ABSTRACT:
On July 2, 2012, the California Supreme Court issued a decision upholding a charter city’s autonomy under California Constitution Article XI, Section 5, to exempt locally funded public works projects from the payment of prevailing wage. As a charter city, the City of Newport Beach may adopt a resolution affirming its ability to exempt itself from California’s prevailing wage requirements.

RECOMMENDATION:
Adopt Resolution No. 2013-6 exempting locally funded public works projects from prevailing wage.

FUNDING REQUIREMENTS:
Because public works projects vary in size and price, it is difficult to determine an exact dollar amount. However, the City of Newport Beach anticipates saving money by exempting some locally funded projects from prevailing wage.

DISCUSSION:
In 1931, the California Legislature enacted the state’s prevailing wage law. That law required contractors on public works projects to be paid the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed.

In 2007, the City of Vista passed an ordinance that prohibited any city contract from requiring payment of prevailing wage unless: (a) such payment is compelled by the terms of a state or a federal grant; (b) the contract does not involve a municipal affair; or
(c) payment of the prevailing wage is separately authorized by the city council. This ordinance was subsequently challenged in court. The challenge revolved around a charter city’s ability to exempt itself from the state’s prevailing wage law.

On July 2, 2012, the California Supreme Court held that the wage levels of contract workers constructing locally funded public works are a “municipal affair.” Under California Constitution, Article XI, Section 5, charter city laws supersede state law with respect to a city’s “municipal affairs.” Therefore, the court held that Vista’s prevailing wage ordinance supersedes the state’s prevailing wage law.

Consistent with the recent California Supreme Court decision, and prior to the Vista ordinance, in 1981 the California Court of Appeal upheld a resolution adopted by the City of San Diego, which rescinded the city’s prevailing wage schedule for its public works contracts with the exception of state and federally funded projects and those considered to be of state concern. (Vial v. City of San Diego (1981) 122 Cal.App.3d 346.)

Thus, the City of Newport Beach, as a charter city, is not required to pay prevailing wage for locally funded public works projects. The City may adopt either an ordinance or a resolution to affirm its municipal autonomy and conserve valuable financial resources by exempting itself from the prevailing wage requirement for locally funded public works contracts. In the absence of an ordinance or resolution, the City may exempt itself from the payment of prevailing wage through the insertion of language into individual contracts (i.e., creation of an “actual conflict” through explicit contract terms). However, to ensure consistency staff recommends the adoption of the attached resolution. The attached resolution provides an exemption for public works projects, unless: (a) prevailing wage is compelled by the terms of a federal or state grant, or other funding source; (b) the public work is a matter of state-wide concern; or (c) the payment of prevailing wage is separately authorized by the City Council due to a project’s complexity or nature that the public interest would be served by requiring prevailing wage “to the third type of project for which the City might wish to pay prevailing wage.

This matter returns to the City Council after continuances in late 2012. Since that time, staff has added the language above in italics to the resolution.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.
NOTICING:

This agenda item has been noticed according to the Brown Act (72 hours in advance of the City Council meeting). In addition, I contacted members of regional and statewide interest groups who had previously contacted me (the Association of General Contractors, the Building Trades Council of LA/Orange County, and Smart Cities Prevail) to inform them of this matter's study session and regular session hearings.

Submitted by:

By____________________
Dave Kiff
City Manager

Attachment: Prevailing Wage Resolution
RESOLUTION NO. 2013-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH EXEMPTING LOCALLY FUNDED PUBLIC WORKS PROJECTS FROM PREVAILING WAGE

WHEREAS, the California prevailing wage law requires contractors on public works projects to be paid the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed;

WHEREAS, under the California Constitution, Article XI, Section 5, the laws of charter cities supersede state law with respect to municipal affairs of the city;

WHEREAS, the California Supreme Court has held that the wage levels of workers constructing locally funded public works are a municipal affair, and therefore a charter city's prohibition on the payment of prevailing wage supersedes state law; and

WHEREAS, the City of Newport Beach ("City") is incorporated as a charter city, and thus the City may exempt locally funded public works projects from prevailing wage to conserve the City's limited resources.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

SECTION 1: The City of Newport Beach exempts locally funded public works projects from prevailing wage, unless: (1) prevailing wage is compelled by the terms of a federal or state grant or is otherwise funded from a source that requires prevailing wage; (2) the public work is a matter of statewide concern; or (3) the payment of prevailing wage is separately authorized by the City Council, because the project is of a complexity and nature that the public interest would be served by requiring prevailing wage.

SECTION 2: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

ADOPTED this 22nd day of January, 2013.

_____________________________
Keith Curry, Mayor

Attest:

_____________________________
Leilani Brown, City Clerk