

### REPORT TO COUNCIL

#### SUBJECT

Introduce an Ordinance to Amend Several Chapters of Title 5 (Business Licenses and Regulations) and Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code to Authorize the Denial, Suspension or Revocation of a Permit or License Based Upon Violations of Wage and Hour Laws and Adopt Council Policy 5.1.6, Wage Theft Prevention Policy (Study Issue) and Finding of Exemption from the California Environmental Quality Act

#### BACKGROUND

Study Issue OCM 16-02 (Study Issue), Consider Adoption of a Wage Theft Ordinance (Attachment 1), was ranked number two by Council among the proposed Office of the City Manager (OCM) Study Issues in 2017. A budget supplement to provide \$20,000 in funding for this project was approved by Council as part of the 2017/18 Adopted Budget. Staff has not used any of the funding and performed all the work with existing staff. The Study Issue's scope was to:

- Examine existing wage theft laws/ordinances/policies at the state and local level
- Learn about monitoring and enforcement efforts that have been implemented by other jurisdictions, including required resources
- Consider whether additional local remedies would be viable and/or effective
- Review City of San Jose and Santa Clara County Wage Theft Policies
- Review City/County of San Francisco wage theft program

The Study Issue paper also stated that the focus would be on "actions that are under the City's control" such as the City's procurement process and permitting responsibility. Staff was to review all City licenses and permits to "determine if the City has authority to suspend or revoke permits for businesses that have unpaid wage theft judgements."

#### EXISTING POLICY

**3.80.040. Minimum Wage** - Employers shall pay employees no less than the minimum wage set forth in this section for each hour worked within the geographic boundaries of the city of Sunnyvale. Governmental agencies are exempt from the minimum wage requirements under the principle of governmental immunity when the work performed is related to the agency's governmental function.

#### ENVIRONMENTAL REVIEW

The adoption of an ordinance and general policy does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental policy making and administrative activity that will not result in direct or indirect changes in the environment.

#### DISCUSSION

Wage theft occurs when an employer fails to pay its workers' wages which the workers legally earned. There are numerous forms of wage theft involving violations of employment laws, but all result in workers earning less than they are entitled to earn. Some examples of wage theft include:

- Minimum wage violations
- Failure to pay overtime
- Denial of wages/benefits rightfully owed to employee
- Employee misclassification
- Illegal pay deductions
- Working off the clock

As per the Study Issue's scope, staff examined existing wage theft laws, ordinances and policies at the State and local level. Staff contacted the City of San Jose and Santa Clara County to discuss their respective wage theft policies and reviewed the City/County of San Francisco wage theft program. Staff also reviewed existing City licenses and permits to determine if the City has authority to suspend or revoke permits for businesses that have unpaid wage theft judgements." In addition, staff worked closely with members of the Santa Clara County Wage Theft Coalition to further determine what cities are doing to combat wage theft at the local level.

### ***Wage Theft Prevention Approaches at the State and Local Level***

The California Department of Industrial Relations/Division of Labor Standards Enforcement (DLSE) enforces all the California labor and employment laws that establish minimum workplace conditions for workers. These include violations of state minimum wage and overtime protections as well as failure to pay commissions, vacation pay, or failure to provide meal or rest breaks. Workers can file individual claims on their own for nonpayment of wages or benefits with the Labor Commissioner.

To provide the DLSE with additional tools to enforce wage theft judgments, the Fair Day's Pay Act (SB 588) became effective on January 1, 2016. The additional tools provided by SB 588 include, but are not limited to, giving the DLSE authority to impose wage-bond requirements and stop-work orders, levy the employer's assets or lien the employer's property, and in certain cases making individual business owners liable for their company's debts to workers. This section is intended to discourage business owners from closing their operations and starting a new company to avoid paying wage theft judgements.

At the local level, municipalities such as San Francisco, San Jose, Santa Clara County and a few smaller cities have adopted, or are currently exploring, wage theft policies and ordinances (Attachment 2) to discourage wage theft. These policies and ordinances allow cities to act against those businesses which violate state or federal labor laws in addition to local wage laws. Some cities have adopted policies and ordinances to amend their procurement process and deny or suspend certain permits and licenses issued by the City. Some of the larger cities or counties have robust regulatory codes and policies and have entire departments or divisions dedicated to the enforcement of local labor laws. Smaller cities are focusing on licenses and permits that already have a regulatory permitting scheme in place.

The City of San Jose adopted a Wage Theft Prevention Policy that is incorporated in their procurement process for city goods and services. The policy allows the City of San Jose the opportunity to disqualify a potential contractor under certain defined circumstances relating to a final wage theft judgement. In addition, the City of San Jose can deny and/or revoke certain permits or

licenses issued under Title 6 of the San Jose Municipal Code based upon a final wage theft judgment. Some examples of the licenses or permits that the City of San Jose can deny or revoke are automobile dismantlers, junk dealers, massage, and patrol services. The City of San Jose's Office of Equality Assurance (OEA) has staff dedicated to enforcement of wage theft violations.

The City and County of San Francisco combats wage theft through its Minimum Wage Ordinance and Minimum Compensation Ordinance. The City's Office of Labor Standards Enforcement is responsible for enforcement of the city's various local labor laws such as paid sick leave, health care security, family-friendly workplace, and paid parental leave ordinance.

Santa Clara County, in addition to having a wage theft prevention policy for their procurement process, recently approved the creation of an Office of Labor Standards Enforcement (OLSE) with adequate staffing and resources to develop plans for implementation and enforcement of the Santa Clara County's Wage Theft Prevention Policy. Santa Clara County also recently approved a pilot program to evaluate the feasibility of encouraging compliance with labor standards and enforcing wage and hour laws through the exercise of the county's authority over food facility permits. Santa Clara County's Department of Environmental Health issues permits to about 10,000 restaurants and other food facilities, including mobile food trucks, and could require adherence to local and state laws as a condition of these permits.

The county program will be designed such that if Santa Clara County staff becomes aware of a judgment against a food business, county staff would work with the business to resolve the judgment through appropriate means. If administrative efforts to remedy the violation fail, and the violation against the business remains outstanding, the county could issue a notice to the business owner of the county's intention to revoke or suspend the business' county-issued Food Facility Permit. Suspension of the permit would require the business to close and to refrain from conducting any food-related business until the matter is resolved. Sunnyvale staff will work with the Santa Clara County OLSE to advocate that Sunnyvale be included in the early stages of the food business pilot program.

### ***City of Sunnyvale Proposed Policy and Ordinance***

Currently, all potential contractors for goods and services who submit a bid or proposal in response to a City of Sunnyvale solicitation must complete a Bid Form or Invitation for Bid (Certification). The Certification requires the name, address, telephone number, email address, contact person's name and title as well as the signature of the authorized representative(s). By signing the Certification, the submission of the bid or proposal is deemed a representation and certification by the bidder that they have investigated all aspects of the bid or request for proposal (RFP), that they are aware of the applicable facts pertaining to the bid process or RFP process, its procedures and requirements and that they have read and understand the bid or RFP.

The proposed Council Policy (Attachment 3) includes an additional statement that would be required of all bidders to disclose any final court judgment or final administrative order issued within the last five years from the date of the submitted bid or proposal relating to wage and hour law violations on the Certification. Should a bidder disclose any final court judgment or final administrative order relating to wage and hour law violations on the Certification that remains unpaid, the City shall disqualify the bidder based on the unpaid final judgment or order. In order to rebut the disqualification, the bidder would need to show that the final judgment or administrative order has been fully satisfied. Staff will work to implement the new procurement protocol as soon as practicable

upon Council adoption.

Staff performed a comprehensive review of the Sunnyvale Municipal Code to determine which licenses or permits the City might be able to deny or revoke due to a final wage theft judgement. The City issues various licenses and permits. However, Building and Fire Permits or other permits issued under technical codes are permits that are ministerial and can only be revoked based on a violation of the technical codes. Violations of the technical codes are typically the health and safety of the structure, and not the wages of the people within the permitted area. Land Use Permits are similar to Building and Fire Permits. The permit is focused on the uses of the land, and there is no connection between the permitted land use and the wages of the people on the site.

The City issues a certificate when a business pays its Sunnyvale Business License Tax. However, the Sunnyvale Business License Tax is for revenue raising purposes and there are no regulatory provisions included. Any certificate given to a business is merely a receipt for paying the tax, and not a typical license in a regulatory sense.

For the reasons listed above within the existing Municipal Code provisions, staff focused on several chapters in Titles 5 and 9 of the Sunnyvale Municipal Code where a regulatory and enforcement scheme was already in place under the City's police power. The permits and licenses issued under these chapters are necessary for the operation of certain businesses within the city and are related to the employment of persons who could be at risk for wage theft.

Under the current Municipal Code, an application for a Permit or License may be denied, suspended, or revoked for some of the reasons listed below:

- Misrepresentation or false statement contained in the license application
- Conviction of any crime or misdemeanor involving moral turpitude
- Failure to meet the requirements under the applicable code chapter

The proposed ordinance would add another ground for denial - the violation of applicable wage and hour laws within the previous five years found by a court or by final administrative action of an investigatory government agency that has not been satisfied. In addition to permit denial, the ordinance would allow for the suspension or revocation of the permit or license if, after the permit or license has been issued, the City becomes aware that a final court order or final administrative action for a wage and hour violation has been issued and not satisfied by the permittee or licensee. The proposed ordinance (Attachment 4) addresses these recommended additions. The specific permits/licenses that could be denied or revoked are:

1. Peddlers (Chapter 5.28)
2. Private Patrol Services (Chapter 5.32)
3. Taxicabs (Chapter 5.36)
4. Adult Entertainment Establishments (Chapter 9.40)
5. Massage Establishment Operators (Chapter 9.41)

In addition to the above proposed Council Policy and ordinance, staff will also monitor applicable legislation at the state level, including recently adopted AB 1069, which changes the requirements for taxicab companies to only obtain a permit, license or franchise from the jurisdiction in which it is substantially located. Additionally, staff would continue working with the Santa Clara County Wage

Theft Coalition to advocate for wage theft policies at a regional level and the Santa Clara County OLSE to advocate for Sunnyvale businesses to be included in the food businesses pilot.

### **FISCAL IMPACT**

The primary fiscal impact to implement the procurement policy and ordinance can be absorbed with current staff resources. Staff will closely monitor this issue and if additional workload is created by the new policy and ordinance that cannot be handled by current resources, staff will return to Council with a request for additional resources.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

1. Make a finding of exemption from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(5).
2. Introduce Ordinance to amend certain Chapters of Sunnyvale Municipal Code Titles 5 and 9 to specifically authorize the denial, suspension or revocation of a permit or license based upon a final wage theft judgment.
3. Adopt a new Council Policy entitled "Wage Theft Prevention Policy."
4. Other Council direction.

### **STAFF RECOMMENDATION**

Alternatives 1, 2 and 3: 1) Make a finding of exemption from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(5), 2) Introduce Ordinance to amend certain Chapters of Sunnyvale Municipal Code Titles 5 and 9 to specifically authorize the denial, suspension or revocation of a permit or license upon a final wage theft judgment, and 3) Adopt a new Council Policy entitled "Wage Theft Prevention Policy."

Staff prepared the study as per the scope of Study Issue OCM 16-02. Staff presented the preliminary findings to Council at a study session on February 27, 2018. At that time, Council was supportive of the preliminary findings and supported the next steps of bringing the policy and ordinance to Council for a public hearing.

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Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Study Issue Paper OCM 16-02
2. Regional Wage Theft Policies
3. Council Policy 5.1.6, Wage Theft Prevention Policy
4. Proposed Ordinance