

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 OF CHAPTER 24.02 TO REGULATE
CERTAIN PRIVATE DEVELOPMENT PROJECTS 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.

- 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. "Owner" means the person or persons, firm, corporation, partnership or other legal entity exercising ownership of the project.
- J. "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.
- K. "Project" means a construction project that requires a building permit from the City of San José.

- L. “Project construction employees” means employees of the contractor or subcontractor.
- M. “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).
- N. “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, 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. 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 tasked with the investigation and enforcement of wage and hour laws.

24.02.820 Exemptions

A project that meets any of the following criteria is exempt from the requirements of this chapter.

- 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 that the contractor and all subcontractors on the project pay any wage theft judgments that have been entered against them either before or during the construction of the project.
- C. 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 issuance of approval of certificate of occupancy for a project, for each contractor or 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, 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. A statement that the owner, contractor, and any subcontractors have no unpaid wage theft judgments; and
- B. A statement that:
 - (1) Project construction employees of the contractor and any subcontractors received written notice 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. (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:
- (1) The owner has failed to submit the pay transparency certification required by Section 24.02.850.
 - (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 judgement – 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 a labor commissioner'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 not issue the certificate of occupancy if the Director of Public Works finds that the complaint is sustained.
- C. The Director of Public Works shall, within 10 working days, mail written notice of the complaint to the owner and contractor at the address(es) on file with the city for the project. 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.
- D. The owner or contractor may provide a written response to the complaint 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 the owner or contractor's response, if 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.

24.02.880 Unpaid wage theft judgement – 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 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 relying in the conduct of serious affairs.
- D. The hearing shall be de novo. 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 at any time, including a violation related to an unpaid wage theft judgment, by providing evidence

that the judgment has been 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.

24.02.900 No private right of action

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

PASSED FOR PUBLICATION of title this ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk