

City of Fresno Development Legal Checklist

Updated 1/6/20

The following legal issues should be considered for any development or project:

- CEQA (environmental review)
- Competitive Process
- Prevailing Wage
- Funding

Additionally, in many cases:

- Zoning and General Plan compliance
- Development Code compliance
- Permits (CUP, building, other public entities)
- Impact and connection fees (City and other entities)
- Better Business Act (due diligence)
- Real property environmental testing

CEQA -- Environmental impact assessment for any project must be done by official or body upon first discretionary approval.

“Project” means discretionary approval of any contract or entitlement that will likely result in any physical change in the environment.

CEQA options include: no project, previously assessed, finding of conformity, categorical exemption, statutory exemption, mitigated negative declaration, negative declaration, and environmental impact report (some will require greater than 30 days' notice).

Competitive Process

City Charter requires any public work of improvement to be competitively bid. May include design build. “Public work of improvement” generally means construction performed on City property or paid for by the City.

Threshold for full competitive bid is \$141,000. RFP process for lower amounts.

Contracts generally must be awarded to lowest responsible and responsive bidder. May include limited local preference.

Funding and Financing

The following should be considered for any project:

- Equity requirements
- Loan term and interest rate
- Collateral
- Personal guarantees (recourse or non-recourse)
- Bond issuance costs, terms and limitations
- Grants and grant matches
- Costs of surety bonds and insurance
- Appropriation for any City portion of funding
- Tax credits
- Taxes

Prevailing Wage

Pursuant to Labor Code §§ 1720, etc., the City must follow state prevailing wage law.

Prevailing wage must be paid on any construction or maintenance project that is under a contract with the City and “paid for in whole or in part with public funds,” including construction, design, inspection, land surveying, alteration, demolition, installation, and repair (certain maintenance exempted).

“Paid for in whole or in part” includes cash payments; below market loans, sale or rent; fee waivers; if the City does a portion of a private project; pays any projects costs (bonds, insurance, fees); or accepts payment on a contingent basis. Projects may not be split to avoid prevailing wage.

General exceptions:

- Projects under \$1,000
- Certain affordable housing projects
- Certain work paid for with tax credits
- Work done by City employees
- Volunteer work
- De Minimis (<3%) public funds contribution

The contractor is responsible for paying prevailing wage and keeping records.

Prevailing wage typically can add 20-30% to cost of a project.

Penalties for not paying prevailing wage when required include difference in wages, interest, penalties, and attorney fees. Certain violations can result in debarment.

The City will normally require developers to indemnify the City should a claim be brought for failure to pay prevailing wage.

Federally funded projects may have different requirements.

Developers should independently verify costs of prevailing wage and legal requirements. The City will normally not make representations that a project is not subject to prevailing wage, but may affirmatively require prevailing wage.

Policy and Political Considerations

It may be beneficial well in advance of an item going to Council for approval to meet with Councilmembers, particularly the Member for the District the project is in, as well as the Administration, Department heads, and the City Attorney's Office. Often community outreach and input can be helpful or necessary too.