

THE CORPORATION OF THE CITY OF VAUGHAN

CORPORATE POLICY

POLICY TITLE: FAIR WAGE

POLICY NO.: 15.C.01

Section:	Procurement		
Effective Date:	April 1, 2021	Date of Last Review:	Click or tap to enter a date.
Approval Authority: Council		Policy Owner: DCM, Corporate Services, Chief Financial Officer & City Treasurer	

POLICY STATEMENT

On construction projects with the City of Vaughan with a procurement value of five hundred thousand dollars (\$500,000) or more, every contractor and sub-contractor shall pay wages to workers that are equal to, or greater than, the wage rates set out in the City's Fair Wage Schedules.

Contractors are required to comply with applicable laws including the Employment Standards Act, the Occupational Health and Safety Act and the regulations to those statutes.

Failure to comply with the City's Fair Wage policy may result in restricted ability to bid on City construction business.

PURPOSE

The purpose of the City's Fair Wage policy is to ensure that no contractor or sub-contractor performing construction work for the City of Vaughan secures an unfair competitive advantage over other construction employers by paying wages that are below prevailing norms.

The Fair Wage policy serves the interests of the residents by executing on the 2018-2022 Term of Council Strategic Plan through the promotion of City work that is based on contractors' efficiency, quality and productivity while, at the same time, ensuring that all Workers are treated fairly.

SCOPE

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The provisions of the Fair Wage policy apply equally to contractors and all sub-contractors undertaking construction work for the City of Vaughan at or above the construction contract threshold. Contractors may not sub-contract work to any sub-contractor at a lower rate stipulated in the Fair Wage policy.

The Fair Wage policy does not apply to owner operators or partnerships, or principals of companies as long as they undertake the work themselves.

The conditions of the Fair Wage policy cannot be waived, unless authorized by City Council.

LEGISLATIVE REQUIREMENTS

None.

DEFINITIONS

1. **Apprentice:** As defined by the *Modernizing Skilled Trades and Apprenticeship Act* or its successor.
2. **Audit Services:** The review of tender submissions of any or all bids at item of tender and records of low bid contractors and sub-contractors to ensure compliance. Audit services may be performed by the City of Vaughan or alternate designated by the City of Vaughan.
3. **Benefits:** Any non-statutory payment to an employee or non-statutory premiums or contributions paid to provide benefits to an employee.
4. **Chief Human Resources Officer:** The City's Chief Human Resources Officer or designate.
5. **City Council:** Council of the City of Vaughan
6. **City:** The City of Vaughan, its officers, officials, employees and agents
7. **Construction Contract or Prime Contract:** Any contract entered into between the City with a contractor for the completion of a construction project.
8. **Construction Project:** A project in the construction industry where the businesses are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, tunnels, bridges, canals or other works at the site, and where the project falls within one of more of the following sectors:

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8.1. The industrial, commercial and institutional sector

8.2. The sewers and watermain sector

8.3. The roads sector

8.4. The heavy engineering sector

but excludes landscaping work, snow removal and maintaining buildings or equipment.

9. Construction Contract Threshold: A minimum contract value of \$500,000 of the prime contract.

10. Contractor: Any person having a construction contract with the City but does not include any person that only supplies materials for the construction contract or incorporated owner-operators.

11. Director of Procurement Services: The City's Director of Procurement Services or designate.

12. Employee(s): "Employee" as defined by the *Employment Standards Act*.

13. Fair Wage Schedule: The Fair Wage Schedule approved by Council, as amended from time to time.

14. Fair Wage Working Group: The working group established by the City to provide advice to the City on the administration of the Fair Wage policy.

15. Hours of Work: The regular hours of work per day and week and shall include a provision for the payment of overtime as per the *Employment Standards Act*, 2000.

16. Initiator: Any person who submits a complaint to the City alleging non-compliance with the Fair Wage policy and Fair Wage Schedule by any contractor or sub-contractor performing construction work on a City construction contract.

17. Manager of Procurement Services: The City's Manager of Procurement Services or designate.

18. Non-Compliance: The occurrence of any of the following conditions:

18.1. Contractor or sub-contractor does not co-operate with the Director of Procurement Services in fulfilling his or her responsibilities under the Fair Wage policy.

18.2. Contractor or sub-contractor has been found in violation of the

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Fair Wage policy.

19. Procurement Call Document: A tender, request for quotation, and a request for proposal as issued by the Procurement Services department in the City.

20. Registered Complaint: A written complaint from an identified source which alleges that a Contractor or sub-contractor has violated this Fair Wage policy. Registered complaints must be submitted on the Fair Wage Complaint Form. All elements of the form must be responded to.

21. Sub-Contractor: Any person, firm or corporation performing work on a City construction contract for a contractor, or an agreement with another sub-contractor, but does not include any person, firm or corporation that only supplies materials for the construction contract.

22. Sub-Contract: Any contract between a contractor and any of that contractor's sub-contractors with a firm, person or corporation for work in accordance with a construction contract. The term excludes contracts for material supplies only.

23. Substantial Performance as defined in the Construction Act, R.S.O. 1990, c. C.30, as amended.

24. Total Hourly Compensation: The aggregate amount of Wages and Non- Statutory Benefits as stated in the Fair Wage Schedule.

25. Wages: The Workers basic hourly rate, which is paid as earned at the time of undertaking the work

26. Worker(s): A person who performs work or supplies services who is entitled by contract to be paid wages or is entitled to be paid at least the minimum wage under the *Employment Standards Act, 2000*.

POLICY

1. City Responsibilities:

1.1. The Director of Procurement Services shall review the Fair Wage policy every three years and recommend to the appropriate standing committee of Council any required amendments to the Fair Wage policy for Council approval.

1.2. The Director of Procurement Services, in consultation with the Chief Human Resources Officer, will prepare and review the Fair Wage Schedule every three years and recommend to the appropriate Standing Committee of Council those amendments to the Fair Wage Schedule for Council approval.

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- 1.3. The Director of Procurement Services shall reference the Fair Wage policy and Fair Wage Schedule in all City construction contracts. The City's Procurement website will post the Fair Wage policy and Fair Wage Schedule and Fair Wage Complaint Form.
- 1.4. The Director of Procurement Services will co-ordinate the preparation of an annual report for the appropriate Standing Committee of Council regarding complaints investigated and resulting audits performed pursuant to the Fair Wage policy and Fair Wage Schedule.
- 1.5. The City is not in any way liable, obligated or responsible to any worker, sub-contractor, contractor or any other person for the payment of any wages or monies not paid by a contractor or sub-contractor in accordance with the Fair Wage policy and Fair Wage Schedule, and the City assumes no responsibility to such worker, sub-contractor, contractor or any other person for the administration and enforcement of the Fair Wage policy and Fair Wage Schedule.

2. Contractor and Sub-Contractor Responsibilities:

- 2.1. A contractor has responsibility for the completion of the project.
- 2.2. A contractor is responsible for both its own compliance with the Fair Wage policy and the compliance of any sub-contractors.
- 2.3. The contractor or sub-contractor shall not be responsible for any increase to the Fair Wage Schedule which occurs after the closing of the Request for Tenders or Request for Proposals or issuance of a Purchase Order unless the increase is required by law.
- 2.4. At the commencement of the work, the contractor shall post a copy of the Fair Wage policy and Fair Wage Schedule in a prominent location at the City construction contract site to enable workers of the contractor and sub-contractor to review. Alternate methods may be considered, and if approved by the Manager of Procurement, shall be in writing prior to the commencement of the construction contract.
- 2.5. After substantial performance of the construction contract and prior to release of the holdback, for all construction contracts with the City, the contractor shall provide to the City, in a form acceptable to the City, a declaration confirming that the contractor and its sub-contractors complied with the Fair Wage policy and Fair Wage Schedule. The City reserves the right to not release part or all of the holdback on a construction contract until such contractor's sworn statement of compliance is received and deemed to

be satisfactory by the City.

3. Fair Wage Working Group

- 3.1. The Director of Procurement Services will form a Working Group comprised of City Staff and representatives from unions, unionized employers and non-union employers.
- 3.2. The Fair Wage Working Group will be chaired by the Director of Procurement Services.
- 3.3. The Working Group shall meet, at least, every three years to consult on the Fair Wage policy. The Director of Procurement Services shall present the Working Group with any updated Fair Wage Schedules.

4. Compliance

- 4.1. A contractor or sub-contractor shall be in compliance with the Fair Wage policy and Fair Wage Schedule when the worker receives a minimum compensation package that includes wages and benefits, which aggregate amount is not less than the total hourly compensation as set out in the Fair Wage Schedule.
- 4.2. Workers shall be paid on a “pay-by-pay basis” every pay period in accordance with the Fair Wage Schedule. The “pay-by-pay basis” shall comply with the *Employment Standards Act, 2000*.
- 4.3. Construction contracts that exceed construction contract threshold solely as a result of change orders are not covered by the Fair Wage policy.

5. Records

- 5.1. Every contractor and sub-contractor covered by the Fair Wage policy will maintain, in addition to records required by the *Employment Standards Act*, a record of wages and non-statutory benefits paid and hours worked.
- 5.2. Unless otherwise approved by the City, the contractor and sub-contractor shall make these records available for inspection upon request by the City within five business days.
- 5.3. If a contractor or sub-contractor enters into a contract for service with a self-employed independent contractor to perform work identified in the Fair Wage Schedule, the contractor or sub-contractor shall keep the following records to demonstrate that the self-employed independent contractor is not an employee of the contractor or sub-contractor:

- 5.3.1. Self-employed independent contractor invoices;
- 5.3.2. Self-employed independent contractor HST registration number;
- 5.3.3. Self-employed independent contractor's clearance certificate from the Workplace Safety and Insurance Board; and,
- 5.3.4. List of equipment supplied by the independent contractor beyond the hand tools conventionally associated with their trade.

5.4. Should there be concerns regarding the self-employed independent contractor's degree of dependency from the contractor or sub-contractor, further records shall be made available to demonstrate that an employer employee relationship does not exist between the contractor or sub-contractor and a self-employed independent contractor. The guideline issued by Canada Revenue Agency RC4110 "Employee or Self-Employed" may be used to assist in making a final determination.

5.5. Records of wages shall be kept and maintained by the contractor and sub-contractor for seven years.

6. Inspection and Audits

6.1. The City retains the right to inspect and audit the records of the contractor or sub-contractor (refer to s.5) at any time during the period of the construction contract and up to seven years after contract completion. The records shall be made available to the City to inspect and audit within five business days.

7. Consequences of Non-Compliance

7.1. Upon determining that a contractor or sub-contractor is non-compliant with the Fair Wage policy and Fair Wage Schedule, the Director of Procurement Services:

- 7.1.1. Shall advise the contractor, in writing, that it has been determined that the contractor or sub-contractor is non-compliant and that the contractor or sub-contractor is required to rectify the non-compliance(s) and provide written proof of the same, in a form satisfactory to the City, within ten business days;
- 7.1.2. May withhold making payment, progress payment or release of holdback to the contractor in an amount which is equal to the shortfall in wages or benefits, or may take any other remedies that are otherwise available at law or in equity; and,

7.1.3. Shall impose upon the contractor a minimum cost of \$5,000 (excluding taxes) for the City inspection, audit or other action as deemed necessary by the City, and may deduct such costs from any payment or payments (as appropriate) owed by the City to the contractor, or may take any other remedies that are otherwise available at law or in equity. In addition, the contractor shall be responsible for all the City's costs beyond the minimum cost of \$5,000 (excluding taxes), which will be payable immediately upon request. Examples of costs may include, but are not limited to, legal, auditor and other investigation costs.

7.2. Where a contractor or sub-contractor has been determined to be non-compliant with the Fair Wage policy and Fair Wage Schedule for the first time in a three year period, the Director of Procurement Services may require the contractor to pay for and submit a Certified Public Accountant assurance report, acceptable to the City, which verifies compliance with the Fair Wage policy and Fair Wage Schedule on the next three City construction contracts to which the contractor is awarded. Such assurance report shall provide sufficient information and detail to demonstrate compliance with the Fair Wage policy and Fair Wage Schedule and shall be submitted after substantial performance of the construction contract and prior to the release of the holdback. The City reserves the right to not release part or all of the holdback on a construction contract until such assurance report is received and deemed to be satisfactory by the City.

Depending on the seriousness of the non-compliant, the City reserves the right to treat a first non-compliance as a material breach and s.7.3 would apply.

7.3. Where a contractor or sub-contractor has been determined to be non-compliant with the Fair Wage policy and Fair Wage Schedule (i) for a second or subsequent time within a three year period from the date of the first determination of non-compliance by the Director of Procurement Services, or (ii) the severity of a one-time breach is deemed by the City as material, the City, as approved by City Council, may refuse:

7.3.1. To accept any bid, quotation or proposal from such contractor or sub-contractor; or,

7.3.2. The use of a sub-contractor where the sub-contractor was determined to be non-compliant with the Fair Wage policy and Fair Wage Schedule on any City contract for a period of two years from the date of City Council approval, save and except any construction contract the contractor may currently have with the City.

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- 7.4. If the contractor or sub-contractor fails to keep accurate records, the contractor or sub-contractor will pay a Certified Public Accountant to provide an assurance report, acceptable to the City, which clearly demonstrates compliance with the Fair Wage policy and Fair Wage Schedule.
- 7.5. If a contractor or sub-contractor is found not to comply with the Fair Wage policy, the Director of Procurement Services may recommend the next lowest bidder for contract award in the following circumstances:
- 7.5.1. At the time of declaration as set out in s.2.5, a contractor or sub-contractor does not meet the Fair Wage Schedules;
- 7.5.2. An investigation is underway and the contractor or sub-contractor does not co-operate in providing information within five business days after being requested by the Director of Procurement Services in fulfilling their responsibilities under the Fair Wage policy and the provision of goods and/or services cannot be delayed; and,
- 7.5.3. A contractor or sub-contractor is in violation of the Fair Wage policy and has not paid restitution to its workers.

8. Complaints

- 8.1. Any person may submit a complaint to the City, alleging non-compliance with the Fair Wage policy and Fair Wage Schedule, by any contractor or sub-contractor performing construction work on a City construction contract. All complaints must be submitted in writing and contain sufficient information in order to investigate the complaint. The Fair Wage Complaint Form must be completed for this purpose.
- 8.2. A contractor shall not engage in a reprisal against its worker as a result of a claim being filed under this policy.
- 8.3. The complaint must be forwarded to the City's Director of Procurement Services via email (fairwage@vaughan.ca), regular mail or in person to Procurement Services, Vaughan City Hall, 2141 Major Mackenzie Drive, Vaughan, Ontario, L6A 1T1.
- 8.4. The complaint may be initiated at any time during the term of the construction contract but shall be received by the City no later than 21 calendar days following substantial performance of the related construction contract. The City may investigate at its sole discretion a breach of the Fair Wage policy at any time regardless of time limits or whether a complaint has been received.

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- 8.5. Upon receipt of a complaint, the Director of Procurement Services will conduct an initial review of the complaint submitted and advise the initiator of the complaint of the investigation fee and what the likely cost of the investigation will be. The minimum cost of an investigation will be \$5,000.00 (excluding taxes). The City will waive the cost of an investigation if a worker of the contractor or sub-contractor is the initiator of the complaint.
- 8.6. The initiator shall confirm to the City in a timely manner whether or not they would like to proceed with the complaint.
- 8.7. The City shall take such action as it deems is necessary to determine whether the contractor or sub-contractor involved or named in the complaint is compliant with the Fair Wage policy and Fair Wage Schedule. Such action deemed necessary by the City shall commence within 30 calendar days of receipt of a completed Fair Wage Complaint Form submitted to the Director of Procurement Services.
- 8.8. Once such action to determine compliance or non-compliance is completed to the City's satisfaction, the Director of Procurement Services shall inform the initiator and any contractor or sub-contractor involved or named in the complaint in writing of the City's determination of the contractor's or sub-contractor's compliance or non-compliance with the Fair Wage policy and Fair Wage Schedule.
- 8.9. Whenever a complaint is initiated by a person other than an individual worker of the contractor or sub-contractor involved or named in the complaint, and said contractor or sub-contractor is found to be compliant with the Fair Wage policy and Fair Wage Schedule with respect to the complaint, the costs associated with the inspections, audits or other action deemed necessary regarding the investigation of the complaint will be borne solely by the initiator. These costs will be considered a debt payable to the City. Until the initiator has paid the debt in full to the City, the City will not accept any additional complaints from the initiator.
- 8.10. For the purposes of the City not accepting any additional complaints from the initiator under s.8.8 of this Fair Wage policy, a reference to initiator shall also include an officer, director, a majority or controlling shareholder, or a member of the initiator, if a corporation; a partner of the initiator, if a partnership; any corporation to which the initiator is an affiliate of or successor to, or an officer, a director or a majority or controlling shareholder of such corporation; and any person with whom the initiator is not at arm's length within the meaning of the Income Tax Act (Canada).
- 8.11. The City shall make every effort to safeguard the confidentiality of each

initiator's identity. However, this information is subject to the provisions of the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56. or otherwise required by law. For more information, the initiator may reference the City's policies related to Freedom of Information on the City's website under the Office of the City Clerk - Access and Privacy at vaughan.ca.

9. Appeals Process

- 9.1. Contractors, sub-contractors or initiators may dispute the outcome of a fair wage complaint process. If a party involved wishes to appeal the outcome of a fair wage complaint, they shall write to the Director of Procurement Services within five business days of being notified of the fair wage complaint outcome and provide a detailed statement outlining the grounds of the appeal and request a meeting with the Director of Procurement Services.
- 9.2. If no resolution satisfactory to both parties has been achieved, the contractor, sub-contractor or initiator will have three business days from the date of the meeting with the Director of Procurement Services to make a formal written request with the Director of Procurement Services to meet with the Deputy City Manager of the Client Department issuing the construction contract and the Deputy City Manager of Corporate Services regarding their complaint. The decision of the Deputy City Managers is final and binding.

10. Fair Wage Schedule

- 10.1. The City encourages contractors and sub-contractors to hire and train apprentices under approved apprenticeship programs. Apprentices/trainees will be assessed based on Provincial Qualification Apprenticeship Certification criteria.
- 10.2. Employees reported as apprentices/trainees not properly registered or are utilized at the jobsite in excess of the ration of journeymen permitted under the approved program, must be paid the applicable schedule of wage.
- 10.3. The Fair Wage Schedule shall include rates for apprentices/trainees.
- 10.4. The Fair Wage Schedule shall be automatically updated every three years.
- 10.5. Unless otherwise approved by Council, the total hourly compensation rates set out in the Fair Wage Schedule shall be:
- 10.5.1. Based on the wages from the collective agreement that is most representative of prevailing wages in Board Area Eight as defined by the

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Ontario Labour Relations Board plus a maximum of 15%. The wages to be used in this calculation will be the wages that applied three years prior

10.5.2. Frozen for the three-year period.

10.6. When an apprentice is subject to a collective agreement, the wages for an apprentice will be the wages set out in the collective agreement. When an apprentice is not subject to a collective agreement, the apprentice wage will be a percentage of the wages applicable to a journeyperson in the same trade based on the following schedule.

Percent of required hours of experience completed per the Trade Standards	Percent of Journeyperson Wage
25% or less	60%
More than 25% to 50%	70%
More than 50% to 75%	80%
More than 75% but less than 100%	90%

ADMINISTRATION

Administered by the Office of the City Clerk.

Review Schedule:	3 Years If other, specify here	Next Review Date:	April 1, 2024
Related Policy(ies):			
Related By-Law(s):			
Procedural Document:			
Revision History			
Date:	Description:		
15-Dec-20	Approved at Council. Report No. 61 Item No. 2 Effective April 1, 2021.		
Click or tap to enter a date.			