

REGULAR

NUMBER: 65.150

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
ADDING CHAPTER 32 (RESPONSIBLE CONSTRUCTION) TO TITLE III OF
THE MILPITAS MUNICIPAL CODE

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of January 5, 2021, upon motion by Councilmember Phan, and was adopted (second reading) by the City Council at its meeting of February 2, 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:

Wendy Wood, City Clerk

Rich Tran, Mayor

APPROVED AS TO FORM:



Christopher J. Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Milpitas may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, the City Council of the City of Milpitas desires to adopt certain provisions to ensure that construction contractors doing business in Milpitas comply with the California Labor Code by making compliance a condition with State wage theft prevention laws a condition of approval for any building permit, and requiring compliance certification prior to issuance of a certificate of occupancy; and

WHEREAS, the City Council finds that such provisions shall serve the best interests of the citizens of Milpitas by requiring that any work being performed on certain private construction projects in the City be made by responsible construction contractors; and

WHEREAS, this Ordinance is intended to combat wage theft and protect vulnerable worker populations in the City by establishing safeguards for responsible construction practices.

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 ADDING A NEW CHAPTER 32 TO TITLE III

Title III of the Milpitas Municipal Code is hereby amended by adding a new Chapter 32, “Responsible Construction,” 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 on a construction project.
- (c) “Owner” means the person or persons, firm, corporation, partnership or other legal entity exercising ownership of the Project.
- (d) “Project” means new construction of greater than fifteen thousand square feet that is not subject to prevailing wage requirements and/or does not have a valid Project Labor or Community Workforce Agreement.
- (e) “Project Construction Employees” means employees of the Contractor or subcontractor.
- (f) “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).

III-32-4.00 - Acknowledgement of Responsibility

As a condition of approval for any 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 have no unpaid wage theft judgments.

III-32-5.00 - Pay Transparency Certification

Prior to issuance of a certificate of occupancy, or other permit to occupy new construction, 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 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 Project Construction Employees of the Contractor and any subcontractors received written notice of the employers pay practices as required by California Labor Code section 2810.5 and wage statements under Labor Code section 226(a); or
- (b) 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 30 percent more than the state minimum wage. (See Labor Code section 2810.5(c)); and
- (c) 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, or other permit allowing occupancy of 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 of the State of California 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.