




## MEMORANDUM

**TO:** Trustee Johnston, Chairperson  
Economic and Community Development Committee

**FROM:** William J. Heniff, AICP, Director of Community Development 

**DATE:** October 12, 2015

**SUBJECT:** **Prevailing Wage Act Applicability and Program Amendments**

Following up from a request from a Downtown Lombard property owner, a question was raised pertaining to the provisions of the Illinois Prevailing Wage Act relative to Tax Increment Financing (TIF) expenditures by the Village. Specifically, the raised issue pertains to the requirement that is currently included within our TIF grant programs that states that any grant programs would be subject to the provisions of the Illinois Prevailing Wage Act. Practically speaking, such provisions would obligate a grant applicant to track the wages paid for any vendors and employees associated with a project and expend the necessary additional funds to complete a project, given that public funds were being used to support the project. The Village would also have a duty to ensure such prevailing wage provisions are met, as the funds are disbursed through the municipality.

In response to the inquiry, staff met with Village Counsel relative to this request. A fairly recent court case (*Town of Normal v. Hafner* 395 ILL. App. 3d 589) provided some clarity relative to the application of the Illinois Department of Labor regulations. In this case, the court found that such expenditures, if to be applied for improvements on private property and would not be publicly owned improvements would not be subject to the provisions of the Act, as it pertains to TIF expenditures. As such, prevailing wage provisions would only be applicable when a project is a public work. For example, a new awning on a business is not a public work. However, a developer extending a water main that will later be publicly accepted and owned by the Village would be considered a public work and prevailing wage would need to be paid.

In light of this ruling, staff is bringing this matter to the ECDC. As the purpose of the prevailing wage requirement was exclusively based upon the past Department of Labor regulations and not a desire by the Village to mandate the wage requirement, staff recommends that the applicable TIF grant programs be amended to clarify that the Act does not require prevailing wages to be paid for private projects. However, the Act would still apply for Public Works projects, as defined by the state, as well as any other programs identified by the state as being subject to the Act provisions.

**ACTION REQUESTED**

This item is being placed on the October 12, 2015 ECDC agenda for approval. Staff recommends striking the language on prevailing wage in the TIF grant program guidelines as it pertains to projects that are utilizing TIF funds and are not deemed to be Public Works projects. This item would not need Board approval, since staff is proposing a change to the TIF grant program guidelines, not Village Code.

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