

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 MINIMUM
LABOR STANDARDS FOR A PRIVATE CONSTRUCTION
PROJECT ACCEPTING A CITY SUBSIDY**

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

**MINIMUM LABOR STANDARDS FOR A PRIVATE CONSTRUCTION PROJECT
ACCEPTING A CITY SUBSIDY**

14.10.010 Purpose

This Chapter 14.10 supplements the prevailing wage requirements in Chapter 14.09 of this Title 14.

**Part 1
Definitions**

14.10.020 Definitions

The definitions in this Part 1 govern the application and interpretation of this Chapter 14.10.

14.10.030 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.

14.10.040 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.

14.10.050 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.

14.10.060 Financially Infeasible

“Financially Infeasible” means that the typical Private Construction Projects, as that term is defined in Section 14.10.090 of this Chapter 14.10, in a Subcategory of Use, as that term is defined in Section 14.10.100 of this Chapter 14.10, are not likely to be built absent a reduction in fees and/or taxes applicable to the Projects.

14.10.070 Good Faith Efforts

“Good Faith Efforts” means the efforts that a reasonable Person would determine is a diligent and honest effort under the same or similar set of facts or circumstances.

14.10.080 Local Resident

“Local Resident” means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, as it may be amended, within Santa Clara County for at least seven (7) calendar days before commencing work on a Private Construction Project.

14.10.090 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.

14.10.100 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 14.10.300, 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 of the San Jose Municipal Code; and/or
- D. A determined building size or range, as defined by building area or unit count.

14.10.110 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, permanent suspension or exemption of any fee or tax applicable to a single Private Construction Project or to multiple Private Construction Projects.

14.10.120 Total Work Hours

- A. “Total Work Hours” means the total hours of work needed to complete construction of a Private Construction Project and performed by any journey level, apprentice or other construction worker employed by any contractor or subcontractor.
- B. Notwithstanding Subsection A, “Total Work Hours” does not include hours of work on construction of the Private Construction Project performed by residents of states other than California.

14.10.130 Underrepresented Worker

“Underrepresented Worker” means an individual who meets any one of the following conditions at the time the individual begins work on a Private Construction Project:

- A. The individual is a risk of losing his/her home, the individual is homeless, or the individual is housed within the past twelve (12) months before which he/she was homeless;
- B. The individual is receiving public assistance;
- C. The individual is participating in a reentry program or was formerly incarcerated;
- D. The individual has been continuously unemployed for the previous year;
- E. The individual has a family or household income that falls below the current United States Department of Housing and Urban Development threshold for low income households in Santa Clara County;
- F. The individual has been emancipated from the foster care system;
- G. The individual is a veteran of the United States military;
- H. The individual is participating in a program for “at-risk” youth; or
- I. The individual is a survivor of labor trafficking.

Part 2

Prevailing Wage Requirement

14.10.140 Prevailing Wage

A Private Construction Project must comply with the City’s prevailing wage requirements set forth in Chapter 14.09 of this Title 14 if it accepts a Subsidy from the City.

14.10.150 Apprenticeship

The requirement in Section 14.10.140 to comply with the City's prevailing wage requirements in Chapter 14.09 of this Title 14 includes complying with the apprenticeship requirements contained therein.

14.10.160 Administration and Enforcement

The City's Department of Public Works is responsible for promulgating regulations and procedures, consistent with Chapter 14.09 of this Title 14, for the administration and enforcement of this Part 2.

14.10.170 Conflict

Notwithstanding anything to the contrary in this Chapter 14.10, this Part 2 does not apply to any Private Construction Project that is subject to the prevailing wage requirements in Chapter 14.09 of Title 14.

Part 3
Additional Minimum Labor Standards

14.10.180 Requirement

A Private Construction Project must comply with the additional minimum labor standards set forth in this Part 3 if it accepts a Subsidy from the City.

14.10.190 Local Hire

- A. The Private Construction Project must use Good Faith Efforts to have Local Residents perform at least thirty (30) percent of the Total Work Hours.

- B. The local hire requirement does not apply if, during the month that the Private Construction Project accepts the Subsidy from the City, the unemployment rate for the construction industry in Santa Clara County, as published by the Employment Development Department or some equivalent government publication covering that month, is equal or less than four (4) percent.

14.10.200 Underrepresented Worker

The Private Construction Project must use Good Faith Efforts to hire Underrepresented Workers as entry-level apprentices to perform twenty-five (25) percent of the total apprentice hours.

14.10.210 Hiring Discretion

- A. Nothing in this Part 3 is intended to limit the ability of a contractor or subcontractor to assess qualifications of prospective workers, or to make a final hiring decision.
- B. No provision of this Part 3 shall be interpreted to require a contractor or subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

14.10.220 Administration and Enforcement

- A. The City's Department of Public Works is responsible for promulgating regulations and procedures for the administration and enforcement of this Part 3.
- B. Such regulations and procedures, including those related to complying with the Good Faith Efforts requirements of this Part 3, must impact union and nonunion employees equally and must neither encourage nor discourage the collective-bargaining process.

Part 4

Subsidy Exclusions

14.10.230 Scope of Part

This Part 4 sets forth exclusions from the definition of Subsidy.

14.10.240 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.

14.10.250 Housing Projects

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

- B. A City contribution of land, money or other direct financial assistance, or a City reduction in a fee or tax, to benefit a housing project subject to Resolution Numbers 72518, 61144 or 61716, as they may be amended, is not a Subsidy.
- C. A City contribution of money or other direct financial assistance to benefit a Private Construction Project is not a Subsidy if the funds were originally granted to the City by the State or Federal Government and the project is subject to Federal Labor Standards.
- D. Any housing project covered by Resolutions Numbers 72518, 61144 or 61716, as they may be amended, will remain subject to the requirements of those resolutions.

14.10.250 Small Housing Projects

- A. 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.
- B. A City contribution of land, money or other direct financial assistance, or a City reduction in a fee or tax, to benefit a City housing project involving the construction or rehabilitation of less than eight (8) units is not a Subsidy.
- C. The portion of a City housing project involving volunteers or self-help construction or rehabilitation that is not contracted out by the developer is not subject to any of the requirements of this Chapter 14.10.

14.10.270 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.

14.10.280 Infrastructure Reimbursement

The City's reimbursement of a Private Construction Project for the cost of constructing infrastructure that would normally be borne by the public as set forth in California Labor Code 1720(c)(3), as it may be amended, is not a Subsidy.

14.10.290 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.

14.10.300 Category Reduction

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

14.10.310 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.

- 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 study analyzing whether construction of the Private Construction Projects within the specified Subcategory of Use is Financially Infeasible.
- C. The financial feasibility study referenced in Subsection B of this Section 14.10.310 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;
 - b. The reason(s) for any conclusion that construction of the Private Construction Projects in the specified Subcategory of Use is Financially Infeasible;

- c. The anticipated duration of any condition(s) making construction of the Private Construction Projects in the specified Subcategory of Use Financially Infeasible;
 - d. The estimated size of the financial gap between the Private Construction Projects in the specified Subcategory of Use being Financially Infeasible and financially feasible;
 - e. Options for making construction of the Private Construction Projects in the specified Subcategory of Use financially feasible, 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, 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.
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 14.10.310.

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