

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
THE SAN JOSE MUNICIPAL CODE TO ADD A NEW
CHAPTER 14.10 TO TITLE 14 SETTING FORTH
ADDITIONAL PREVAILING WAGE REQUIREMENTS FOR
CERTAIN PRIVATE CONSTRUCTION PROJECTS**

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

Title 14 of the San Jose Municipal Code is hereby amended to add a new Chapter to be numbered and entitled and to read as follows:

CHAPTER 14.10

**ADDITIONAL PREVAILING WAGE REQUIREMENTS FOR CERTAIN PRIVATE
CONSTRUCTION PROJECTS**

Part 1

Intent

14.10.010 Purpose

This Chapter 14.10 supplements the prevailing wage requirements in Chapter 14.09 of this Title 14 as applied to certain Private Construction Projects, as that term is defined in Section 14.10.080.

14.10.020 Conflict

If both Chapter 14.09 and this Chapter 14.10 apply to a Private Construction Project, and one chapter requires the payment of prevailing wages while the other one does not, the chapter requiring the payment of prevailing wages controls.

**Part 2
Definitions**

14.10.030 Definitions

The definitions in this Part 2 govern the application and interpretation of this Chapter 14.10.

14.10.040 Affordable Housing Cost

“Affordable Housing Cost” has the same meaning as that phrase has in Section 5.08.105 of Chapter 5.08 of Title 5 of the San Jose Municipal Code, as it may be amended.

14.10.050 Area Median Income

“Area Median Income” has the same meaning as that phrase has in Section 5.08.130 of Chapter 5.08 of Title 5 of the San Jose Municipal Code, as it may be amended.

14.10.060 De Minimis

“De Minimis” has the same meaning as that word has in California Labor Code Section 1720(c)(3), as it may be amended.

14.10.070 Financially Infeasible

“Financially Infeasible” means that the typical Private Construction Projects, as that term is defined in Section 14.10.070 of this Chapter 14.10, in a Subcategory of Use, as that term is defined in Section 14.10.090 of this Chapter 14.10, are not likely to be built absent a reduction in fees and/or taxes applicable to the Projects.

14.10.080 Private Construction Project

- A. “Private Construction Project” means a project that is owned and controlled by one or more private Persons and that is for the construction of one or more buildings or structures.
- B. Private Construction Project includes any development project that is owned and controlled by one or more private Persons and that includes a plan to undertake construction of one or more buildings or structures.

14.10.090 Subcategory of Use

“Subcategory of Use” means a specified category of land use, other than one of the five general land use categories specified in Section 14.10.210, in which all the Private Construction Projects within the category share one or a combination of the following characteristics:

- A. The same limited geographical boundaries;
- B. A specified building typology;
- C. A specified use as defined in Title 20; and/or
- D. A determined building size or range, as defined by building area or unit count.

14.10.100 Subsidy

Subject to the exclusions in Part 4 of this Chapter 14.10, “Subsidy” means either of the following:

- A. The City’s contribution of land, money or other direct financial assistance to a Private Construction Project; or
- B. The City’s reduction of any fee or tax applicable to a single Private Construction Project or to multiple Private Construction Projects.

Part 3
Prevailing Wage Requirement

14.10.110 Prevailing Wage Requirement

If the City provides a Subsidy to a Private Construction Project, the terms of the Subsidy must include the requirement that all workers employed on the construction be

paid not less than the applicable general prevailing rate of per diem wages for work of a similar character.

14.10.120 Prevailing Wage Rate

The applicable general prevailing rate of per diem wages will be those rates determined by the Director of the California Department of Industrial Relations in accordance with Article 2 of Chapter 1 of Part 7 of Division 2 of the Labor Code (commencing with Section 1770 et seq.), as it may be amended.

14.10.130 Administration and Enforcement

The City will administer and enforce the requirement to pay workers the applicable general prevailing rate of per diem wages in accordance with Chapter 14.09 of this Title 14.

**Part 4
Subsidy Exclusions**

14.10.140 Scope of Part

This Part 4 sets forth exclusions from what is a Subsidy.

14.10.150 De Minimis

A City contribution of land, money or other direct financial assistance, or a City reduction in a fee or tax, that is *De Minimis* in the context of the Private Construction Project is not a Subsidy.

14.10.160 Affordable Housing

A City contribution of land, money or other direct financial assistance, or a City reduction in a fee or tax, benefitting a Private Construction Project is not a Subsidy if the Project is subject to a recorded restriction meeting the following requirements:

- A. The term of the recorded restriction is at least 55 years,
- B. The recorded restriction is applicable to all non-manager units,
- C. The recorded restriction limits household income to no more than 100 percent of Area Median Income, and
- D. The recorded restriction limits rent or sales price to no more than the Affordable Housing Cost pro-rated as appropriate for such maximum income.

14.10.170 Accessory Dwelling Units

A City contribution of land, money or other direct financial assistance, or a City reduction in a fee or tax, to benefit a homeowner in the construction of a Secondary Dwelling Unit or Accessory Dwelling Unit, as those terms are used Title 20, is not a Subsidy.

14.10.180 Infrastructure

Construction by the City or another public entity of infrastructure benefitting a Private Construction Project is not a Subsidy if:

- A. The cost of constructing the infrastructure is paid entirely from the collection of impact fees or taxes, and
- B. Regarding the impact fees or taxes being used to pay for construction of the infrastructure, the benefitted Private Construction Project paid the full amount of the impact fees or taxes that would normally be assessed on such a project under the applicable assessment schedule.

14.10.190 Infrastructure Reimbursement

- A. The City's reimbursement of a Private Construction Project for the cost of constructing infrastructure that would normally be borne by the public is not a Subsidy.
- B. This provision has the same meaning as the exclusion in California Labor Code 1720(c)(3), as it may be amended.

14.10.200 Mandated Reduction

A fee or tax reduction applied to a Private Construction Project or uniformly to all Private Construction Projects within a specified Subcategory of Use, and resulting from changes to any federal or state law or regulation, is not a Subsidy.

14.10.210 Category Reduction

A fee or tax reduction applied uniformly to all Private Construction Projects within any of the following five general land use categories is not a Subsidy: residential, office, retail, research and development, or industrial.

14.10.220 Financially Infeasible

A fee or tax reduction applied uniformly to all Private Construction Projects within a specified Subcategory of Use is not a Subsidy if the Council determines, in accordance with the requirements of this Section, that construction of the projects is Financially Infeasible~~reasonably unlikely absent the reduction~~.

- A. The Council must make its determination that a fee or tax reduction is not a Subsidy, supported by findings, following a public hearing.
- B. The Council's findings must be supported by evidence presented at the public hearing, including a ~~financial feasibility~~ study analyzing whether construction of the Private Construction Projects within the specified Subcategory of Use is Financially Infeasible~~reasonably unlikely absent the fee or tax reduction~~.
- C. The financial feasibility study referenced in Subsection B of this Section 14.10.210 must be performed by a consultant qualified to provide real-estate analytic services.
 1. The City will select and retain the consultant using its normal procurement process.

2. The required consultant study must address the following issues:
 - a. Whether construction of the Private Construction Projects in the specified Subcategory of Use is Financially Infeasible~~reasonably unlikely absent the proposed fee or tax reduction~~;
 - b. The reason(s) for any conclusion that construction of the Private Construction Projects in the specified Subcategory of Use is Financially Infeasible~~is reasonably unlikely absent the proposed fee or tax reduction~~;
 - c. The anticipated duration of any condition(s) making construction of the Private Construction Projects in the specified Subcategory of Use Financially Infeasible~~reasonably unlikely absent the proposed fee or tax reduction~~;
 - d. The estimated size of the financial gap between minimum fee or tax reduction needed, if any, to make construction of the Private Construction Projects in the specified Subcategory of Use being Financially Infeasible and financially feasible~~reasonably likely~~;
 - e. Options for making construction of the Private Construction Projects in the specified Subcategory of Use financially feasible~~reasonably likely~~, including the following:
 - i. Providing the proposed fee or tax reduction without requiring the payment of prevailing wages;

- ii. Providing the proposed fee or tax reduction along with requiring the payment of prevailing wages; and
- iii. Any additional options, other than the proposed fee or tax reduction, that would make construction of the Private Construction Projects within the specified Subcategory of Use financially feasible~~reasonably likely~~, provided that any such options must comply with all applicable laws and regulations, including the City's current general plan.

3. Consultant's preparation of the required study will include the opportunity for stakeholder input.

3.4. The Council will use reasonable efforts to conduct the required public hearing within ninety (90) calendar days following the completion of the study referred to in Subsections B and C of this Section 14.10.220.

PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk