

**REGULAR**

**NUMBER:** 65.151

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING VARIOUS SECTIONS OF CHAPTER 32 (RESPONSIBLE CONSTRUCTION) OF TITLE III OF THE MILPITAS MUNICIPAL CODE

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of March 2, 2021, upon motion by Councilmember Phan, and was adopted (second reading) by the City Council at its meeting of March 16, 2021 upon motion by Mayor Tran. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (5) Mayor Tran, Vice Mayor Montano, Councilmembers Chua, Dominguez, and Phan

NOES: (0) None

ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:

APPROVED:

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Wendy Wood, City Clerk

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Rich Tran, Mayor

APPROVED AS TO FORM:



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Christopher J. Diaz, City Attorney

## **RECITALS AND FINDINGS:**

**WHEREAS**, on February 2, 2021, the City Council adopted Ordinance No. 65.150 adding Chapter 32 (Responsible Construction) to Title III (Business and Professions) of the Milpitas Municipal Code; and

**WHEREAS**, City staff is recommending minor clean-up changes to various sections of Title III, Chapter 32 to include definitions, corrections and other clarifying revisions, and requests that the City Council adopt these changes.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

### **SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

### **SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE III, CHAPTER 32 “Responsible Construction”**

Title III, Chapter 32 (Responsible Construction) of the Milpitas Municipal Code is hereby amended to read as follows:

#### **Chapter 32 - RESPONSIBLE CONSTRUCTION**

##### **III-32-1.00 - Title**

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

##### **III-32-2.00 - Authority**

This Chapter is adopted pursuant to the powers vested in the City of Milpitas under the laws and Constitution of the State of California, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution.

##### **III-32-3.00 - Definitions**

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

- (a) “City” means the City of Milpitas, California or any agency designated by the City to administer the terms of this Chapter.
- (b) “Contractor” means the prime contractor for the Project.
- (c) “Labor Commissioner” means the Office of the Labor Commissioner within the State of California’s Department of Industrial Relations.
- (d) “Owner” means the person or persons, firm, corporation, partnership or other legal entity exercising ownership of the Project.
- (e) “Project” means new construction of greater than 15,000 square feet that is not subject to prevailing wage requirements.
- (f) “Project Construction Employees” means employees of the Contractor or subcontractor.
- (g) “Representative” means a person authorized to legally bind the Owner and/or Contractor (for example; a corporate officer, general partner, or managing member of a limited liability company).

- (h) “Unpaid wage theft judgment” means 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 Milpitas Minimum Wage Ordinance, and which has not been fully paid or satisfied. As used in this subsection, “investigatory government agency” includes the United States Department of Labor, the California Division of Labor Standards Enforcement, the City of Milpitas, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

### **III-32-4.00 - Acknowledgement of Responsibility**

Prior to issuance of a building permit required for a Project, an applicant shall sign an acknowledgement that the Owner, Contractor and any subcontractors are required to comply with all applicable provisions of the California Labor Code, including Labor Code section 2810.5, and that the Owner, Contractor and any subcontractors are required to comply with this Chapter.

### **III-32-5.00 - Pay Transparency Certification**

Prior to issuance of a certificate of occupancy for the Project, for each Contractor or subcontractor whose portion of the work exceeds one hundred thousand dollars (\$100,000) or one percent (1%) of the value of the construction cost of the Project, whichever is greater, the Owner shall provide to the City a Pay Transparency Certification (“Certification”), signed by a Representative of the Owner, the Contractor and any subcontractor under penalty of perjury. 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 received written notice of the employer’s pay practices as required by California Labor Code section 2810.5 and wage statements under Labor Code section 226(a); or
2. Project Construction Employees 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 30 percent more than the state minimum wage. (See Labor Code section 2810.5(c));

and

(b) A statement that the Owner, Contractor and any subcontractors have no unpaid wage theft judgments.

### **III-32-6.00 - Compliance Determination**

Prior to issuing a certificate of occupancy for the Project, the City shall make a finding of compliance with this Chapter. Such a finding shall be issued if:

- (a) The City determines after a review of the Certification that the Owner, Contractor and any subcontractors have complied with the provisions of this Chapter; and
- (b) The City has not received any information that the Labor Commissioner has found violations of Labor Code sections 226 or 2810.5 regarding construction work performed on the Project.

### **III-32-7.00 - Bonds Required for Correction of Violation**

If the City determines that the Owner, Contractor or any subcontractor has failed to comply with the provisions of this Chapter, or if the Labor Commissioner has found violations of Labor Code sections 226 or 2810.5, the City may issue a certificate of occupancy, only if the Owner or Contractor can provide evidence of the existence of a

labor payment and/or lien release bond, in a form and amount sufficient to ensure that any wage claims and penalties can be fully paid.

### **III-32-8.00 - Private Right of Action**

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

### **SECTION 3. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

### **SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.