



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmembers Jimenez,
Peralez & Carrasco

SUBJECT: SEE BELOW

DATE: February 7, 2020

Approved

Date: 02/07/2020

Council Policy Priority #16: Wage Theft Prevention Policy.

Recommendation:

1. Accept status update and workplan for completion of Council Priority #16- *Update to Wage Theft Prevention Policy* and direct staff to include the following items in the development of the policy to be presented to City Council in Spring 2020:
 - a. A recommended Wage Theft Policy update that:
 - i. Removes the exclusion of public works contracts from the Policy and clarifies that the proposed definition of “Final Judgments, Decisions, and Orders” also includes judgments or final administrative decisions resulting from:
 1. A California Division of Labor Standard Enforcement Civil Wage and Penalty Assessment (CWPA);
 2. A California Division of Labor Standard Enforcement Bureau of Field Enforcement (BOFE) citation; or
 3. A U.S Department of Labor Final Administrative Decision; and
 - ii. Is based on self-disclosure. The City shall work towards the goal of being able to verify disclosures and shall investigate complaints and irregularities, where possible, to ensure compliance.
 - b. A draft Wage Theft Prevention Ordinance as directed in the Jan. 30, 2019 Rules and Open Government memo authored by Vice Mayor Jones and Councilmembers Peralez, Carrasco, and Jimenez.
2. As part of the recommended Wage Theft Prevention Policy update to be brought back to Council, direct staff to define chronic bad actors that shall be disqualified as potential contractors. This stipulation should be data-driven, and defined in consultation with our local stakeholders, academic partners, DLSE, and the County’s OLSE.

Analysis:

On January 30, 2019, the Rules and Open Government committee recommended expanding the Wage Theft policy to public works and adding an ordinance to address wage theft in construction.

On March 5, 2019, a majority of the Council voted to prioritize updating the City's Wage Theft Prevention Policy to cover construction workers, including both 1) expanding the current policy to public works contracts and 2) developing a responsible construction ordinance and potential penalties for private construction projects that receive City incentives and commit wage theft violations on those projects.

On November 18, 2019, Councilmember Jimenez submitted a memo, which was approved by the Council, that requested a work plan and timeline for bringing a recommended policy update and a draft Wage Theft Prevention ordinance to the City Council.

It has now been a full year since the initial memo, during which time workers on construction jobs have continued to be at risk. Rather than repeatedly discussing the problem without making any forward motion, we recommend staff to bring forward a recommended policy and ordinance as originally directed, so that the City Council and the public can review a concrete proposal.

With regard to the definition of Final Judgments, Decisions, and Orders, the staff analysis moves us in the right direction. To further avoid ambiguity, we recommend stating explicitly that "Final Judgments, Decisions, and Orders" includes judgments or final administrative decisions resulting from: a DLSE Civil Wage and Penalty Assessment (CWPA); a DLSE Bureau of Field Enforcement (BOFE) citation; or a U.S. Dept. of Labor Final Administrative Decision. Additionally, it is in the interest of the City to include U.S. Department of Labor Final Administrative Decisions. Staff should thus strongly pursue access to DOL data that would help support the intent of the wage theft prevention policy. Upon gaining access, staff is directed to update the policy to reflect inclusion of DOL Final Administrative Decisions in the definition of "Final Judgments, Decisions, and Orders."

We support the staff analysis suggesting that we maintain the current policy regarding unsatisfied Final Judgments, Decisions, or Orders, under which the City will not contract with any such company, unless and until it satisfies the judgment, decision, or order.

Finally, there is the question of City contracting with companies who do not have any unsatisfied judgments, but have accumulated multiple wage theft violations: the chronic bad actor. The staff analysis suggests that barring a company from contracting if it has 2 or more offenses may be too onerous. Establishing objective standards will help us identify chronic bad actors and determine an appropriate policy response. We recommend that Staff work to analyze state DLSE data, as it is received by the state, to define what a non-responsible, chronic bad actor looks like based on the data available. This should be done in consultation with our local stakeholders, academic partners, DLSE, and the County's OLSE. We strongly recommend that the current policy of disqualifying bidders remain in place until a new threshold is determined.

Brown Act Disclaimer:

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.