O'KEEFE
LYONS &
HYNES LLC
EST. 1937

MEMORANDUM

Date: January 26, 2018

To: Mark R. Davis

From: John P. Nyhan

Re: Recommendation to oppose pending amendment to add "Prevailing Wage Requirement" to incentive classification.

On January 17, 2018 Cook County Commissioners Tobolski, Arroyo, and Moody proposed an amendment to the Cook County Real Property Assessment Classification Ordinance ("Classification Ordinance"), Chapter 74, Sec.74-71 "Laws regulating payment of wages". The proposed amendment seeks to add a "prevailing wage" component to Sec.74-71 (Proposed Ordinance 18-1604 attached). The County Board referred the matter to the Finance Committee on the same date. Pursuant to David Orr's website, the next County Board meeting is scheduled for February 7th, at which time this ordinance could be passed out of committee and approved by the Board.

Due to a history of uncoordinated amendments over time, the Classification Ordinance is an overly complex and confusing mix of competing and at times conflicting elements. The proposed amendment would only make the administration of the Classification Ordinance more difficult for all concerned parties. Also, the proposed amendment would do nothing to promote economic development. Instead, it will likely impede such activity due to the added costs and administrative burdens it imposes on those seeking assistance through the County Incentive Programs.

For the reasons stated herein, we should encourage interested parties to strongly recommend that the County Board of Commissioners deny enactment of the proposed amendment.

The amendment, as written, raises the following concerns:

1. Prevailing wage obligation will further complicate an already complex structure requiring compliance with County Living Wage and confusing affidavit requirements regarding compliance with State, Federal and Local labor laws as well as the Cook County Minimum Wage Ordinance.

2. Proposed amendment is too broadly drafted because it applies to all incentive classifications (except for 9 and S) and is applicable to current incentive holders and

pending applicants. Unfair, and probably unenforceable for government to change rules for those that already obtained incentive; and unfair to change rules for applicants that have already acted in reliance on current version of the law.

3. At present, Living Wage requirement applies to Class 6, 8 industrial, and 9. When "Living Wage" was originally put forward, County Board limited application to the three classes of property based on its conclusion that only those classes of property had the financial wherewithal to take on such an obligation. Now the Board seeks to apply what appears to be a higher burden on almost all incentive class properties. Why? Fact that Living Wage is currently in place should provide a rationale that prevailing wage is not necessary.

4. There has been no input from constituencies such as municipal development staff or developers to learn what impact this additional obligation would have on economic development through the County.

5. Proposed amendment is too broadly drafted as prevailing wage must be paid not only for activities related to the initial development, but must also be paid for any maintenance or repair work undertaken at the subject after obtaining the incentive.

6. Proposed amendment contains requirement for retention of a significant amount of employee, wage and hours information to establish compliance. In addition, there is an obligation to file monthly reports with the County to show compliance. This regulatory and reporting obligation pushes additional cost onto property owner as well as County Agency tasked with maintaining monthly reports. Amendment fails to identify what County agency will be required to take in the monthly reports.

7. Proposed amendment also adds a requirement that any improvement activities occurring at the subject property, after obtaining incentive, must be under-taken by an entity participating in the US Dept. of Labor Apprenticeship program. Once again creating additional expense and reporting obligation making development incentives less desirable. Unclear why this issue is being raised as a similar requirement for class 8 property was repealed in 2017, due to concerns that it impaired economic development in southern townships

Prevailing Wage Requirement

The proposed amendment seeks to impose the prevailing wage obligation as follows:

> Any owner of real estate that on or after January 2018 is an applicant for, or recipient of, any Property Tax Incentive under any Assessment Class … for which a Resolution or Ordinance from the municipality or the County Board is or was required …... shall pay all laborers, workers and mechanics engaged in Construction work within, or relating to Construction projects within, the subject property not less than the prevailing rate of wages paid for work of

similar character on public works in Cook County. This requirement extends to all contractors, subcontractors, and lessees who perform such Construction work, whether or not at the direction of the owner. Sec. 74-71(b)(1).

Incentives Impacted

Incentive classifications covered by the prevailing wage obligation are:

- Class 6b (industrial)
- Class C (environmental remediation)
- Class 7a (commercial)
- Class 7b (commercial)
- Class 7c (commercial)
- Class 8 (commercial/industrial)
- Class L (landmark)

Per the above referenced language, the prevailing wage requirement applies to any incentive class that requires county or municipal approval. This would include every incentive classification, except for class 9 and S, which do not require local governmental approval. The issue as to what incentive classifications are impacted becomes a bit more confusing given that **"Property Tax Incentive"** is defined to mean "a reduction in the assessment level as set forth in Division 2 of this Article for any property regardless of the Assessment Class." This appears to be imprecise drafting as no property in Cook County receives an assessment level below the levels set forth in Sec. 74-64 of Classification Ordinance.

Also, term "Property Tax Incentive" is defined to mean class 6b, 8 industrial, and 9 in the prior subsection regarding living wage, Sec. 74-71(a)(7). Two conflicting definitions in the same section should not stand.

New Burdens and Obligations Counterproductive to Economic Development

Although the prevailing rate of wages paid for public works in Cook County is not identified in the amendment, such prevailing wages would be greater than minimum wage levels set by government, including "Living Wage", and greater than market rates; as the inverse would make no sense. Published reports also confirm that "prevailing wages" for public works typically exceed those paid in the private market. As such, it appears that the public policy behind this proposed amendment is to raise the wages for workers interacting with the above referenced incentive classifications. This obligation, in combination with some of the reporting requirements also contained in the proposed amendment, would increase the cost to develop and maintain property qualifying for incentive classifications.

Increasing the cost of economic development conflicts with the original reason for the creation of the incentive classes. These development classifications were created based on

the public policy that the reduced property tax provided by the incentive allows for development that otherwise would not be economically feasible. By making such development economically feasible, via incentive classification, government benefits through the expansion of its real estate tax base. The public benefits as well due to fact that taxes are spread out over this larger tax base, thereby reducing the individual load.

In some cases, the added cost of the proposed prevailing wage requirement will cause potential economic development projects to no longer be economically viable, thus deterring economic growth where it is needed the most. Such outcomes would be counterproductive. Indeed, loss of potential development projects would work against the very workers the proposed amendment seeks to help.

To what extent the added cost of a prevailing wage requirement could have on future development is unknown at present. Before moving forward, the County should seek to quantify any negative impact on future development. It could do so by seeking input from local municipalities and their development staff. They are best positioned to comment as to the impact the proposed amendment would have on their ability to promote economic growth in their geographic area. To move forward without such input would be ill-advised as it could result in more harm than any benefit derived from a prevailing wage obligation.

Too Broad – Applies to Current Incentives and Non-Development Activities

The proposed prevailing wage is applicable to any "owner" of a property receiving an incentive classification on or after January 2018. In addition, it is applicable to any owner with a pending application as of January 2018. This section is too broad.

As to property owners who already receive an incentive classification, this prevailing wage requirement is likely not enforceable. Such property owners have a vested interest in the incentive designation they currently receive. They obtained this vested right through their good-faith reliance on the Classification Ordinance as written when they incurred development expenses that qualified for the initial incentive classification. To change the rules now would not withstand judicial scrutiny based on analogous case law regarding zoning regulations. Industrial National Mortgage Co v. City of Chicago, 95 Ill.App.3d 666 (1st. Dist.); 420 NE2d 581. (City of Chicago barred from applying zoning change against property owner who changed its position in good-faith reliance on prior zoning requirements).

In addition, the same rationale would apply to owners with pending applications. They too could reasonably argue they modified their position regarding development based on a good-faith reliance on the Classification Ordinance, as it was written when they filed their application.

Next, the prevailing wage requirement is to be applied to "Construction" activities occurring at the subject property. The term **"Construction"** is defined to mean "all work on any newly constructed building or structure, or any alteration, improvement, repair, renovation, rehabilitation, demolition, deconstruction, maintenance, or reconstruction of

existing building or structure, regardless of the public or private nature of the projects or ownership". 74-17(b)(3)(b).

Given the expansive scope of this definition, it appears that even routine maintenance or repairs occurring after the incentive is obtained would be subject to the prevailing wage obligation. Such a broad application not only adds to the cost of the underlying development but then continues to burden the property after achieving the incentive classification.

Onerous Record Keeping and Reporting Obligation

Sec. 74-71 (b)(4)(a)&(b) requires that certain records regarding the payment of a prevailing wage be maintained and that a monthly report regarding the same be filed with the County. These records are to be kept for a period of 5 years and are to include a significant amount of information as to wages, workers and their social security numbers, hours etc. This record keeping obligation will only act to increase the cost associated with a proposed development. As with the impact of the prevailing wage, the County should seek the input of development officials to determine the scope of any negative impact these additional regulatory burdens will have on future development.

As to the filing of a monthly report, the amendment does not specify which County Office or Agency will be tasked with accepting and monitoring such documents. The amendment should identify where such reports are to be filed. In addition, the designated Office or Agency should be given the opportunity to provide its position as to taking on such an obligation, as the volume of monthly reports generated by each incentive property in the County would be onerous. In addition, the Board should ensure that the designated Agency has the capacity to safeguard the sensitive worker information included in the monthly reports.

During 2017, recent changes to the Classification Ordinance required that affidavits be filed by owners and occupants of most incentive properties in the County regarding compliance with various State, Federal and local labor laws. This created an unexpected burden on both the Bureau of Economic Development and the Assessor's Office. The proposed reporting component of the pending amendment would result in a march larger operation in terms of the number of documents generated and filed every month. This would put a much greater strain on County resources, as compared to the referenced affidavit filing, which was only an annual requirement.

Given recent budgetary constraints and the resulting limits on manpower and other resources, is there a County Agency that is adequately resourced to accept 12 reports a year for every incentive property in the County? Is there a County Agency that has adequate protocols in place to safe guard sensitive information as to every worker that interacts with every incentive property in the county? Even if such resources are available, would they be better deployed to support other County efforts to benefit the public?

Resurrects US Dept. of Labor Apprentice Program and Broadens Its Application

Finally, the prevailing wage amendment also includes a provision that requires all "Construction" occurring at the subject, after receipt of the incentive, must be undertaken by entities that participate in an "active apprenticeship and training program approved and registered with the United States Department of Labor's Office of Apprenticeship." Sec 74-71(b)(5). This obligation appears to echo a similar requirement the County Board first enacted (Class 8 only), but then later repealed. It is unclear why this issue is back.

On June 8, 2016, the Cook County Board of Commissioners approved Ordinance Number 16-3191, which imposed similar apprentice obligations, but only regarding Class 8 incentive property. Thereafter, numerous local municipal officials, including the South Suburban Mayors and Managers Association, raised objections to this obligation; due in part to the negative impact the obligation had on proposed economic developments in their jurisdictions. In response to this advocacy by concerned local officials, the County Board repealed the apprentice obligations as to class 8. (see Ordinance Number 17-4339, enacted July 19, 2017). Given the back-lash that resulted in this repeal, it makes little sense for the County Board to now propose to bring this program back and to do so on an expanded basis across all, but 2, incentive classifications.

Recommendation

1.) Reject proposed prevailing wage amendment.

2.) Undertake efforts to notify and seek input and comment from stake-holders such as: Municipal Development Officials; Owners of Incentive Properties; Developers; Financial Institutions; Labor; Business Community to build consensus as to policy goals supporting any future amendments to the Classification Ordinance.