

## **Responsible Construction Ordinance**

### **1. Definitions**

For purposes of this ordinance:

A. “Building permit holder” means a person or entity that has received a permit to undertake a major construction project. A building permit holder does not include an owner self-performing work on the owner’s residence.

B. “Building permit applicant” means a person or entity that has applied for a permit to undertake a major construction project. A building permit applicant does not include an owner self-performing work on the owner’s residence.

C. “Developer or Permit Holder” means an entity or person who owns or controls a major construction project. Developer does not include an owner self-performing work on the owner’s residence.

D. “Final judgment, final administrative decision, or citation” means any of the following:

- i. A judgment, administrative decision, determination, order, Civil Wage and Penalty Assessment (CWPA), or citation including but not limited to a civil judgment or final administrative decision issued by a court of law, an investigatory government agency authorized by law to enforce an applicable law, an arbitrator, or an arbitration panel and for which all have been exhausted or the time period to appeal has expired for violations of the wage and hour and retaliation provisions of the California Labor Code, the Fair Labor Standards Act or a local wage and hour or retaliation law;
- ii. A civil judgment or final administrative decision for violations of laws enforced by the Equal Employment Opportunity Commission or the California Department of Fair Employment and Housing;
- iii. A serious and willful OSHA citation; or
- iv. An admission of guilt or finding of guilt in a criminal proceeding or a restitution order.

E. “Major construction project” means a project that will involve construction, alteration, and/or demolition work of greater than 5,000 square feet of floor area within the city.

F. “Unsatisfied final judgment, final administrative decision, or citation” means a final judgment, citation, or Civil Wage and Penalty Assessment (CWPA) that requires the payment of money, and that has not been fully satisfied, except that an unsatisfied judgment, decision or citation shall not disqualify a contractor or subcontractor if its enforcement against the contractor or subcontractor is stayed by court order or operation of law.

### **2. Bidding and Contracting Requirements**

A. A Developer or Permit Holder shall require, in all solicitations or invitations for bids to perform work on a major construction project, and prior to awarding any contract to perform work on a major construction project, that every contractor and subcontractor performing work in excess of \$50,000 on the

project must complete and return to the Developer or Permit Holder the disclosure form required by this ordinance. The completed form shall be verified by a representative of the contractor or subcontractor under penalty of perjury.

B. A Developer or Permit Holder shall disqualify a contractor or subcontractor from entering into a contract to perform work, and from performing such work, if the required disclosure form has not been submitted, if the disclosure form is materially false or incomplete, or if the disclosure form reports that the contractor or subcontractor has an unsatisfied final judgment, final administrative decision, or citation. Nothing in this ordinance shall preclude a Developer or Permit Holder from disqualifying a contractor or subcontractor for additional reasons.

C. A developer or building permit holder subject to this ordinance shall file a copy of the completed disclosure forms required by this ordinance with the city prior to the contractor or subcontractor performing work on the project. The completed disclosure forms for a project shall be available from the city as public records.

D. A contractor or subcontractor performing work for which a disclosure form is required must complete the disclosure form prior to entering into a contract to perform the work.

E. Upon notification from the city to a Developer or Permit Holder that a contractor or subcontractor performing work for which a disclosure form is required has not completed a disclosure form, or has submitted a disclosure form that is incomplete, the Developer or Permit Holder shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project until such time as the contractor submits a complete disclosure form.

F. Upon notification from the city to a Developer or Permit Holder that a contractor or subcontractor performing work for which a disclosure form is required has submitted a disclosure form that is materially false, or has submitted a disclosure form that reports an unsatisfied final judgment, final administrative decision, or citation, the Developer or Permit Holder shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

G. A contractor or subcontractor which has been ordered removed and/or barred from a project due to failure to submit a complete and accurate disclosure form, or due to failure to satisfy a final judgment, administrative decision, or citation may request an administrative hearing before the Appeals Hearing Board.

### **3. Access Requirements**

A. A Developer or Permit Holder shall require its contractors and subcontractors to provide investigators for the city with access to the project jobsite upon request, and with the right to inspect payroll records

and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

B. The city may contract with a non-profit organization to conduct investigations on behalf of the city for purposes of this ordinance and such investigators shall be provided with the jobsite access and right to inspect payroll records and interview workers that are provided this Ordinance.

C. Upon notification from the city to a Developer or Permit Holder that a contractor or subcontractor refuses to provide the city with the jobsite access and right to inspect payroll records and interview workers that are required by this ordinance, the Developer or Permit Holder shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

#### **4. Prohibition on Retaliation**

No Developer or Permit Holder, contractor or subcontractor shall discriminate or retaliate against any person or entity for cooperating with an investigation under this ordinance or for making a complaint concerning an alleged violation of this ordinance.

#### **5. Responsibilities for Project Work**

A. A Developer or Permit Holder shall be jointly responsible for satisfying any unpaid final judgment, final administrative decision, restitution order, or citation issued against a contractor or subcontractor on its project to the extent it awards wages, benefits, penalties, damages, interest, and attorneys' fees to a worker on account of the worker's performance of work on the project.

B. A Developer or Permit Holder must update the disclosure responses to the document within 30 days of receipt of information relevant to the responses.

C. Upon notice from the city of an unpaid final judgment, final administrative decision or citation subject to subdivision A, a Developer or Permit Holder shall provide the city within 30 days with proof that the judgment, administrative decision or citation, or relevant portion thereof, has been satisfied. If the Developer or Permit Holder fails to provide such proof, the city, in addition to pursuing any other remedies, shall not issue a Certificate of Occupancy until all wage theft judgments, administrative decisions, citations or CWPA's are satisfied.

D. A Developer or Permit Holder who is not issued a Certificate of Occupancy due to failure to satisfy a final judgment, administrative decision, or citation may request an administrative hearing before the Appeals Hearing Board.

## 6. Compliance

A. A building permit applicant subject to this ordinance shall complete and submit with their building permit application a copy of the Disclosure Form for each contractor or subcontractor that has been awarded a contract on the project.

i. The City shall not issue the building permit until a complete Disclosure Form has been filed for each contractor and subcontractor. If no contracts have yet been awarded for the project, the applicant shall submit to the City an attestation to that effect with the building permit application. ii. If additional contracts or subcontracts are awarded after issuance of the building permit, the Developer or Permit Holder shall submit a copy of the Disclosure Form for each contractor or subcontractor prior to commencing work on the project.

iii. As part of the application for a building permit, every applicant subject to this ordinance shall agree to comply with all applicable portions of this ordinance, including submittal of all required Disclosure Forms.

B. A Developer or Permit Holder, contractor, or subcontractor shall be subject to a civil fine payable to the city of up to \$1,000 for each violation of this ordinance.

C. Any person injured by a violation of this ordinance may bring a civil action against a Developer or Permit Holder, contractor, or subcontractor for damages in any court of competent jurisdiction.

D. Any person who contends that a contractor or subcontractor is performing work for which a disclosure form is required by this ordinance and that no such disclosure form was filed with the city may file a complaint with the city supported by evidence to show the violation. The city shall promptly provide a copy of the complaint to the contractor or subcontractor and to the Developer or Permit Holder and request a response within seven days. Unless the contractor or subcontractor provides a completed disclosure form within seven days, or establishes to the satisfaction of the city that no violation occurred, the city shall give notice to the Developer or Permit Holder that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the project.

E. Any person who contends that a contractor or subcontractor performing work for which a disclosure form is required by this ordinance has provided a disclosure form that is materially false or incomplete may file a complaint with the city supported by evidence to show the violation. The city shall promptly provide a copy of the complaint to the contractor or subcontractor and to the Developer or Permit Holder and request a response within seven days. Unless the contractor or subcontractor establishes to the satisfaction of the city that no violation occurred, the city shall give notice to the Developer or Permit Holder that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the Project.

F. The City shall not issue not a Certificate of Occupancy until all unpaid wage theft judgments, administrative decisions, citations, or CWPA's are satisfied.

**7. Disclosure form.** The disclosure form required by this ordinance shall be the form contained in Appendix A to this ordinance and shall be completed under penalty of perjury.

## Appendix A

### City Responsible Construction Ordinance Disclosure Form

To be completed by each contractor or subcontractor hired to perform Project work. A separate form must be completed for each project.

#### 1. Project and Contractor / Subcontractor Information

- a. Project owner or developer:
- b. Party who retained contractor/subcontractor to perform work on the project: (if different from Project Owner or Developer)
- c. Project name:
- d. Project location:
- e. Name of Contractor or Subcontractor:
- f. Address of Contractor or Subcontractor:
- g. Responsible managing officer:
- h. State Contractor's License Number:
- i. Approximate date work by contractor/subcontractor is scheduled to commence on project:

**2. Required Disclosures.** During the five years prior to completion of this form, has contractor/subcontractor:

- a. been found liable by any court or administrative agency for failing to pay wages or benefits to an employee or for violating any wage and hour provisions of the California Labor Code or the Fair Labor Standards Act? If so, list all such judgments, CWPAs, and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.
- b. been subject to any citations or penalties imposed by the U.S. Department of Labor, California Department of Industrial Relations, California Labor Commissioner or serious and willful violations by the California Division of Occupational Safety and Health? If so, list all such citations and penalty assessments and attach copies to this form. Do not list or attach citations or penalty assessments that have been overturned.
- c. been subject to any cause findings by the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission for the laws enforced by those agencies? If so, list all such findings and attach copies to this form. Do not list cause findings that have been overturned.
- d. been found liable for failing to maintain worker's compensation insurance or for engaging in fraudulent activity related to worker's compensation insurance? If so, list and attach copies of all such determinations. Do not list or attach determinations that have been overturned.

- e. been found liable by any court or administrative agency for retaliating or discriminating against a worker for making a complaint about a violation of laws enforced by the Labor Commission, Department of Labor, the Department of Fair Employment and Housing, or the Equal Employment Opportunity Commission? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.
- f. been found liable by any court or administrative agency for failing to pay any payroll taxes? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.
- g. been found liable, admitted guilt, or been found guilty by any court or administrative agency for violating any laws relating to human trafficking? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.
- h. been found by the Contractors State License Board to have performed covered work without a contractor's license or to have performed work without the appropriate license for the classification of work? If so, list all such citations and orders. Do not list citations or administrative awards that have been overturned.

Draft of October 25, 2018

## City of Sunnyvale Responsible Construction Ordinance

### 1. Definitions

For purposes of this ordinance:

A. "Covered party" means a developer, building permit holder, or building permit applicant.

B. "Developer" means an entity or person who owns or controls a major construction project. Developer does not include an owner undertaking work on the owner's residence.

C. "Building permit holder" means a person or entity that has received a permit to undertake a major construction project. A building permit holder does not include an owner performing work on the owner's residence.

D. "Building permit applicant" means a person or entity that has applied for a permit to undertake a major construction project. A building permit applicant does not include an owner performing work on the owner's residence.

E. "Major construction project" means a project that will involve construction, alteration, and/or demolition work in excess of \$500,000 within the city.

F. "Final judgment or citation" means either of the following:

i. a judgment, decision, determination, order, or citation that was issued by a court of law, an investigatory government agency authorized by law to enforce an applicable law, an arbitrator, or an arbitration panel and for which all appeals have been exhausted or the time period to appeal has expired.

ii. an admission of guilt or finding of guilt in a criminal proceeding.

G. "Unsatisfied final judgment or citation" means a final judgment or citation that requires the payment of money, and that has not been fully satisfied, except that an unsatisfied judgment or citation shall not disqualify a contractor or subcontractor if its enforcement against the contractor or subcontractor is stayed by court order or operation of law.



## **2. Bidding and Contracting Requirements**

A. A covered party shall require, in all solicitations or invitations for bids to perform work on a major construction project, and prior to awarding any contract to perform work on a major construction project, that every contractor and subcontractor performing work on the project in excess of \$50,000 must complete and return to the covered party the disclosure form required by this ordinance. The completed form shall be verified by a representative of the contractor or subcontractor under penalty of perjury. A covered party shall disqualify a contractor or subcontractor from entering into a contract to perform work, and from performing such work, if the required disclosure form has not been submitted, if the disclosure form is materially false or incomplete, or if the disclosure form reports that the contractor or subcontractor has an unsatisfied final judgment or citation. Nothing in this ordinance shall preclude a covered party from disqualifying the contractor or subcontractor for additional reasons.

B. A developer or building permit holder subject to this ordinance shall file a copy of the completed disclosure forms required by this ordinance with the city prior to the contractor or subcontractor performing work on the project. The completed disclosure forms for a project shall be available from the city as public records.

C. A contractor or subcontractor performing work for which a disclosure form is required must complete the disclosure form prior to entering into a contract to perform the work.

D. Upon notification from the city to a covered party that a contractor or subcontractor performing work for which a disclosure form is required has not completed a disclosure form, or has submitted a disclosure form that is materially false or incomplete, or has submitted a disclosure form that reports an unsatisfied final judgment or citation, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

## **3. Access Requirements**

A. A covered party shall provide investigators for the city with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

B. A covered party shall require its contractors and subcontractors to provide investigators for the city with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

C. A contractor or subcontractor performing work on a project subject to this ordinance shall provide investigators for the city with access to the project jobsite upon request, and with the right to inspect payroll records and interview workers upon request, for the purpose of verifying compliance with any labor standards laws applicable to workers on the project.

D. The city may contract with a non-profit organization to conduct investigations on behalf of the city for purposes of this ordinance and such investigators shall be provided with the jobsite access and right to inspect payroll records and interview workers that are provided this ordinance.

E. Upon notification from the city to a covered party that a contractor or subcontractor refuses to provide the city with the jobsite access and right to inspect payroll records and interview workers that are required by this ordinance, the covered party shall remove the contractor or subcontractor from the project within 48 hours and bar the contractor or subcontractor from performing further work on the project.

#### **4. Prohibition on Retaliation**

No covered party, contractor or subcontractor shall discriminate or retaliate against any person or entity for cooperating with an investigation under this ordinance or for making a complaint concerning an alleged violation of this ordinance.

#### **5. Guarantee Against Wage Theft**

A. A covered party shall be jointly responsible for satisfying any unpaid final judgment or citation issued against a contractor or subcontractor on its project to the extent it awards wages, benefits, penalties, interest, and attorneys fees to a worker on account of the worker's performance of work on the project.

B. Upon notice from the city of an unpaid final judgment or citation subject to subdivision A, a covered party shall provide the city within 30 days with proof that the judgment or citation, or relevant portion thereof, has been satisfied. If the covered party fails to provide such proof, the city may, in addition to pursuing any other remedies, revoke any building permits or business license issued to the covered party.

#### **6. Enforcement**

A. A covered party, contractor, or subcontractor shall be subject to a civil fine payable to the city of up to \$1,000 for each violation of this ordinance.

B. Any person injured by a violation of this ordinance may bring a civil action against a covered party, contractor, or subcontractor for damages in any court of competent jurisdiction.

C. Any person who contends that a contractor or subcontractor is performing work for which a disclosure form is required by this ordinance and that no such disclosure form was filed with the city may file a complaint with the city supported by evidence to show the violation. The city shall promptly provide a copy of the complaint to the contractor or subcontractor and to the covered party and request a response within seven days. Unless the contractor or subcontractor establishes to the satisfaction of the city that no violation occurred, the city shall give notice to the covered party that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the project.

D. Any person who contends that a contractor or subcontractor performing work for which a disclosure form is required by this ordinance has provided a disclosure form that is materially false or incomplete may file a complaint with the city supported by evidence to show the violation. The city shall promptly provide a copy of the complaint to the contractor or subcontractor and to the covered party and request a response within seven days. Unless the contractor or subcontractor establishes to the satisfaction of the city that no violation occurred, the city shall give notice to the covered party that the contractor or subcontractor must be removed from the project within 48 hours and barred from performing further work on the project.

#### **7. Disclosure form.**

The disclosure form required by this ordinance shall be the form contained in Appendix A to this ordinance and shall be completed under penalty of perjury.



## Appendix A

### City Responsible Construction Ordinance Disclosure Form

To be completed by contractor or subcontractor. A separate form must be completed for each project.

1. Name of Contractor or Subcontractor:
2. Address:
3. Responsible managing officer:
4. State Contractor's License Number:
5. Project name:
6. Project location:
7. Project owner or developer:
8. Party who retained contractor/subcontractor to perform work on the project:
9. Approximate date work by contractor/subcontractor is scheduled to commence on project:
10. During the five years prior to completion of this form, has contractor/subcontractor been found liable by any court or administrative agency for failing to pay wages or benefits to an employee or for violating any wage and hour provisions of the California Labor Code or the Fair Labor Standards Act? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.
11. During the five years prior to completion of this form, has contractor/subcontractor been subject to any citations or penalties imposed by the U.S. Department of Labor, California Department of Industrial Relations, California Labor Commissioner or California Division of Occupational Safety and Health? If so, list all such citations and penalty assessments and attach copies to this form. Do not list or attach citations or penalty assessments that have been overturned.
12. During the five years prior to completion of this form, has contractor/subcontractor been subject to any cause findings by the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission for the laws enforced by those agencies? If so, list

all such findings and attach copies to this form. Do not list cause findings that have been overturned.

13. During the five years prior to completion of this form, has contractor/subcontractor been found liable for failing to maintain worker's compensation insurance or for engaging in fraudulent activity related to worker's compensation insurance? If so, list and attach copies of all such determinations. Do not list or attach determinations that have been overturned.

14. During the five years prior to completion of this form, has contractor/subcontractor been found liable by any court or administrative agency for retaliating or discriminating against a worker for making a complaint about a violation of laws enforced by the Labor Commission, Department of Labor, the Department of Fair Employment and Housing, or the Equal Employment Opportunity Commission? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.

15. During the five years prior to completion of this form, has contractor/subcontractor been found liable by any court or administrative agency for failing to pay any payroll taxes? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.

16. During the five years prior to completion of this form, has contractor/subcontractor been found liable, admitted guilt, or been found guilty by any court or administrative agency for violating any laws relating to human trafficking? If so, list all such judgments and administrative awards and attach copies to this form. Do not list or attach judgments or administrative awards that have been overturned.

17. During the five years prior to completion of this form, has contractor/subcontractor been found by the Contractors State Licence Board to have performed covered work without a contractor's license or to have performed work without the appropriate license for the classification of work? If so, list all such citations and orders. Do not list citations or administrative awards that have been overturned.

18. Have any judgments, decisions, determinations, orders, or citations been issued against the contractor/subcontractor by a court of law, an investigatory government agency authorized by law to enforce an applicable law, an arbitrator, or an arbitration panel, that 1) require the payment of money by the contractor/subcontractor, *and* 2) have not been fully satisfied, *and* 3) are no longer subject to appeal? If so, list and attach copies of all such unsatisfied judgments, decisions, determinations, orders, or citations. Has enforcement of the unsatisfied judgment, decision, determination, order, or citation against the contractor/subcontractor been stayed by court order or operation of law? If so, attach proof of the stay.