

# Council Policy Priority #16 – Wage Theft Prevention Policy

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Item 3.5

City Council

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# | Agenda

- Overview of Monitoring and Enforcement Agencies
- Existing Wage Theft Prevention Policy for the City of San José
- Improving the City's Effectiveness and Impact

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**Wage theft affects all industries and employees at all economic levels; however it has a disproportionate impact on low-wage workers.**

## Wage theft is monitored at various levels

Federal Level:  
Department of Labor

State of California:  
Division of Labor Standards Enforcement

County of Santa Clara:  
Office of Labor  
Standards Enforcement

Superior Courts:  
Civil Suits

City of San José:  
Office of Equality  
Assurance

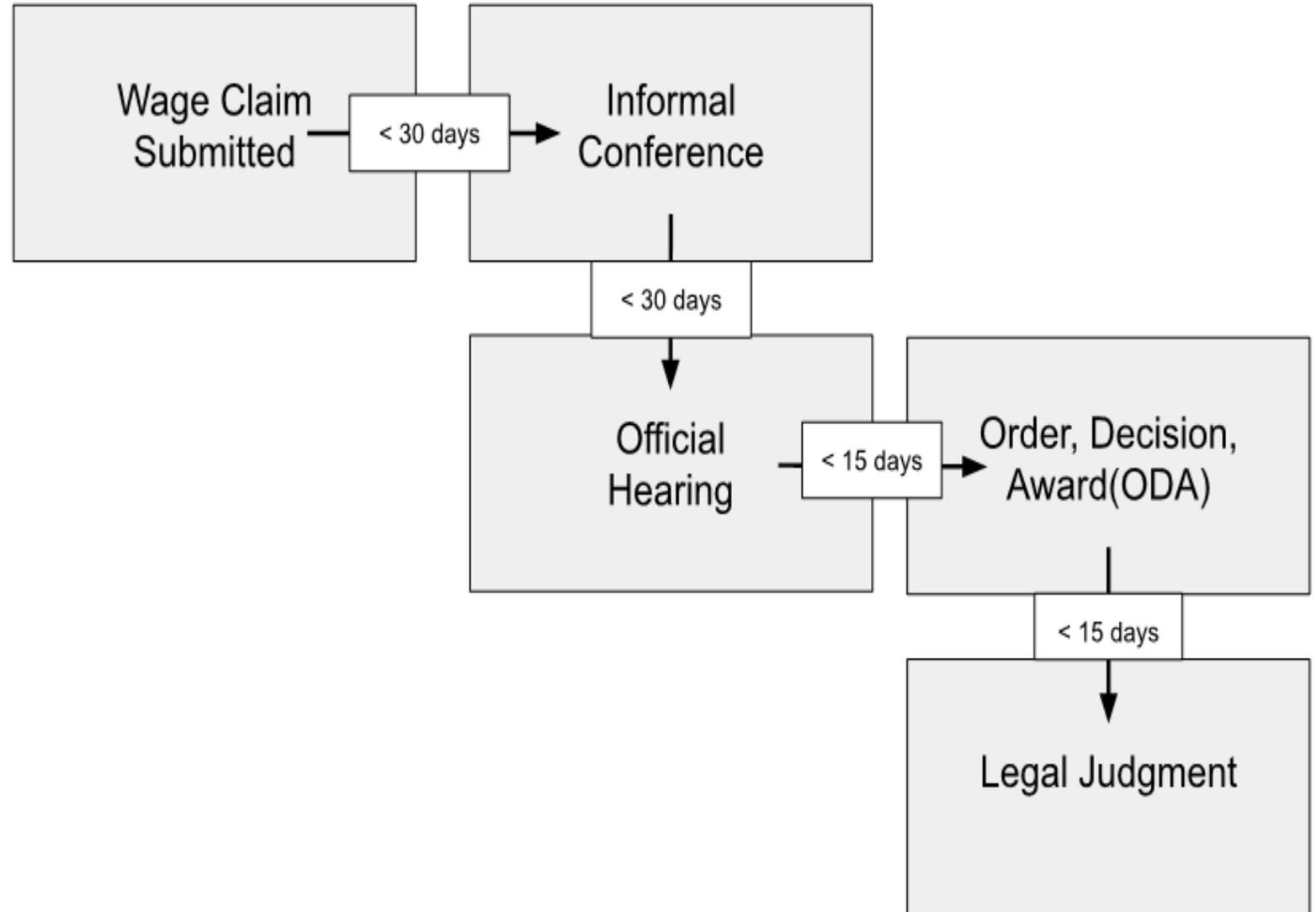
**U.S.  
Department of  
Labor**  
**Wage and Hour  
Division**

- Enforces all federal labor laws, most notably the Fair Labor Standards Act (FLSA)
- Actively investigates employers
- Handles all cases administratively

# State of California Division of Labor Standards Enforcement

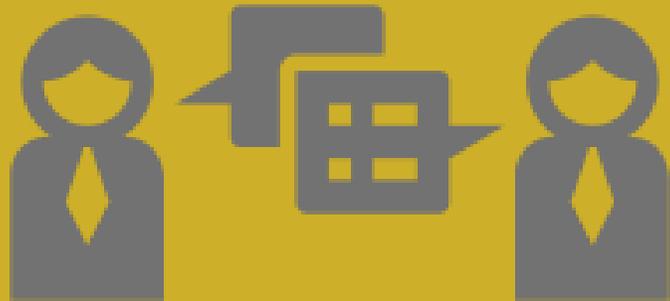
- ✓ Wage Claim Adjudication Process
- ✓ Bureau of Field Enforcement (BOFE)

## Wage Claim Adjudication Process

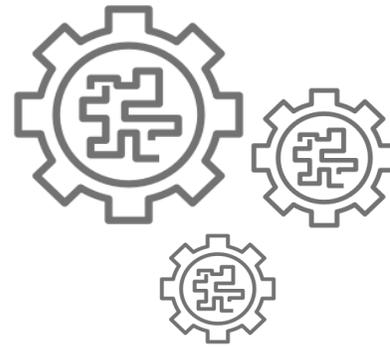


| **SB-588 provides the California Labor Commissioner with broad enforcement powers, but workers must navigate a legal maze to utilize them.**

# What process should be:



# What it typically is:



# California Superior Courts Civil Suits

- When DLSE produces a wage judgment, it is registered with the local Superior Court.
- Workers can also pursue wage claims directly through the Superior Court system
- Both process produce same outcome if a wage violation is found:

*A legal judgment that entitles the worker to wages owed, plus any damages assessed*

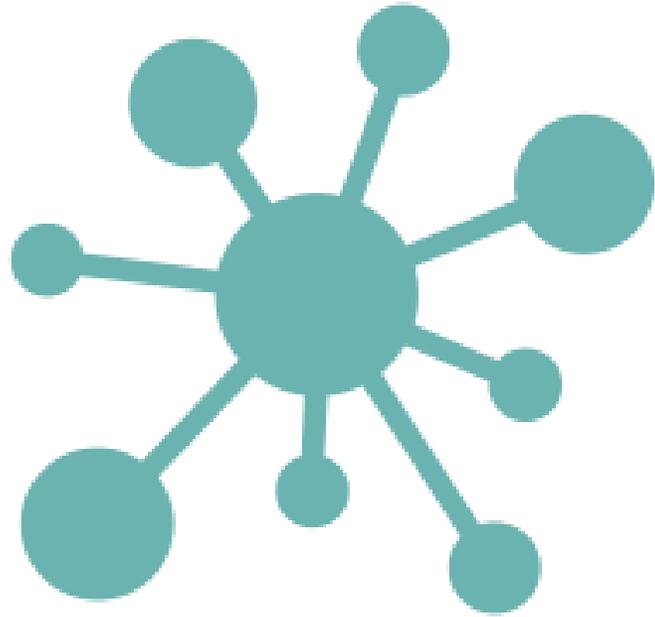
**Santa Clara  
County  
Office of Labor  
Standards  
Enforcement**

- **Provides outreach and education**
- **Supports workers through DLSE process**
- **Aids in wage recuperation**
- **Does not produce its own findings, decisions, or judgments**

# City of San José (Public Works)

## Office of Equality Assurance

- Enforces local minimum wage ordinances for San José and neighboring cities
- Enforces city-wide Living and Prevailing Wage standards
- Highly effective in collecting wages when these local standards are violated



The web of wage enforcement is complex, and this requires a **robust data approach** to be effective at the local level.

# | Data Access

Enforcement Body	Measurable?	Verifiable?
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## Recommended in Staff Memo

California DLSE Final Judgment	Yes	Yes (Pending MOU)
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## Recommended in Memorandum by Councilmembers

DLSE: Civil Wage Penalty Assessment	Yes?	TBD (Staff Submitted Request to State)
DLSE: Bureau of Field Enforcement	Yes?	TBD (Staff Submitted Request to State)
United States DOL	Yes?	TBD (Staff Submitted Request to State)

Not recommended at this time: DLSE Wage Claim Adjudication, Superior Court, Other agency findings

**What is the existing  
City of San José  
Wage Theft  
Prevention Policy?**

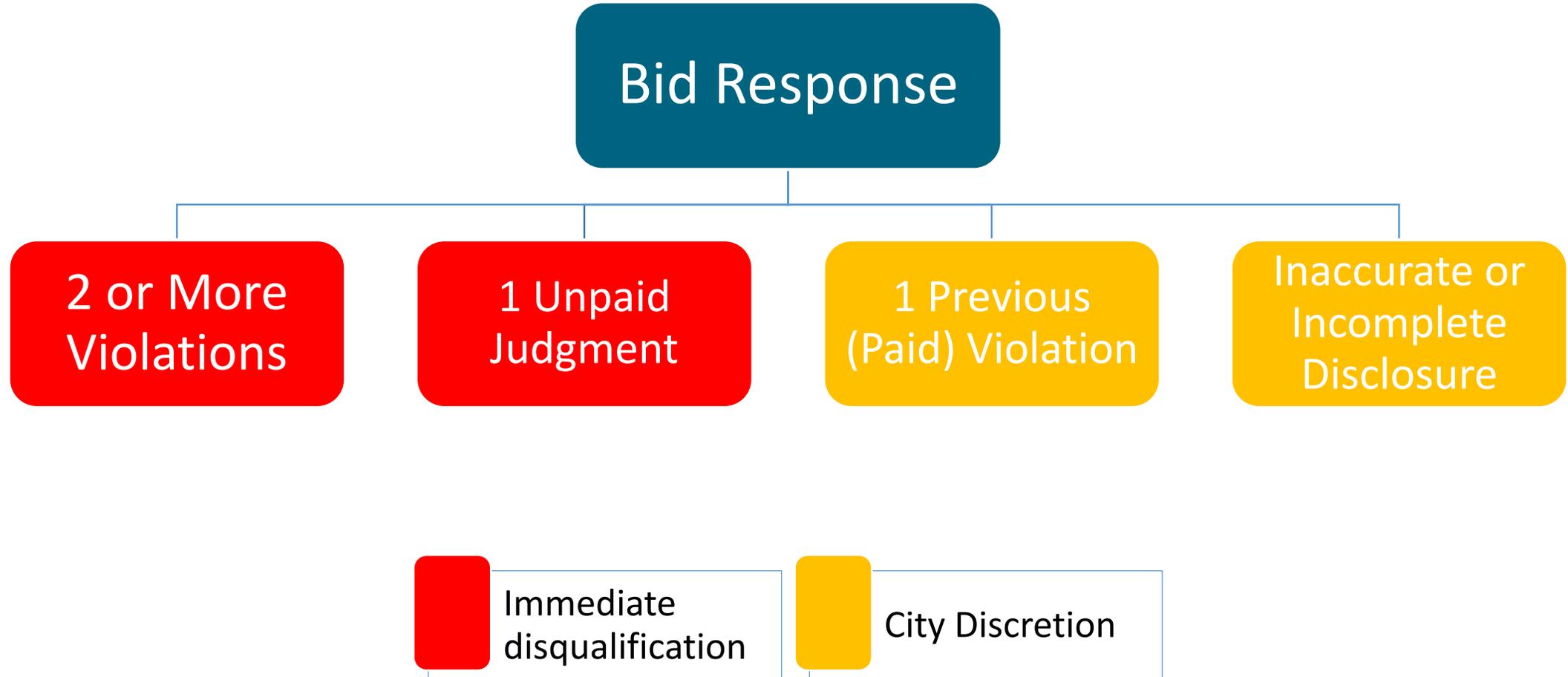
**Council Policy 0-44**

*Purpose:* To establish a Council Policy and procedure to prevent wage theft on City contracts as well as deny, suspend or revoke certain City permits and licenses to businesses with unpaid wage theft judgments.

## | Existing City Wage Theft Prevention Policy

- Broadly applies to contracts across City operations
- Excludes Public Works contracts
- Relies on vendor self-disclosure to assess bid response
- Employee complaint triggers review of vendor wage theft history (passive enforcement)

# Procedure Under Current Wage Theft Prevention Policy



# | Challenges Implementing Existing Policy

- Banking RFP
  - Definitional ambiguity
  - Inflexibility
  - Limited verification capacity
- Good Jobs Report
  - 91 City vendors (19%) with unreported violations
  - High risk of Banking RFP repeat-scenario

# Good Jobs Report

IBM Corp.

Wells Fargo

Southwest Airlines

Cisco Systems

AT&T

Fed Ex

State Farm Insurance

Verizon Communications

Kaiser Permanente

United Parcel Services

Costco

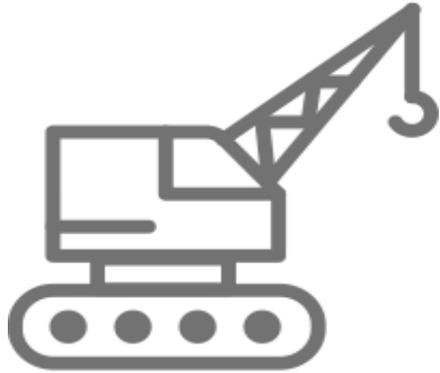
Office Depot

## | Policy Direction

Staff has been directed to consider:

- Removing the Public Works exclusion
- Modifying definition of “Final Judgments, Decisions, and Orders”
- Developing a new ordinance to regulate private development

# | Department of Public Works



- **Currently excluded** from Wage Theft Prevention Policy
- Public Works Contractors required to register with Department of Industrial Relations

- Inclusion minimizes risk to Public Works projects if:
  - ✓ Clear and consistent definition of wage theft
  - ✓ Reliable access to wage theft data

## Ensuring a Stronger, Broader Local Impact

**01**

### **Measurable**

Clear and accurate definition/scope of what City believes constitutes wage theft.

**02**

### **Verifiable**

Ongoing and reliable data access Ongoing and reliable access to the data that constitutes wage theft.

**03**

### **Enforceable**

Enforcing the City's Policy by excluding parties from doing business with the City upon verification of wage theft.

# | Proposed Responsible Construction Ordinance

- Requires permit applicants to obtain wage theft disclosures from all contracts when:
  - Project is greater than 5,000 square feet and,
  - Contract value is \$50,000 or more
- Penalizes contract applicant if wage theft violations are found
- Numerous administrative, policy, and legal issues

# | Proposed Responsible Construction Ordinance

Building permit applicants can include:



**Property Owners**



**Contractors**



**Developers**

## Ensuring a Stronger, Broader Local Impact



### Who We Do Business With

- ✓ Effective, impactful local policy
- ✓ Robust data approach  
combining various datasets
- ✓ Fairness and transparency  
throughout bid procedure



### Supporting Workers

- ✓ Strengthening Partnerships  
with State and County
- ✓ Enhancing local outreach and  
education efforts
- ✓ Ensuring employers comply  
with final judgments



STATE LEGISLATIVE SOLUTIONS



# Preventing Wage Theft in San José through a Policy that is:

✓ **MEASUREABLE**



✓ **VERIFIABLE**



✓ **ENFORCEABLE**



## Council Policy Priority #16 – Update on Council Wage Theft Prevention Policy

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