



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: SEPTEMBER 19, 2023
FROM: COUNCILMEMBER RONALDO FIERRO WARDS: ALL
SUBJECT: CONTRACTOR/SUBCONTRACTOR TRANSPARENCY ORDINANCE

ISSUE:

Consider adoption of an Ordinance relating to license requirements of contractors and subcontractors.

RECOMMENDATION:

That the City Council introduce and subsequently adopt an Ordinance amending Chapters 5 and 16 of the Riverside Municipal Code to amend Section 5.04.300 – Business Tax and add Section 16.04.300 relating to license requirements of contractors and subcontractors.

COMMITTEE RECOMMENDATION:

The Economic Development, Placemaking, and Branding/Marketing Committee met on June 22, 2023, with Chair Fierro and Member Hemenway present, and Vice Chair Edwards absent, to discuss a contractor/subcontractor transparency ordinance. After discussion, the Committee members present voted unanimously to recommend that the City Council adopt the proposed ordinance.

BACKGROUND:

Wage theft is a widespread problem in the construction industry. However, according to the California Center on Policy Initiatives, official complaints are rare and in a majority of cases are filed only in the case of the most egregious of wage theft violations: no payment for all time worked.

Workers less often complain of other, more frequent violations such as employers failing to pay overtime rates or requiring work during rest and meal breaks. Workers seldom claim lost wages while still on the job, and many report enduring violations for months or years before coming forward. The most common obstacles to filing wage claims are fear of retaliation and lack of information. Pursuing wage theft claims is an often confusing and frustrating process, and usually takes longer than the legal time limit, which is particularly difficult for low-paid workers. According to a study conducted by the University of California, Berkeley Labor Center, 39% of families of construction workers are enrolled in one or more safety net programs with a cost of almost

\$28 billion per year. Three times as many construction workers lack health insurance compared to all workers.

Even more significant than the issue of misclassification in construction is the practice of paying workers completely off the books. A 2019 report conducted by the Alliance for Construction Excellence found that there are fully four times as many construction workers being paid off the books as the number being misclassified as independent contractors (1.2 million to 300,000). The cash-only nature of under-the-table work leaves workers particularly vulnerable to wage theft, though misclassified workers and even legally employed workers can be subject to this as well. A study of construction workers in California found that workers paid under the table earn just 52 cents for every dollar earned by workers with employee status.

DISCUSSION:

The City of Riverside can take a more active role in combating wage theft and upholding labor standards in Riverside by updating our verification requirements for contractors and subcontractors of large projects in the city and keeping record of all contractors and subcontractors throughout the duration of the project. Currently, the City of Riverside requires applicants submit a contractor verification form (attached) that requires subcontractors to be validated through the Business Tax Division prior to final approvals and certificate of occupancy. While a meaningful first step, this policy can be strengthened to better identify potential bad actors and ensure a transparent process through updating the time of reporting, identifying a reporting threshold, requiring reporting of past labor violations, codifying requirements for incomplete reporting and violations for not reporting information.

Time of reporting: The City's process currently requires subcontractor information to be reported before issuing a certificate of occupancy. Other cities, including Irvine, Santa Ana and San Diego, have adopted similar policies and require that reporting is submitted and validated prior to the issuance of work permits.

Reporting Threshold: Other cities that have adopted similar policies utilize a reporting threshold to ensure that smaller projects can be exempted. This proposed ordinance would apply to residential and mixed-use developments consisting of or involving 20 or more dwelling units, including single dwelling unit subdivisions and commercial or industrial development that proposes 20,000 square feet or more of tenant improvements or 20,000 square feet of additional gross floor area.

Reporting of Past Labor Violations: This proposed ordinance would expand reporting to include whether the contractor or subcontractor has any pending and/or prior enforcement actions for any state or federal labor violations or paid any penalties to a government agency related to the provisions of the California Labor Code.

Requirements for incomplete reporting: This proposed ordinance can clarify what happens when incomplete reporting is submitted. The proposed ordinance would give contractors two business days to fill in incomplete information after the awarding of each permit.

Other Agencies

Research identified other agencies that have adopted similar ordinances including Irvine, Santa Ana, and the City and the County of San Diego (attached).

The following matrix summarizes and compares the Irvine and City of San Diego ordinances:

| SUMMARY | MUNICIPAL CODE TEXT |
|---|---|
| <p>REPORTING THRESHOLD:</p> <ul style="list-style-type: none"> • Irvine is based on a dollar amount. • San Diego is based on a unit and square footage count. | <p>IRVINE: For projects over \$8 million in value</p> <p>SAN DIEGO:</p> <p>A. Residential and mixed-use development consisting of or involving 20 or more dwelling units, including single dwelling unit subdivisions.</p> <p>B. Commercial or industrial development that proposes 20,000 square feet or more of tenant improvements or 20,000 square feet of additional gross floor area.</p> |
| <p>LABOR VIOLATION REPORTING REQUIREMENTS:</p> <ul style="list-style-type: none"> • Irvine requires reporting for violations within the prior 7 years and settlements over \$500,000. • San Diego has no minimum reporting requirement. Any labor violation big or small is reported. | <p>IRVINE: Shows verification whether each subcontractor, or its principals, has any final adverse determinations for state or federal labor violations within the <u>prior 7 years</u>, or paid any penalties to a state or federal governing agency for the enforcement of settlement actions over \$500,000 within the prior 7 years.</p> <p>SAN DIEGO: Prior to permit issuance, the applicant shall submit the following: Whether the contractor or subcontractor has any pending and/or prior enforcement actions for any state or federal labor violations or paid any penalties to a government agency related to the provisions of the California Labor Code.</p> |
| <p>REQUIREMENTS FOR INCOMPLETE REPORTING:</p> <ul style="list-style-type: none"> • Irvine allows applicants two business days to report list of all subcontractors after awarding each permit. • San Diego does not allow contractor to undertake any further construction without information being provided to the City first, even if permit has been issued. | <p>IRVINE: In the event that the applicant cannot provide a complete list of valid subcontractors at the time of permit issuance or later at the time of adding or replacing a subcontractor, <u>the applicant shall provide such information in each circumstance to the City within two business days after award of each permit, and/or after adding or replacing a subcontractor.</u></p> <p>SAN DIEGO: If the applicant is unable to provide the information in Section 129.0121(c)(1)(A)-(B) prior to permit issuance, or in the event the permit holder adds or changes contractors or subcontractors following permit issuance, the permit holder shall provide the information required in Section 129.0121(c)(1)(A)-(B) prior to the new contractor or subcontractor starting work. (3) In the event that any of the information required in Section 129.0121(c)(1)(A)-(B) changes for any of the contractors or subcontractors, the permit holder shall provide updated information prior to the contractor or subcontractor undertaking any further construction related to the permit.</p> |

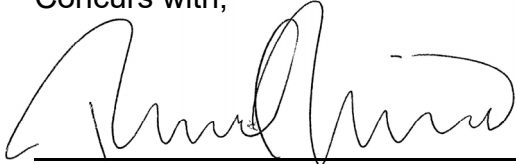
| | |
|---|---|
| <p>VIOLATIONS FOR NOT REPORTING INFO:</p> <ul style="list-style-type: none"> • Irvine can issue a right to stop work and/or assess penalty for failure to provide complete list of subcontractors. • San Diego states that work done without satisfying the disclosure requirements is deemed work performed without permit and has three remedies. 1. Stop Work Order 2. Revocation of Permit 3. Misdemeanor. | <p>IRVINE: Failure to provide a complete list of subcontractors prior to commencing work on the project, or failure to provide subcontractor information after adding or replacing a subcontractor within two business days when either the delay was not reasonable, the delay was intentional, or if the City has made an additional request for this information which was not complied with within two business days, shall result in the City having the right to stop work on the project, and/or assess the applicant a penalty for default in an amount determined by the City as necessary for each subcontractor violation to defray City costs of enforcement of this section.</p> <p>SAN DIEGO: Any work performed without satisfying the requirements of this Section shall be deemed performed without the required permit, pursuant to Section 121.0302.</p> <ol style="list-style-type: none"> 1. A first-time violation of this Section shall be subject to the remedies in Section 121.0309, there the permit holder may be issued a Stop Work Order 2. A second-time violation of this Section shall be subject to the remedies in Section 121.0313, where the City Manager may issue a notice of intent to revoke a permit. 3. Any additional violation shall be subject to the remedies in Section 121.0311. <ol style="list-style-type: none"> a. Violations of the Land Development Code shall be treated as strict liability offenses regardless of intent. Violations of the Land Development Code may be prosecuted as misdemeanors subject to the fines and custody as provided in Municipal Code Section 12.0201. The City Manager or designated Code Enforcement Official may also seek criminal or civil injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy provided in Municipal Code Chapter 1, including administrative abatement, revocation of permits, recordation of notice of violation, and withholding of issuance of City permits |
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FISCAL IMPACT:

There is no fiscal impact associated with this report. If the Ordinance is approved, City departments are prepared to absorb the impact of the Ordinance on business processes within existing staffing levels and budgeted appropriations.

Prepared by: Caleb Ragan, Office of Councilmember Ronaldo Fierro

Concurs with;

A handwritten signature in black ink, appearing to read 'Ronaldo Fierro', written over a horizontal line.

Ronaldo Fierro, Chair
Economic Development, Placemaking, and Branding/Marketing Committee

Attachments:

1. Ordinance
2. Current Contractor Verification Form
3. Irvine Ordinance
4. City of San Diego Ordinance
5. City of Santa Ana Ordinance
6. County of San Diego Ordinance
7. Presentation