

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
ADDING ARTICLE III, RESPONSIBLE CONSTRUCTION,
TO CHAPTER 42 OF THE MOUNTAIN VIEW CITY CODE

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 42 of the Mountain View City Code is hereby amended to add Article III, Responsible Construction, to read as follows:

**“ARTICLE III.
RESPONSIBLE CONSTRUCTION.”**

SEC. 42.30. - Title.

This Article shall be known as the “Responsible Construction Ordinance.”

SEC. 42.31. - Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

a. “Certificate of Occupancy.” The chief building official’s certification under Chapter 8, Sec. 8.10.15 of the Mountain View city code that the project complies with all applicable requirements for occupancy. The project job card issued by the City of Mountain View may serve as the Certificate of Occupancy when properly signed by the city. This also includes a temporary Certificate of Occupancy under Chapter 8, Sec. 8.10.1, and the California Building Code.

b. “City Manager.” The City Manager or designee.

c. “Contractor.” The prime contractor for the Project.

d. “Hearing Officer.” An independent hearing officer retained by the City Manager.

e. “Labor Code Section 226(a).” A provision of the California Labor Code that requires the employer to provide each employee, either bimonthly or at the time of payment of wages, an itemized wage statement that contains certain specified information concerning the employee’s wages and deductions.

f. “Labor Code Section 2810.5.” A provision of the California Labor Code that requires the employer, at the time of hiring, to provide each employee a written notice containing certain

specified information about the employer, the employee's rate of pay, workers' compensation insurance and sick leave.

g. "Mail." To deposit in United States mail, postage prepaid, unless the parties have agreed in writing to receive notifications by email in lieu of United States mail.

h. "New construction."

1. Site preparation for, and construction of, entirely new structures, whether or not the site was previously occupied; or

2. Additions and remodels in existing buildings where at least two (2) of three (3) of the below conditions are met:

i. Fifty (50) percent of the walls, interior and exterior (linear measurement);

ii. Fifty (50) percent of foundation (linear measurement); and/or

iii. Fifty (50) percent of roof (square measurement) are modified.

i. "Owner." The person or persons, firm, corporation, partnership or other legal entity exercising ownership of the Project.

j. "Project." A construction project that requires a building permit.

k. "Project Construction Employees." Employees of the Contractor or Subcontractor.

l. "Representative." A person authorized to legally bind the Owner and/or Contractor or Subcontractor (for example, a corporate officer, general partner or managing member of a limited liability company).

m. "Subcontractor." A subcontractor on a Project whose portion of the work exceeds one hundred thousand dollars (\$100,000) or one (1) percent of the value of the construction cost of the Project, whichever is greater.

n. "Unpaid Wage Theft Judgment." A judgment, decision or order, for which all appeals have been exhausted or the time to appeal has expired, that was issued by a court of law or an Investigatory Government Agency authorized to enforce applicable federal, state and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and the City of Mountain View Minimum Wage Ordinance, and which has not been fully paid or satisfied.

o. "Investigatory Government Agency." The United States Department of Labor, the California Division of Labor Standards Enforcement, the City of Mountain View or any other

governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

SEC. 42.32. - Exemptions.

A Project that meets any of the following criteria is exempt from the requirements of this Chapter.

a. The Project consists of less than fifteen thousand (15,000) square feet of New Construction.

b. The Project is subject to prevailing wage requirements under state law.

SEC. 42.33 - Acknowledgement of responsibility.

Prior to issuance of a building permit for a Project, an Owner shall sign an acknowledgement that:

a. The Owner, Contractor and all Subcontractors on the Project are required to comply with all applicable provisions of this Article and the California Labor Code, including Labor Code Sections 226a and 2810.5.

b. The Owner and Contractor are responsible for ensuring that the Contractor and all Subcontractors on the Project pay any wage theft judgments that have been entered against them either before or during the construction of the Project.

c. The employment of day laborers as a Project Construction Employee is similarly subject to applicable provisions of this Article and the California Labor Code, including Labor Code Sections 226a and 2810.5. Day laborers means workers employed on a temporary or daily basis and performing a variety of services.

d. The existence of an Unpaid Wage Theft Judgment against the Contractor or any Subcontractor on the Project may result in withholding of the Certificate of Occupancy at the conclusion of the Project.

SEC. 42.34. - Posting.

Each day that work is performed on the Project, the Contractor shall post, in a conspicuous place at each job site where work takes place, the notice published each year by the city informing employees of their rights under this ordinance. The notice shall be written in the top three (3) languages spoken in the city based on the latest available census information for the city.

SEC. 42.35. - Pay transparency certification.

Prior to issuance of a Certificate of Occupancy for a Project, for each Contractor and Subcontractor, Owner shall provide to the city a Pay Transparency Certification, signed by a Representative of the Owner, the Contractor and any Subcontractor under penalty of perjury under the laws of the state of California. The certification required under this section shall be in a form approved by the city and contain the following.

a. A statement that:

1. Project Construction Employees of the Contractor and any subcontractors received written wage statements under Labor Code, Section 226(a), and notice of the employers' pay practices as required by California Labor Code, Section 2810.5; or

2. Project Construction Employees of the Contractor and/or any Subcontractors are covered by a valid collective bargaining agreement that expressly provides for the wages, hours of work and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than thirty (30) percent more than the state minimum wage. (See Labor Code Section 2810.5(c).)

b. A statement that the Owner, Contractor and any Subcontractors have no Unpaid Wage Theft Judgments.

SEC. 42.36. - Unpaid Wage Theft Judgment—Complaint.

a. Any person who is legally entitled to payment of an Unpaid Wage Theft Judgment against the Contractor or a Subcontractor on a Project may submit a complaint to the City Manager. The complaint must include:

1. A copy of the Investigatory Government Agency's order, decision or award;

2. A copy of the judgment entered by the superior court; and

3. A declaration signed under penalty of perjury that the specified Contractor or Subcontractor is the subject of an Unpaid Wage Theft Judgment that is owed to the complaining party.

b. The complaint must be received by the City Manager prior to issuance of a Certificate of Occupancy for the Project. After receiving a complaint, the chief building official shall not issue the Certificate of Occupancy unless the City Manager finds that the complaint is not sustained.

c. Within ten (10) business days of the date the complaint is received, the City Manager shall Mail written notice of the complaint to the Owner, Contractor and Subcontractor (if

applicable) to the address(es) on file with the city for the Project. If the review of the complaint will delay issuance of the Certificate of Occupancy, the City Manager shall notify the Owner and Contractor as soon as practicable.

d. The Owner, Contractor or Subcontractor (if applicable) may provide a written response to the complaint within thirty (30) business days of the Mailing of the notice of alleged violation. Failure to respond may be deemed an admission to the truth of the facts alleged in the complaint.

e. After consideration of the complaint and the Owner, Contractor's or Subcontractor's response, if any, the City Manager shall make a finding that the complaint is either sustained or not sustained. The City Manager's decision shall be mailed to the Owner, Contractor, Subcontractor (if applicable) and complaining party.

SEC. 42.37. - Unpaid Wage Theft Judgment—Appeal.

a. If an Owner, Contractor or Subcontractor is aggrieved by a decision of the City Manager pursuant to Section 16.80.070, the aggrieved Owner, Contractor or Subcontractor may appeal the decision by submitting a written notice of appeal to the City Manager's Office within ten (10) business days of the mailing of the City Manager's decision. The appeal shall contain the facts and basis for the appeal. The appeal shall be accompanied by payment of the appeal fee adopted by the city council.

b. The appeal shall be heard by the Hearing Officer within thirty (30) business days of receipt of the notice of appeal, or at a date and time agreed to by the parties. The complaining party shall be the respondent at the appeal hearing.

c. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues, to be represented by counsel and to confront and cross-examine witnesses. Testimony may be taken on oath or affirmation. Compliance with formal rules of evidence shall not be required at the hearing. Any relevant evidence may be admitted if it is the sort of evidence upon which reasonable persons are accustomed to relying in the conduct of serious affairs.

d. The hearing shall be "de novo." The complaining party must prove by a preponderance of the evidence that the Contractor or a Subcontractor on the Project is the subject of an Unpaid Wage Theft Judgment that is owed to the complaining party.

e. The Hearing Officer shall issue a written decision within ten (10) business days of the date of the hearing. The decision shall be final and shall be subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure, Section 1094.6.

SEC. 42.38. - Cure.

The Owner or Contractor or Subcontractor may cure a violation of this Article at any time, including a violation related to an Unpaid Wage Theft Judgment, by providing evidence that the judgment has been paid, or that it has been secured by a surety bond or in lieu notarized accord as set forth in Labor Code Section 238, lien release bond or similar security instrument in a form and amount sufficient to ensure that any wage claims and penalties can be fully paid.

SEC. 42.39. - Violations.

It shall be a violation of this Article to:

- a. Fail to submit the pay transparency certification required as set forth in Sec. 42.35; or
- b. Submit a pay transparency certification that is known, or reasonably should be known, to be false.

SEC. 42.40. - Penalties.

a. The chief building official shall not issue a Certificate of Occupancy under any of the following circumstances:

- 1. The Owner has failed to submit the pay transparency certification required by Sec. 42.35.
- 2. The City Manager has sustained a complaint of an Unpaid Wage Theft Judgment pursuant to Sec. 42.36, and the Owner, Contractor or Subcontractor has not cured the Unpaid Wage Theft Judgment or obtained reversal of the City Manager's determination on appeal pursuant to Sec. 42.37.

b. In addition to any other remedies provided by law, violation of this Chapter is an infraction punishable as set forth in Chapter 1, Sec. 1.7, of the Mountain View city code and may be subject to administrative citations, fines and penalties as set forth in Chapter 1, Sec. 1.18, et seq.

SEC. 42.40. - No private right of action against city.

Nothing in this Chapter shall be interpreted to authorize a private right of action against the city."

Section 2. The provisions of this ordinance shall be effective as of January 1, 2023.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other

remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).
