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City Clerk:

Amendment A2-Kim to Ordinance 25-29 is legally insufficient.¹

The City Attorney is required under Section 3.02(3) of the City of Saint Paul Administrative Code to submit notice to the City Clerk when an ordinance is not able to be legally approved by the City Attorney's Office. As City Council has been informed, the Amendment violates the City's prevailing-wage ordinance as well as the State of Minnesota's prevailing-wage statute. The Amendment requires all contracts for a "Project" to pay its construction workers "no less than the Prevailing Wage Rate." The prevailing-wage rate is the rate referenced in the City's prevailing-wage ordinance at Administrative Code section 82.07 (2025). The City's Ordinance takes *its* definition and authority from the State's prevailing-wage law at Minnesota Statutes section 177.42 (2024).

But both the City's and the State's prevailing-wage laws only apply to *public* projects using *public* funds.² The Amendment's language goes beyond this public-only constraint and reaches into purely *private* projects paid with *private* funds. This private-reach violates the plain and ordinary meaning of the public-only language within both prevailing-wage laws,³ as well as caselaw recognizing the legislative-intent of the state's prevailing-wage statute applies only to contractors engaged in state projects.⁴

¹ Saint Paul Admin Code § 3.02 (3) ("[N]o ordinance shall be introduced until it shall either have been approved as to form by the city attorney or until the city attorney has filed with the city clerk a statement of reasons why the ordinance is insufficient.").

² See Minn. Stat. § 177.42 (2024) (defining a prevailing-wage "project" as construction-work "of a *public* building, structure, facility, land, or other *public* work, which includes any work suitable for and intended for use by the *public*, or for the *public* benefit, financed in whole or part by *state* funds") (emphases added); *Saint Paul Admin. Code* § 82.07(a) (stating "it is the policy of the City of Saint Paul that the wages of workers on *publicly*-owned and *publicly*-funded projects be comparable to wages paid for similar work in the local community") (emphases added).

³ *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001) ("Words and phrases are to be construed according to their plain and ordinary meaning.").

⁴ *Dicks v. Minnesota Department of Administration*, 627 N.W.2d 334, 337 (Minn. App. 2001) (concluding the legislative history of Minnesota's Prevailing Wage Act was intended to benefit employees of private contractors engaged in state projects).

Since the Amendment violates both laws' limitation to only public-projects by installing a prevailing-wage requirement on private-projects, the Amendment is legally defective.

In addition, it is unclear from the Amendment which specific prevailing wage rate applies to a "Project".⁵ The Amendment defines a Project *"as a newly constructed residential rental property of twelve or more units or a formerly non-residential property or portion of a non-residential property that is converted to a residential rental property of twelve or more units."*

This definition creates confusion since this is not how City, state, or federal rules define "residential" construction for prevailing wage purposes, instead, the City and state limit the definition of residential projects to single- or two-family homes.⁶ Prevailing wage rules would define a Project, as described in the Amendment, as *Commercial* construction projects, which would require Commercial prevailing wages.⁷ Commercial prevailing wage rates are higher than residential prevailing wage rates, and it is unclear when reading the Amendment, as drafted, with City, state and federal laws and regulations, which rate is intended to apply.

There may be an intent to broadly define projects as "residential" construction for rent stabilization purposes, however the City does not have the ability to provide residential prevailing wage rate determinations. The Department of Labor and Industry (DLI) surveys, sets, and issues prevailing wage determinations, and per state law, will only provide residential wage determinations on state-funded projects.⁸ Therefore, neither the City nor the Landlord would be able to receive, insert into contracts, and enforce residential prevailing wage determination (as defined in city and state law) for private construction projects, thereby making any requirement to pay DLI residential prevailing wage rates on private projects functionally unenforceable.

Due to the nature of these conflicts, which cannot be remedied without changes to Minnesota Statute, this ordinance if passed will be legally unenforceable, and Minnesota Statute will control.

Respectfully,

s/Lyndsey M. Olson
Lyndsey M. Olson
City Attorney

⁵ As background, prevailing wage rates vary based on type of project and worker. The various rates are set by the State's Department of Labor and Industry (DLI) and DLI is the only entity in the State that certifies projects as prevailing wage compliant.

⁶ Minnesota Rule 5200.1010: Subp. 5. "Residential construction" means all construction, remodeling, or repairing of single- or two-family homes.

⁷ Minnesota Rule 5200.1010: Subp. 2. "Commercial construction" means all building construction projects exclusive of residential construction.

⁸ Minnesota Rule 5200.1020 Subp. 4. Residential type construction. Prevailing wage rates applicable to state projects which are similar in nature to residential construction projects will be made upon request of a governmental official involved in the bidding process for a state project who desires such rates for insertion in a specific contract proposal.