



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Introduce Ordinance No. 65.151 Regarding Responsible Construction
Category:	Leadership and Support Services
Meeting Date:	3/2/2021
Staff Contacts:	Christopher J. Diaz, City Attorney 408-586-3040 Steve McHarris, City Manager 408-586-3059
Recommendation:	Following the reading of the title by the City Attorney, move to waive reading beyond the title and introduce Ordinance No. 65.151, amending various sections of Chapter 32 (Responsible Construction) of Title III of the Milpitas Municipal Code

Background:

On February 2, 2021, the City Council adopted Ordinance No. 65.150 adding Chapter 32 (Responsible Construction) to Title III of the Milpitas Municipal Code. Staff is recommending some minor clean-up changes to various sections of this Chapter to include definitions, corrections and other clarifying revisions.

Analysis:

The proposed changes are as follows:

- **Section III-32-3.00 - Definitions:** Defines the term “unpaid wage theft judgments” as final judgments, decisions or orders issued by a court of law, or an investigatory government agency authorized to enforce applicable federal, state and local wage and hour laws, which have not been fully paid or satisfied. This definition tracks the language used in the City’s existing wage theft policy, which will also be included in the acknowledgment and certification forms required by this Chapter. Changes to this Section also include clarifying revisions to the terms “Contractor” and “Project,” as well as adding a definition for the term “Labor Commissioner.”
- **Section III-32-4.00 - Acknowledgement of Responsibility:** Clarifies that the acknowledgement will be signed by the applicant prior to issuance of a building permit required for a Project instead of as a condition of the building permit. Revises language to require the Owner, Contractor, and any subcontractors to agree to comply with this Chapter, which would include acknowledging that they will need to certify as to any unpaid wage theft judgments prior to issuance of a certificate of occupancy, as provided in Subsection III-32-5.00.
- **Sections III-32-5.00 - Pay Transparency Certification and III-32-6.00 - Compliance Determination:** These are minor clarifying revisions without any substantive changes.
- **Section III-32-8.00 - Conditions of Approval:** Adds a provision making the requirements of this Chapter to be a condition of approval of any land use entitlement required for a Project, and allows enforcement of the ordinance via issuance of an administrative citation and/or the revocation or modification of any land use entitlement issued for the Project.

Fiscal Impact:

Introduction and adoption of the Ordinance in itself would not lead to any financial impact; however, enforcement of the Ordinance would lead to a financial impact on the City in terms of staff time or other costs. The City currently does not have the staff capacity or expertise to carry out enforcement, even if only complaint

driven. Therefore, once a complaint is received, staff will have to contract with a neighboring agency or third party vendor and may have to seek an appropriation action to fund the contractual expenses needed for enforcement.

California Environmental Quality Act:

The introduction and adoption of this Ordinance is not a project subject to the California Environmental Quality Act (CEQA) as it can be seen with certainty that the project does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and is more akin to a administrative activity of the government intended to ensure wage laws are followed in the City pursuant to CEQA Guideline 15378.

Recommendation:

Following the reading of the title by the City Attorney, move to waive reading beyond the title and introduce Ordinance No. 65.151, amending various sections of Chapter 32 (Responsible Construction) of Title III of the Milpitas Municipal Code.

Attachment:

Ordinance No. 65.151 (redlined for first reading)