



Sunnyvale

## Responsible Construction Ordinance Study Issue

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# OCM—Responsible Construction Ordinance Study Issue

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- Proposed by member of the public
- Purpose of Ordinances is to:
  - ◆ Prevent wage theft in Construction Industry
  - ◆ Ensure contractors meet employment, insurance, tax, and safety obligations
- City reviewed two proposed Ordinances:
  - 1<sup>st</sup> Ordinance applies to Projects above \$500,000
  - 2<sup>nd</sup> Ordinance applies to Projects over 5,000 SF

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Both Ordinances include following provisions:

- ◆ Withholding of building permits or certificates of occupancy
- ◆ Documentation requirements for contractors and subcontractors with \$50,000 of work
- ◆ Removal of contractors/sub-contractors from jobs
- ◆ Appeals Board
- ◆ Civil fines

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Developers, contractors/subcontractors must disclose:

- Project information
  - Final wage theft judgments, insurance judgements, payroll taxes, etc.
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- Wage Theft and Wage Related Actions Already taken by the City:
    - ◆ Wage theft policy/ordinance for City's contracts (public works, goods and services)
    - ◆ Higher minimum wage for all employers in City
    - ◆ Prevailing Wage requirements for public works projects

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- No jurisdiction has adopted proposed ordinances
  - ◆ Milpitas adopted Responsible Construction Ordinance
    - ✓ Applies to projects 15,000 SF
    - ✓ Withholds Certificate of Occupancy for non-compliance with Ordinance
  - ◆ Morgan Hill requires contractors to certify they comply with certain provisions of Labor Code prior to issuing certificate occupancy of new construction

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- Proposed ordinances have serious legal issues:
  - ◆ Revocation of building permit
  - ◆ Withholding of certificate of occupancy
  - ◆ High likelihood of litigation
- Proposed ordinances pose unintended consequences to others not involved in wage theft:
  - ◆ Workers would lose wages if project stops
  - ◆ Tenants not able to occupy buildings
  - ◆ Homeowners/renters able to move in

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- Requires substantial staff resources to implement
  - ◆ ~4,000 projects per year subject to ordinance
  - ◆ Large projects may have dozens of subcontractors
- Successful program would require:
  - ◆ Ability to collect/track thousands of disclosure forms
  - ◆ Ability to perform investigation to verify complaints
  - ◆ Notice and appeal process (administrative hearings)
  - ◆ Other legal enforcement actions may be necessary to address noncompliance or disregard of City orders

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## Next Steps:

- ◆ Staff will return to Council for formal direction on study issue findings with alternatives:
  1. Do not adopt proposed ordinance
  2. Continue working on draft ordinance and funding needs for implementation