

01-30-2020

20-1455



January 29, 2020

**Mayor and City Council Members**

City of Santa Clara  
1500 Warburton Ave.  
Santa Clara CA 95050

Re: Responsible Construction Ordinance

The **Santa Clara Valley Contractors Association** represents union mechanical and plumbing contractors in Northern California. Our billion+ dollar industry employs hundreds of local contractors on local construction projects using thousands of local workers. We literally built this valley!

We believe it is critical to maintain high standards in the construction industry. It becomes even more important when development activity peaks and the industry expands. Under this kind of scenario, sometimes business practices and quality construction suffers. It may be hard for some players to turn down the offer of new work, even if the job pushes companies beyond their capabilities.

To ensure high quality work, we support the passage of the proposed Responsible Construction Ordinance. An ordinance such as this will help our industry maintain high standards, all without creating any unnecessary new laws. This ordinance would simply be re-enforcing what's already on the books.

The **Santa Clara Valley Contractors Association** contractors and construction technicians enjoy a solid reputation in the South Bay with some of our firms celebrating over 100 years in business. Still, the underground economy thrives, and unscrupulous operators often break laws, exploit workers, and deliver substandard results all of which are detrimental not only to our industry, but to the safety of our citizens and public at large.

Let's make sure our industry and our elected officials are in sync -- addressing issues before they become real problems. Supporting the Responsible Construction Ordinance makes "cents." We urge you to support approval of this ordinance at your meeting on January 30<sup>th</sup>.

Sincerely,

Wayd La Pearle  
Executive Manager

**POST MEETING MATERIAL**

REPRESENTING SHEET METAL CONTRACTORS IN NORTHERN CALIFORNIA

400 Reed Street, Box 58032 • Santa Clara, California 95052 • (408) 727-5887 • Fax (408) 970-8409 • scvca@aol.com • www.scvca.com



**South Bay Piping Industry  
Labor Management Trust**

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Santa Clara, CA 95050  
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January 29, 2020

Mayor and City Council Members  
City of Santa Clara  
1500 Warburton Ave.  
Santa Clara, CA 95050

RE: Responsible Construction Ordinance

Dear Councilmembers:

Project Development and construction in the South Bay remain strong. In fact, new development proposals in the City of Santa Clara are approaching record pace. Projects are moving forward across the board in sectors including industrial, residential housing, commercial office, hotel and retail.

With a significant amount of development activity both in planning stages as well as in progress now, we believe it is critical that construction standards remain high. That is why we support the attached policy that creates a level playing field where contractors can compete and focus on excellence issues like efficiency, quality and timeliness – instead of simply the least expensive bid.

This policy does not create new laws or new burdens for our industry; it simply enforces the existing rules. Unfortunately, there are sometimes rogue operators that don't follow best business practices and frankly hurt the reputation of the entire construction sector. The underground economy also remains a serious threat. There are unscrupulous operators and even criminals in our industry, many working without a valid contractor's license, others engage in tax evasion, wage theft, and lack adequate workers compensation required by law for their employees.

This policy makes sense. It is vital and important, and we urge you to support approval for this Responsible Construction Ordinance. Please, do the right thing and enact this ordinance for the City of Santa Clara. The South Bay Piping Industry represents 100's of contractors (some of which have celebrated over 100 years in the valley) and their union technicians at Plumbers and Pipefitters U.A. Local #393. We live, work, thrive and vote and have **built this valley!**

Respectfully,

Wayd La Pearle  
CFO

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*Attachment 1*

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

D. "Developer" 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.

E. "Final judgment, final administrative decision, or citation" means either of the following:

i. A judgment, administrative decision, determination, order, or citation including but not limited to a civil judgment or final administrative decision 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; 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; a California Division of Labor Standards Enforcement's Bureau of Field Enforcement's citation, a California Division of Labor Standards Enforcement's Public Works' CWSA, an OSHA 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 or a restitution order.

F. "Financial Assistance" means any financial incentive or investment provided by the city or a city-controlled entity or political subdivision to facilitate or support a Major Construction Project, including:

i. Taxes, fees, costs, rents, insurance or bond premiums, loans, interest rates, inclusionary housing obligations, inclusionary housing in-lieu fees, or other obligations

that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, rebated or forgiven by the city, including those provided under the existing Downtown High-Rise Incentive Program, as well as any other city tax or fee break programs available to new developments or to a particular sub-category of developments.

ii. The payment of money or the equivalent of money for the design, development, construction, financing or any other component related to development of the project, including, but not limited to, infrastructure costs, preconstruction costs, demolition costs, construction costs, financing costs, equipment costs, design costs, environmental review costs, and environmental mitigation costs; and

iii. Any loan or loan guarantee.

G. "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.

H. "Unsatisfied final judgment, final administrative decision, 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, 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 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 in excess of \$50,000 on the project 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.

B. 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, final administrative decision, or citation. Nothing in this ordinance shall preclude a covered party 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 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 incomplete, 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 until such time the contractor submits a complete disclosure form.

G. Upon notification from the city to a covered party 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 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.

H. 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 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. Responsibilities for Project Work

A. A covered party 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. Upon notice from the city of an unpaid final judgment, final administrative decision or citation subject to subdivision A, a covered party 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 covered party fails to provide such proof, the city may, in addition to pursuing any other remedies, suspend any building permits or business license issued to the covered party until the covered party provides proof that the judgment, administrative decision or citation has been satisfied.

C. A covered party which has been subjected to a suspension of its building permit 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 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 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.

C. 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.

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 covered party 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 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.

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 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.

F. For any major construction project receiving Financial Assistance, if a covered party is found to have an unsatisfied final judgment, final administrative decision, or citation, then in addition to any other penalties, the City shall issue an assessment requiring the recipient to repay the full amount of the Financial Assistance provided for that project, including but not limited to the full amount of any tax and fees that were reduced, suspended, or waived as part of an economic incentive program. Any such repayments shall be deposited in the fund which was the source of the incentive, or in the case of tax and fee breaks, in the fund to which the tax or fee would have been directed.

#### 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 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.

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.