



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Davis
Councilmember Jimenez
Councilmember Torres
Councilmember Ortiz
Councilmember Foley

SUBJECT: Responsible Construction Ordinance

DATE: January 18, 2024

Approved:

Date: January 18, 2024

Recommendation

Accept recommendation #2 from the January 12, 2024, staff memorandum with the following additions and modifications:

1. Before receiving a building permit, applicants will attest that, to the best of their knowledge, all contractors and subcontractors hired or to be hired to provide labor on their project are either not listed on the outstanding unpaid wage theft judgments list at the time of attestation or, if they are listed, will produce proof of satisfaction of the judgment(s) before work begins.
 - a. Applicant attestations will be based on checking California Department of Industrial Relations Judgment Search¹ to ensure that none of their contractors or subcontractors have outstanding unpaid wage theft judgments in the construction industry. Exhibit A shows the search terms to be used. Each project will perform the search once on or around the date of the attestation and use those search results (aka “outstanding judgments list”) as needed for the duration of the project.
 - b. If a contractor or subcontractor is added to the project subsequent to building permit receipt, the project owner is responsible for checking each new company that is hired either is not on their outstanding judgments list or produces proof that the judgment has been satisfied before beginning work on the project.
 - c. If a contractor or subcontractor is not on the outstanding judgments list at the outset, but later receives a wage theft judgment, does not pay, and is subsequently added to the California Department of Industrial Relations database, the project

¹ <https://cadir.my.site.com/s> accessed on January 16, 2024.

owner would not be held responsible unless the unpaid judgment is for work on the project.

- d. As provided in the original ordinance draft, a project owner who hired a contractor or subcontractor who was on the outstanding judgments list without producing proof of satisfaction of the judgment before beginning work would be required to pay the judgment or cause the contractor owning the money to pay the judgment, before receiving the final Certificate of Occupancy. (However, if a contractor or subcontractor was not on the outstanding judgments list but was subsequently added to the California Department of Industrial Relations database, the project owner would not be responsible unless the unpaid judgment is for work on the project.)
 - e. As provided in the original ordinance draft, only contractors and subcontractors that meet the materiality threshold for a project are included.
2. All projects at or above 10,000 square feet are included, regardless of project labor agreements or prevailing wage requirements.

Discussion

The purpose of the Responsible Construction Ordinance is twofold: 1) to ensure that outstanding wage theft judgments get paid to workers who are owed money, and 2) to ensure a level playing field for contractors and subcontractors. The recommendations above achieve both goals for San Jose. The message is clear: Contractors and subcontractors are welcome to work on large projects in San Jose as long as they have fully paid their workers on the project and satisfied any outstanding unpaid wage theft judgments prior to being hired for the project.

We want to thank the developer and labor community for their input into this process and willingness to come to an agreement. It was clear to us that everyone involved wanted to ensure that workers are treated fairly and that companies follow labor laws. We hope future issues can build upon this newfound common ground.

Exhibit A

Judgment Search

Enter information in the boxes below to search for judgments based on criteria such as defendant name. This search provides access to all records of Labor Commissioner judgments in all industries, including those that have been paid.

Defendant/Employer Name

Defendant Address

(Only address of the main business location can be searched e.g. corporate office.)

Judgment Entry Date

From Date (mm/dd/yyyy)

To Date (mm/dd/yyyy)

Judgment Status

Available

- Open - Payment Plan
- Closed - Satisfied
- Closed - Discharged in Bankruptcy
- Stayed - Bankruptcy
- Stayed - Other
- Vacated

Selected

- Open/Unpaid
- Open - Partial Payment/Satisfaction

Judgment Total

From

To

County Court

Courthouse

Citation Number

DIR Office

NAICS Code

A NAICS Code is a standard used to classify business establishments. To view the available NAICS Codes, please visit: <https://www.naics.com/search/>

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.