.

2.78.030 Payment of Prevailing Wage

All Traffic Control Workers performing Traffic Control Work, as required by a Permit, shall be paid no less than the Prevailing Wage, except as follows:

- A. Traffic Control Work performed by an Employee in support of the construction, renovation, or repair of a single-family home, duplex, triplex, or accessory dwelling unit.
- B. Traffic Control Work performed by an Employee on any project costing \$1,000 or less, as specified in California Labor Code section 1771 or any subsequent cost threshold applicable to the payment of Prevailing Wage established by California law.
- C. Traffic Control Work performed by an Employee of a gas or electric utility company on any project where the Employee performs Traffic Control Work for one hour or less per workday or one hour or less per shift.
- D. Traffic Control Work performed by an Employee of any public agency.
- E. To the extent prohibited by law or by a state or federal funding source requirement applicable to the work that is the subject of the Permit.

2.78.040 Enforcement

- A. The City Manager may enforce this Chapter in accordance with the provisions of Chapter 1.44 or Chapter 1.48 of this Code.
- B. The City Manager is authorized to establish, consistent with the terms of this Chapter, any additional administrative rules, regulations, and standards determined to be necessary to carry out the purposes of this Chapter.
- C. Any person may file a written complaint with the City Manager regarding a violation of this Chapter. The written complaint must describe the alleged violation, including a statement of relevant facts, dates, places, and Persons or entities responsible for the alleged violation.
- D. If an Employer ceases its business operations, or sells, exchanges, transfers, or otherwise disposes of the Employer's business, then any Person that becomes a successor

to the business shall be liable for any unpaid amounts owed under this Chapter if, at the time of the conveyance of the business, the successor has actual or constructive knowledge of the amounts owed as determined by the City.

2.78.050 Limitations

A. Any waiver by a Traffic Control Worker of any or all of the provisions of this Chapter or of rights or protections afforded under the authority of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable.

B. This Chapter is not intended to, and shall not be interpreted to, conflict with federal or state law and shall be interpreted to be compatible with federal and state enactments, not limited to those dealing with employee/employer and labor relations, and in furtherance of the public purposes that those enactments encompass.

C. This Chapter does not create any cause of action for damages against the City.

D. This Chapter is not to be construed to limit the rights of an Employee to bring legal action for a violation of any law concerning wages, hours, or other standards or rights. Exhaustion of remedies under this Chapter is not a prerequisite to the assertion of any right.

E. This chapter shall not be construed to discourage or prohibit an Employer from providing higher wages to its Employees.

Section 2: This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of the members of the City Council voting for and against the same in the Star News, a newspaper of general circulation published in the County of San Diego, California.

Section 3: The City Clerk shall certify to the adoption of this Ordinance and shall publish in accordance with the law.

INTRODUCED at a regular meeting of the City Council of the City of National City, California, held on the 5th day of March, 2024.

PASSED and ADOPTED this _____ of _____, 2024.

Ron Morrison, Mayor

ATTEST:

Shelley Chapel, MMC, City Clerk

APPROVED AS TO FORM:

Barry J. Schultz, City Attorney