

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE TO DO THE FOLLOWING: (1) CLARIFY THAT THE CITY'S PREVAILING WAGE POLICY DOES NOT APPLY TO THE CONSTRUCTION OF PARK IMPROVEMENTS THAT ARE WHOLLY DONATED TO THE CITY, (2) MEMORIALIZE AND CONSOLIDATE INTO ONE RESOLUTION CERTAIN EXCLUSIONS FROM THE REQUIREMENT TO PAY PREVAILING WAGES UNDER THE CITY'S PREVAILING WAGE POLICY, AND (3) REPEAL PREVIOUS RESOLUTIONS OR PORTIONS THEREOF SETTING FORTH THE EXCLUSIONS INCORPORATED INTO THIS RESOLUTION

WHEREAS, the following chart provides a history of the resolutions adopted by the City Council setting forth the City's prevailing wage policy ("Policy"), including whether these resolutions have been repealed or superseded;

Resolution Number	Adoption Date	Repealed or Superseded?	Description
60932	10-11-1988	Superseded	Required payment of prevailing wages for certain construction contracts.
61144	2-7-1989	No	Superseded Resolution No. 60932. Requires payment of prevailing wages for certain construction, maintenance and direct service contracts.
61716	10-10-1989	No	Requires payment of prevailing wages for certain housing projects.
71584	5-27-2003	No	Requires contracts to contain remedies (including liquidated damages) for prevailing wage violations.
72518	2-1-2005	No	Extends the prevailing wage requirements for housing projects.

75638	11-16-2010	Repealed	Section 3 set forth an exclusion from prevailing wage requirements for certain "donated" park maintenance work.
75848	6-14-2011	No	Repealed Resolution No. 75638. Restated Section 3 of Resolution No. 75638 without substantive change.

WHEREAS, on September 25, 2007 and February 12, 2008, the City Council directed staff to amend the Policy to clarify that prevailing wages need not be paid to:

- Volunteers and volunteer coordinators, which would include employees of Habitat for Humanity and Our City Forest ("Volunteer Exemption");
- Apprentices [workers] of the California Conservation Corps ("Conservation Corps Exemption");
- Paid employees of private businesses performing work on community service days ("Community Service Day Exemption");
- Workers providing parks maintenance services paid for by a donor pursuant to an agreement meeting certain specified requirements ("Donated Park Maintenance Exemption"); and

WHEREAS, the Volunteer Exemption, Conservation Corps Exemption and Community Service Day Exemption have never been memorialized in a City Council resolution; and

WHEREAS, the Donated Park Maintenance Exemption was set forth in Resolution No. 75638, which was subsequently superseded by Resolution No. 75848; and

WHEREAS, the City Council desires to clarify that the Policy does not require the payment of prevailing wages for the construction of any park improvements that are not paid for in whole or in part with public funds (“Donated Park Improvement Exemption”); and

WHEREAS, the City Council desires to consolidate into one resolution the Donated Park Improvement Exemption, Volunteer Exemption, Conservation Corps Exemption, Community Service Day Exemption, and Donated Park Maintenance Exemption.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. PREVAILING WAGE EXCLUSIONS.

The requirements set forth in Resolution No. 61144 to pay workers not less than the applicable prevailing per diem wage does not apply to the following:

- A. Volunteer Exemption:** Work performed by a volunteer or a volunteer coordinator. For purposes of this provision, “volunteer” and “volunteer coordinator” have the same meanings as those terms are defined in California Labor Code Section 1720.4, as that section may be amended from time to time.

- B. Conservation Corps Exemption:** Work performed by apprentices [workers] of the California Conservation Corps or the Community Conservation Corps. This exclusion does not apply to subcontractors hired by either of these organizations.

- C. Community Service Day Exemption:** Work performed by employees being paid their normal compensation by their private employer provided both of the following conditions exists:

1. The work is provided to the City at no cost other than costs associated with providing the access needed to perform the work, approving a work plan, supervising and/or coordinating the work, providing incidental tools and equipment needed to perform the work, providing materials, and inspecting and accepting the completed work; and
2. The regular job duties of the employees do not include the work they are providing to the City.

D. Donated Park Maintenance Exemption: Donated work involving park establishment period services or park maintenance by a developer or other entity with, or without, an interest in a development in the City, provided that all of the following conditions exist:

1. The work occurs on real property that is a part of the City's park inventory or is designated by the City as open space, or the work occurs on real property that is used by the City as a trail, whether or not the trail is improved; and
2. The donor agrees to perform the work at no cost to the City other than those costs associated with negotiating and approving a donation agreement, providing any needed access, approving a work plan, and inspecting and accepting the work; and
3. The donor agrees to provide the work for a minimum of two (2) years; and

4. Before the City enters into a donation agreement, or an extension of any such agreement, City staff consults with the applicable labor organizations, the neighbors surrounding the subject property, and any community groups with an interest in the subject property; and
5. The City Council approves the donation agreement if the estimated value of the donated work exceeds the amount of the City Manager's authority set forth in San Jose Municipal Code Section 4.04.020, as it may be amended; and
6. The donor has not received any credit, reduction, or other type of similar benefit from parkland fees associated with the specific park the donor is proposing to maintain.

E. Donated Park and Recreational Improvement Exemption: Donated construction of any park or recreational improvement(s) by a person or entity, regardless of the person's or entity's interest in a development in the City, provided that all of the following conditions exist:

1. The improvement must be constructed on real property that is part of the City's park or community center inventory, that is designated by the City as open space, or that is used by the City as a trail, whether or not the trail is improved; and
2. The donor agrees to construct the improvement at no cost to the City other than those costs associated with negotiating and approving a donation agreement, providing any needed access, and approving a work plan; and

3. The City Council approves the donation agreement if the estimated value of the donated work exceeds the amount of the City Manager's authority set forth in San Jose Municipal Code Section 4.04.020, as it may be amended; and
4. Construction of the improvement(s) is not done for the purpose of satisfying any past, current or future development requirement, and the donor does not receive any credit, reduction, or other type of similar benefit from developer fees or development requirements.

SECTION 2. REPEAL OF PREVIOUS RESOLUTIONS

This Resolution is effective on the same day it is adopted by the City Council. Previous resolutions and portions of previous resolutions related to the exclusions set forth in Section 1 of this Resolution are hereby repealed. Without limiting the foregoing, Section 3 of Resolution No. 75848, adopted on June 14, 2011, is hereby repealed. Sections 1 and 2 of Resolution No. 75848 remain effective.

RD:JVP:GDS
5/8/2012

ADOPTED this _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk