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PREVAILING WAGE UPDATE: Charter Cities Exempt From Prevailing Wage Laws

[Roger A. Grable](#)

In the recent decision, *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (Fourth District Court of Appeal, Division 1, Case No. D05218, Filed April 28, 2009), the California Court of Appeal held that the prevailing wage laws (California Labor Code §§ 1720-1780) do not represent matters of statewide concern and therefore a charter city such as Vista is not required to comply with prevailing wage laws for public works projects financed solely from city revenues. While a petition for hearing by the California Supreme Court is certainly likely, if this opinion is upheld it creates a major inroad into the application of prevailing wage laws in California. There are approximately 80 charter cities in California, including major centers of development activity, such as Los Angeles, San Francisco, San Diego, Anaheim, Long Beach, Riverside and San Bernardino. The potential cost differential between projects subject to prevailing wage requirements and those that are not is estimated to be between 20 and 30 percent, depending on the type of construction involved.

In these difficult economic times, charter cities and counties may well be tempted to use their charter status to save money on public works projects by avoiding the application of prevailing wage laws. This case also has implications for private/public partnerships. Under a series of Department of Industrial Relations coverage determinations, many private projects are found to be subject to prevailing wage laws because the projects are considered to be integrated with public projects. Examples include a hotel and conference center that included a publicly financed parking structure and construction of a shopping center project that also included a public library funded in part with public funds. Please view our previous newsletter article dated [April 18, 2006](#) addressing this subject. Charter cities and counties and redevelopment agencies within those jurisdictions may well find themselves at a competitive advantage in attracting private partners for public/private projects if they can exempt those projects from the application of prevailing wage laws.

In the *Vista* case, the City of Vista specifically elected to become a charter city in order to avoid the application of prevailing wage laws to several pending public works

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projects in the City. A number of major public works projects were under consideration in the City. Following voter approval of the new charter, the City Council adopted an ordinance providing that no City contract shall require payment of prevailing wages except to the extent required by federal or state grants, projects not considered to be a municipal affair, or for projects for which the City Council agreed to authorize the payment of prevailing wages. The labor groups challenged the City's position that they could use charter status to avoid the payment of prevailing wages. The court, in a 2-to-1, 40-page opinion, agreed with the City to the extent that only local sources of funds were used to pay for project costs. The dissenting opinion argued that the majority opinion misapplied the precedents cited in the majority opinion.

If a petition for hearing is filed with and then granted by the California Supreme Court, this Court of Appeal opinion may no longer be cited as precedent. Therefore, while this opinion may not have a long life in the interim, the following principles should be applied for any project relying on the opinion to avoid the payment of prevailing wages:

- The contract documents should specifically call out the fact that only local funds are being utilized to fund the project.
- Consider including a provision in the agreements giving the developer the option to decline public funding or to terminate the agreement if a determination is made that prevailing wages are required for the project. Examples of public funding include land write-downs, fee waivers and below-market financing.
- To the extent related projects may rely on state or federal funds, which in turn require the payment of prevailing wages, the related projects should be bid and administered separately from the public project. As much separation of the projects as possible should be documented so as to avoid the project being considered an integrated project which would trigger the payment of prevailing wages notwithstanding the charter status of the contracting entity.

Given the importance of this case, we will provide an update as soon as we receive word of any action by the California Supreme Court on a petition for hearing, should one be filed

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