

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 24 OF THE SAN JOSE MUNICIPAL CODE TO ADD
A NEW PART 8 TO CHAPTER 24.02 TO REGULATE
CERTAIN PRIVATE DEVELOPMENT PROJECTS OF
MORE THAN 10,000 SQUARE FEET BY WITHHOLDING
THE CERTIFICATE OF OCCUPANCY WHEN AN OWNER
OR CONTRACTOR HAS UNPAID FINAL WAGE THEFT
JUDGMENTS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

A new Part 8 is added to Chapter 24.02 of Title 24 of the San José Municipal Code to be numbered, entitled and to read as follows:

**Part 8
Responsible Construction**

24.02.810 Definitions

The following words and phrases, whenever used in this Part, shall be construed as defined in this section:

- A. “Certificate of occupancy” means the building official’s certification under Chapter 24.02.630 of this code that the project complies with all applicable requirements for occupancy. The building official’s signature on the final inspection card may serve as the certificate of occupancy.
- B. “Contractor” means the prime contractor for the project.

- C. “Subcontractor” means any business or person that carries out work of the prime contractor or another contractor for the project, provides labor to the project, and whose portion of the work exceeds one hundred thousand dollars or one percent of the value of the construction cost of the project, whichever is greater.
- D. “Hearing officer” means the City Manager or designee.
- E. “Labor Code Section 226(a)” is a provision of the California Labor Code that requires the employer to provide each employee, either bimonthly or at the time of payment of wages, an itemized wage statement that contains certain specified information concerning the employee’s wages and deductions.
- F. “Labor Code Section 2810.5” is a provision of the California Labor Code that requires the employer, at the time of hiring, to provide each employee a written notice containing certain specified information about the employer, the employee’s rate of pay, worker’s compensation insurance, and sick leave.
- G. “Mail” means to deposit in United States mail, postage prepaid, unless the parties have agreed in writing to receive notifications by email in lieu of United States mail.
- H. “New construction” means construction of new buildings or structures including additions to existing buildings and structures.
- I. “Outstanding judgments list” means a list of contractors who have any unpaid wage theft judgment(s) against them generated by the owner from the California Department of Industrial Relations Judgment Search database, or any succeeding database, as of the date of the building permit application.

- IJ.** “Owner” means the person or persons, firm, corporation, partnership or other legal entity exercising ownership of the project.
- JK.** “Remodeling” means internal or external reconstruction, renovation, or improvements to an existing building or structure that does not constitute complete replacement of the existing building or structure.
- KL.** “Project” means a construction project that requires a building permit from the City of San José.
- LM.** “Project construction employees” means employees of the contractor or subcontractor.
- MN.** “Representative” means a person authorized to legally bind the owner and/or contractor (for example, a corporate officer, general partner, or managing member of a limited liability company).
- NO.** “Unpaid wage theft judgment” means a judgment, decision or order, for which all appeals have been exhausted or the time to appeal has expired, that was issued by a court of law or an investigatory government agency authorized to enforce applicable ~~federal,~~California state and local wage and hour laws, including ~~, but not limited to, the Federal Fair Labor Standards Act,~~ the California Labor Code, and the City of San Jose Minimum Wage Ordinance, ~~and~~ which has not been fully paid or satisfied, and which can be verified by reference to the California Department of Industrial Relations Judgment Search database, or any succeeding database. As used in this subsection, “investigatory government agency” includes ~~the United States Department of Labor,~~ the California Division of Labor Standards Enforcement, the city of San José, or any other governmental

entity or division ~~authorized to investigate and enforce~~tasked with the investigation and enforcement of state and local wage and hour laws.

24.02.820 Exemptions

A project that ~~meets any of the following criteria~~consists of less than ten thousand square feet of new construction or remodeling is exempt from the requirements of this chapter~~Part~~.

~~A. The project consists of less than fifteen thousand square feet of new construction or remodeling.~~

~~B. The project is subject to prevailing wage requirements under state law.~~

~~C. The contractor and all subcontractors are legally bound by an agreement that establishes the terms and conditions of employment on the project, commonly referred to as a project labor agreement or community workforce agreement.~~

24.02.830 Acknowledgement of responsibility

As a condition of approval for any building permit required for a project, an applicant shall sign an acknowledgement that:

A. The owner, contractor, and ~~all~~ subcontractors on the project will comply with all applicable provisions of this chapter and the California Labor Code, including Labor Code Sections 2810.5 and 226a.

B. The owner and contractor are responsible for ~~ensuring~~verifying that the contractor and ~~all~~ subcontractors hired on the project do not, as of the date of the

- building permit application, have pay any unpaid wage theft judgment(s) that have been entered against them either before or during the construction of the project.
- C. After approval of the building permit, the owner and contractor are responsible for verifying, prior to hiring any new contractor or subcontractor, that the contractor or subcontractor does not appear on the outstanding judgments list.
- D. The owner is responsible for ensuring that, if a contractor or subcontractor has an unpaid wage theft judgment entered against them that appears on the outstanding judgments list, the contractor or subcontractor has provided proof demonstrating that the unpaid wage theft judgment has been satisfied prior to being hired onto the project.
- E. The owner is responsible for ensuring that any unpaid wage theft judgment(s) entered against the owner, contractor, or subcontractor for labor provided to the project are satisfied prior to application for a certificate of occupancy on the project.
- F. A violation under Section 24.02.860 will result in withholding of the certificate of occupancy at the conclusion of the project.

24.02.840 Posting

Each day that work is performed on the project, the contractor shall post, in a conspicuous place at each job site where work takes place, the notice published each year by the city informing employees of their rights under this chapter. The notice shall be written in the top three languages spoken in the city based on the latest available census information for the city.

24.02.850 Pay transparency certification

~~Prior to~~With the request for issuance ~~of approval~~ of a certificate of occupancy for a project, for each contractor ~~and~~ subcontractor whose portion of the work exceeds one hundred thousand dollars or one percent of the value of the construction cost of the project, whichever is greater, the owner shall provide to the city a pay transparency certification ("certification"), signed by a representative of the owner, ~~the contractor and any subcontractor~~ under penalty of perjury under the laws of the state of California. The certification required under this section shall be in a form approved by the city and contain ~~the following~~a statement that:-

- A. The owner did not have any unpaid wage theft judgment(s) entered against them dated prior to application for the building permit;
- B. A statement that the owner, No contractor, ~~and any or~~ subcontractors have any unpaid wage theft judgment(s) entered against them dated prior to application for the building permit;
- C. No contractor or subcontractors have any unpaid wage theft judgment(s) entered against them for labor provided to the project; and
- ~~B~~D. A statement that:
- (1) ~~Project construction employees of the c~~Contractor and any subcontractors who provided labor to the project were obligated to provide~~received~~ written notice to project construction employees of the employers' pay practices as required by ~~California~~ Labor Code Section 2810.5 and wage statements under Labor Code Section 226(a); or
 - (2) Project construction employees of the contractor and ~~or any~~ subcontractors are covered by a valid collective bargaining agreement that

expressly provides for the wages, hours of work, and working conditions of the employee, and the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than thirty percent more than the state minimum wage- (~~S~~see Labor Code Section 2810.5(c)).

24.02.860 Violations

~~A.~~—The building official shall not issue a certificate of occupancy under either of the following circumstances:

~~A.~~ ~~(1)~~—The owner has failed to submit the pay transparency certification required by Section 24.02.850.

~~B.~~ ~~(2)~~—The Director of Public Works has sustained a complaint of an unpaid wage theft judgment pursuant to Section 24.02.870, and the owner or contractor has neither cured the unpaid wage theft judgment nor reversed the Director of Public Works' determination by appeal pursuant to Section 24.02.880.

~~B.~~—~~In addition to any other remedies provided by law, violation of this chapter is an infraction punishable as set forth in Chapter 1.15 of this code and may be subject to administrative citations, fines, and penalties as set forth in Chapters 1.14 and 1.15 of this code.~~

24.02.870 Unpaid wage theft judgment – Complaint

A. Any person who is aware of an unpaid wage theft judgment against the contractor or a subcontractor on a project whose portion of the work exceeds one hundred thousand dollars or one percent of the value of the construction cost of

the project, whichever is greater, may submit a complaint to the building official. The complaint must include: (1) a copy of ~~the ILabor eC~~ommissioner's order, decision or award; (2) a copy of the judgment entered by a court of law that the specified contractor or subcontractor is the subject of an unpaid wage theft judgment; and (3) a declaration signed under penalty of perjury from the person that is owed the unpaid wages under the final wage theft judgment against the specified contractor or subcontractor that the judgment has not been satisfied.

- B. The complaint must be received by the building official before the building official has issued a certificate of occupancy. After receiving a complaint, the building official shall ~~withhold~~~~not issue~~ the certificate of occupancy ~~if~~until the Director of Public Works ~~has verified the complaint and has determined whether~~finds that the complaint is sustained, ~~not sustained or incomplete~~. In the event the Director of Public Works finds that the complaint is sustained, the building official shall continue to withhold the certificate of occupancy unless the owner, contractor, or subcontractor provides proof demonstrating that the unpaid wage theft judgment is satisfied, or the Director of Public Works' determination is reversed by appeal pursuant to Section 24.02.880.
- C. The Director of Public Works shall, within 10 working days of receiving the complaint, determine whether the unpaid wage theft judgment appeared on the California Department of Industrial Relations Judgment Search database as of the date of the building permit application, or whether the unpaid wage theft judgment was for labor provided to the project, and verify that the complaint includes all the documentation required by Section 24.02.870(A).

(1) If the complaint is verified, the Director of Public Works shall mail written notice of ~~violation~~~~the complaint~~ to the owner and contractor at the address(es) on file with the city for the project. The notice of violation shall

inform the owner and contractor of their opportunity to provide a written response to the complaint. The certificate of occupancy shall be withheld until the owner, contractor, or subcontractor provides proof demonstrating that the wage theft judgment has been satisfied. If the review of the complaint will delay issuance of the certificate of occupancy, the Director of Public Works shall notify the owner and contractor as soon as practicable.

(2) If the complaint does not include all required documentation, the Director of Public Works shall mail written notice to the complaining party that the complaint is incomplete or not sustained.

D. The owner or contractor may provide a written response to the complaint notice of violation within 30 working days of the mailing of the notice ~~of alleged violation~~. Failure to respond may be deemed an admission to the truth of the facts alleged in the complaint.

E. ~~After consideration of the complaint and~~Within 10 working days of receiving the owner or contractor's response, or if no response is received, after 30 working days of mailing written notice to the owner and contractor~~any~~, the Director of Public Works shall make a finding that the complaint is either sustained or not sustained. The Director of Public Works' decision shall be mailed to owner, contractor, complaining party, and the person that is owed the unpaid wages under the final wage theft judgment. If the complaint is sustained, the certificate of occupancy shall be withheld until the owner, contractor, or subcontractor provides proof demonstrating that the unpaid wage theft judgment is satisfied, or until an appeal pursuant to Section 24.02.880 reverses the Director of Public Works' finding.

24.02.880 Unpaid wage theft judgment – Appeal

- A. Notwithstanding Part 7 of this Chapter, if an owner or contractor is aggrieved by a decision of the Director of Public Works pursuant to Section 24.02.870, the aggrieved owner or contractor may appeal the decision by submitting a written appeal with the hearing officer within 10 working days of the mailing of the Director of Public Works' decision. The appeal shall contain the facts and basis for the appeal. The appeal shall be accompanied by payment of the appeal fee as set forth in a resolution adopted by the city council.
- B. The hearing shall be heard by the hearing officer within 60 working days of receipt of the appeal, or at a date and time agreed to by the parties. ~~The complaining party shall be the respondent at the appeal hearing.~~
- C. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine witnesses. Testimony may be taken on oath or affirmation. The hearing shall not be conducted according to formal rules of evidence. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
- D. The hearing shall be de novo. The complaining party shall be the respondent at the appeal hearing. The complaining party must prove by a preponderance of the evidence that the contractor or a subcontractor on the project is the subject of an unpaid wage theft judgment.
- E. The hearing officer shall issue a written decision within 10 working days of the hearing. The decision shall be final and shall be subject to judicial review

according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

24.02.890 Cure of violation

The owner, contractor, or subcontractor may cure a violation of this ~~chapter~~Part at any time, including a violation related to an unpaid wage theft judgment, by providing proof demonstrating evidence that the judgment has been satisfied~~paid~~, or that it has been secured by a labor payment bond, lien release bond, or similar security instrument in a form and amount sufficient to ensure that any wage claims and penalties can be fully paid. A violation for failure to submit a pay transparency certification may be cured immediately upon submittal of the pay transparency certification to the city.

24.02.900 No private right of action

Nothing in this ~~chapter~~Part shall be interpreted to authorize a right of action against the city.

24.02.910 Effective date

This Part shall become effective on December 1, 2024.

PASSED FOR PUBLICATION of title this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk