

Yes on __, Building a Better San Jose, sponsored by mechanical, electrical, sprinkler, and plumbing organizations

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San Jose, CA 95125

408-606-2060

David@southbaylabor.org

February 6, 2018

Ms. Toni Taber

City Clerk

City of San Jose

200 E. Santa Clara Street

San Jose, CA 95113

Re: Request for Title and Summary for Proposed Initiative

Dear Ms. Taber

Pursuant to the California Elections Code, enclosed please find an original and one copy of the following documents: (1) a Notice of Intention to Circulate Petition; (2) a proposed initiative measure for the City of San Jose; and (3) and the acknowledgement of Elections Code section 18650 as required by law. A filing fee of \$200 is also enclosed.

Pursuant to Elections Code section 9203, please request the City Attorney prepare a title and summary for the proposed measure.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact us.

Sincerely,

Nancy Ferguson

Joanna Koomas

Sarah Velez

Enclosed as stated.

RECEIVED
San Jose City Clerk
2018 FEB -6 AM 11:17

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687 Bundy Ave
San Jose, CA 95117

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Build Better San Jose Initiative

INITIATIVE ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 17 OF THE SAN JOSE MUNICIPAL CODE

WHEREAS the City of San Jose has a long standing commitment to economic fairness and has required that development occur consistent with its values and where appropriate has imposed requirements on development to ensure that it furthers community values and goals;

WHEREAS, although development can be a critical generator of jobs and economic opportunity, a lack of transparency and accountability to community standards can result in development that produces negative economic and fiscal impacts that harm the City, its residents and workers;

WHEREAS, despite the recent development boom in the region, much of this development has not met basic community standards for livable wages and local hiring opportunities, such that over half of blue-collar construction workers employed in Santa Clara County earn less than \$40,000 per year;

WHEREAS there are significant numbers of working people living in poverty or economic hardship within the regional labor market, which includes the area within approximately 50 miles of the San Jose city limits;

WHEREAS development projects that pay sub-standard wages which are inadequate to afford the cost of living are likely to increase the demand for affordable housing and for publicly-funded social services;

WHEREAS ensuring that construction workers are paid prevailing wages will increase their ability to afford housing in the County, thereby reducing the impact of those projects on the need for affordable housing in the city and reducing demands on social services;

WHEREAS this Initiative will establish workforce standards for major developments to ensure that workers employed on those projects are fairly paid for their work, so they can earn enough to support their family, raise their children, and plan for retirement;

WHEREAS this Initiative will ensure that members of our local communities can access pathways into skilled construction careers, so that San Jose can grow our own local workforce and create opportunity for anyone who wants to work hard and learn a trade; and

WHEREAS this Initiative will create a level playing field for developers and contractors, so that those who treat their workers fairly are not thereby placed at a disadvantage by non-responsible developers.

NOW THEREFORE, BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF SAN JOSE:

SECTION 1. This initiative shall be known as the Build Better San Jose Initiative.

SECTION 2. Title 17 of the San Jose Municipal Code is hereby amended to add a new Chapter 17.90 to be numbered, entitled and to read as follows:

Chapter 17.90 Responsible Development Requirements for Major Construction Projects

17.90.010 Purpose

A. This Chapter sets forth the city's responsible development policy for major construction projects seeking certain development assistance or entitlements from the city. It reflects the city's intent to ensure that major construction projects also support investment in local hiring and workforce training, the creation of career pathway jobs that lift up the middle class; and a reduction in the demand for affordable housing and city services for low-income residents. In addition, the responsible development policy will help ensure safety and quality of construction work, reduce greenhouse gas emissions, and expand the training pipeline for a skilled construction workforce.

B. The responsible development policy establishes community standards on major construction projects to ensure contractors on these large projects pay their workers a livable wage, invest in and support workforce development, employ a trained workforce and reduce impacts on the city, its environment, and its residents from projects that generate low-wage jobs and disproportionately hire out-of-area workers.

C. The city's adoption of the responsible development requirements in this chapter is done pursuant to the city's home rule authority over such municipal affairs.

17.90.100 Definitions

The definitions set forth in this part shall govern the application and interpretation of this Chapter.

17.90.110 Apprentice

"Apprentice" means an individual enrolled in an Apprenticeship Program.

17.90.120 Apprenticeship Program

“Apprenticeship Program” means a construction apprenticeship training program approved by the State of California pursuant to Section 3075 of the California Labor Code.

17.90.130 City Assistance or Authorization

“City Assistance or Authorization” means any of the following subsidies, assistance, incentives, allowances, entitlements, authorizations, approvals, or agreements:

1. The sale, transfer, exchange, grant, gift, or lease of publicly owned land, or any other arrangement to allow development on public land for a private purpose.
2. Financial Assistance as defined by section 17.90.220.
3. Land Use Approval as defined by section 17.90.230.
4. Planning Permit as defined by section 17.90.260.
5. A development agreement voluntarily entered into by the city.

17.90.140 Community Workforce Coordinator

“Community Workforce Coordinator” means the work2future Workforce Development Board or another entity as designated by work2future with the concurrence of the City.

17.90.150 Construction Contract

“Construction Contract” means a contract to perform Construction Work on a Covered Project, including subcontracts of any tier.

17.90.160 Construction Employer

“Construction Employer” means any entity or person, including construction contractors and subcontractors of any tier, that employs an individual to perform Construction Work on a Covered Project.

17.90.170 Construction Work

“Construction Work” means construction, alteration, demolition, installation, repair work and all related work done in the execution of the Project. This includes work performed during the design and preconstruction phases of construction, including, but not limited to, trucking work, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all start-up and commissioning work and all cleanup work and off hauling work at and from the jobsite. This also includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems as well as any on and off haul trucking.

17.90.180 Core Employee

“Core Employee” means an individual who was on the Construction Employer’s active payroll for 60 working days out of the last 100 working days immediately prior to the award of the contract to the Employer to perform work on the Covered Project in question.

17.90.190 Covered Project

“Covered Project” means a Major Development Project that is granted City Assistance or Authorization.

17.90.200 Developer

“Developer” means any person or entity that owns or controls a Covered Project and either (1) directly or through an agent, awards a prime contract for Construction Work on the Covered Project or (2) self-performs as a general contractor on the Covered Project..

17.90.210 Disadvantaged Worker

“Disadvantaged Worker” means an individual that:

(1) Has graduated from a local Multi-Craft Core Curriculum (MC3) pre-apprenticeship program, or another pre-apprenticeship program that awards an industry-recognized certificate and has a documented relationship for priority entry of graduates into an Apprenticeship Program serving the San Jose area; and

(2) Has at least one of the following characteristics:

- (a) is a veteran of U.S. military service;
- (b) is currently homeless, recently homeless (within the past twelve months), or in temporary housing;
- (c) has been continuously unemployed for the previous twelve months;
- (d) has a household income that is below 80% of Area Median Income for Santa Clara County;
- (e) is a recipient of means-tested public assistance offered by San Jose or Santa Clara County;
- (f) is 18 to 24 years old and is
 - (i) disconnected from both school and work,
 - (ii) currently or formerly justice engaged (involved with the juvenile justice system, and/or convicted of an offense in the adult justice system), or
 - (iii) currently or formerly in the foster care system;
- (g) was formerly incarcerated;
- (h) is a survivor of human trafficking; or
- (i) has another identified barrier to secure employment, as determined by the City.

17.90.220 Financial Assistance

“Financial Assistance” means any financial incentive or investment provided by the city or a city-controlled entity or political subdivision to facilitate or support a Major Development Project, including:

1. Taxes, fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, rebated or forgiven by the city, including those provided under the existing Downtown High-

Rise Incentive Program, as well as any other city tax or fee break programs available to new developments.

2. The payment of money or the equivalent of money for the design, development, construction, financing or any other component related to development of the project, including, but not limited to, infrastructure costs, preconstruction costs, demolition costs, construction costs, financing costs, equipment costs, design costs, environmental review costs, and environmental mitigation costs; and
3. Any loan or loan guarantee.

17.90.230 Land Use Approval

“Land Use Approval” means a general plan amendment, specific plan amendment, urban village plan amendment, rezoning, signature project designation, area development policy amendment, or other zoning or land use plan change that is required for development of a Major Development Project.

17.90.240 Local Resident

“Local Resident” means an individual whose primary place of residence is located within the City of San Jose or within 50 miles of the City limits.

17.90.250 Major Development Project

“Major Development Project” means any new private residential, nonresidential or mixed-use development project proposed to include either (a) 100 or more residential units or (b) 100,000 or more square feet of floor area dedicated to non-residential uses.

17.90.260 Planning Permit

“Planning Permit” means a tentative map, parcel map, conditional use permit, site development permit, planned development permit, development agreement, or special use permit or other similar discretionary permit or entitlement for a Major Development Project that is granted by the city.

17.90.270 work2future

“work2future” means the Local Workforce Development Board responsible for administering the Workforce Investment and Opportunity Act in San Jose and neighboring cities.

17.90.300 Applicability

A. This requirements set forth in this Chapter shall apply to all Covered Projects, except as follows:

1. These requirements shall not apply to any Major Development Project with an effectuated Planned Development zoning, an approved site development permit, an approved unexpired vesting subdivision map or which has been issued a building permit prior to November 6, 2018.

2. Where an approval of City Assistance or Authorization has expired, the requirements shall apply to any new approval of the City Assistance or Authorization, but will not apply to any discretionary extension beyond its initial term.

3. Any project for which application of the Chapter would violate any state or federal law shall be exempted from the requirements of this Chapter.

B. Nothing in this Section is intended to create any vested right in any project.

17.90.400 Compliance Requirements

Developers of Covered Projects shall be responsible for compliance with all provisions of this Chapter.

17.90.410 Wage Rates.

A. Developers shall pay, or cause to be paid, prevailing wages to workers for all Construction Work performed on a Covered Project by all contractors and subcontractors at every tier.

B. For purposes of this section, "prevailing wages" means a total wage and benefit package that is at least equivalent to the general prevailing rate of per diem wages for the type of work and geographic area as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the California Labor Code. The applicable prevailing wage rates shall be the current rates in effect at the time the work is being performed. Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. Nothing in this Section shall preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code. Apprentices shall be paid not less than the applicable apprentice prevailing wage rates determined and published by the Director of Industrial Relations. In the absence of a prevailing wage determination for the craft classification published by the Director of Industrial Relations, the City's Office of Equality Assurance ("OEA") shall establish the prevailing wage rate for the respective craft classification. If applicable federal or state law requires payment of a higher wage rate to any workers, the higher wage rate shall apply.

C. Developers shall ensure that all Construction Employers performing Covered Work maintain payroll records containing all the information described by Section 1776(a) of the Labor Code and make those records available for review by the City within 10 days of the City's request.

17.90.420 Local Resident Hiring.

A. Local Resident Hiring Procedures. Developers shall ensure that all Construction Employers adhere to the following procedures when hiring and employing workers for Construction Work to be performed on a Covered Project.

1. At least 30 days prior to the commencement of any Construction Work, each Construction Employer shall submit, using a form approved by the City, a Workforce Projections and Local Workforce Plan to the Office of Equality Assurance setting forth (1) projected workforce needs, crafts, and timeline, (2) a list of Core Employees who will work on the Covered Project, with ZIP codes of residence, (3) planned steps to ensure the targeted hiring percentage requirement is met, and (4) a contact person for purposes of communication regarding workforce hiring and data tracking. No Construction Employer may perform Construction Work on a Covered Project unless the City has approved that Construction Employer's Workforce Projections and Local Workforce Plan.
2. Each Construction Employer shall limit the share of work hours performed by Core Employees who are not Local Residents to no more than 50% of all work hours performed on the Covered Project. Work hours performed by residents of States other than California are hereby excluded from this calculation.
3. Each Construction Employer shall make every feasible effort to attempt to identify and hire Local Residents for work on Covered Projects in an amount sufficient to allow 30% of all Construction Work hours to be performed by Local Residents and shall specifically take all of the following steps:
 - a) Assign any Core Employees who are Local Residents to work on the Covered Project;
 - b) Prior to hiring, meet with local union hiring halls, work2future, and (if appropriate) other sources of local skilled labor to inform them of projected workforce needs and request a point of contact for referral of qualified Local Residents;
 - c) If performing work under a project labor agreement or bona fide collective bargaining agreement, use City-approved Craft Request Forms to request dispatch of qualified Local Residents from construction trades hiring halls, as well as "Name Call" and "Rehire" or other programs when they are available as part of the hiring hall dispatch procedures;
 - d) If not performing work under a project labor agreement or collective bargaining agreement, or to the extent permitted by and in accordance with any applicable project labor agreement or collective bargaining agreement, request Local Residents from work2future and provide work2future with detailed job requirements and employee qualifications;
 - e) Fairly consider all qualified Local Residents referred by work2future;
 - f) If work2future cannot provide the needed workers within 48 hours, obtain Local Resident candidates from other sources; and
 - g) Maintain copies of all requests for Local Residents, all job descriptions provided to work2future, and the names of candidates referred, interviewed, and whether those candidates were hired or not hired.
4. Each Construction Employer shall, while performing Construction Work on a Covered Project, submit monthly reports using a City-approved form to the Office

of Equality Assurance. Such reports must include: a list of Local Residents employed on the Covered Project; the trade classification of each such Local Resident; the employer of record for each such Local Resident; the number of hours worked on the Covered Project by each such Local Resident; the total wages and benefits earned by each such Local Resident; the demographics of each such Local Resident, including gender, race and ethnicity; and the total hours worked, total wages and benefits earned by the Project workforce overall.

- B. Local Resident Hiring Percentage.** A Developer shall use best efforts to ensure that Local Residents perform not less than 30% of all hours of Construction Work performed on a Covered Project. Work hours performed by residents of States other than California are hereby excluded from this percentage calculation. Best efforts shall be defined as complying with all applicable Local Resident Hiring Procedures as described in Subsection A of this Section.

17.90.430 Apprentice Hiring

- A. Apprentice Hiring Procedures.** Each Developer shall ensure that all Construction Employers adhere to the following procedures when hiring and employing workers for Construction Work to be performed on a Covered Project.
1. Each Construction Employer that is approved by an Apprenticeship Program to train Apprentices in the applicable craft or trade and geographic area shall give that Apprenticeship Program written notice at least 72 hours before the projected date of hire of Apprentices;
 2. Each Construction Employer that is not already approved by an Apprenticeship Program to train Apprentices in the applicable craft and trade and geographic area shall give written notice to all Apprenticeship Programs for the applicable craft or trade and geographic area of contract award information within ten (10) days of the date of the execution of its contract or subcontract, but in no event later than the first day in which the Construction Employer performs Construction Work on a Covered Project. The notice shall include an estimate of journeyman hours to be performed under the contract, the approximate number of Apprentices the Construction Employer seeks to hire, and the approximate dates the Apprentices would be employed. The Construction Employer shall also give the programs written notice at least 72 hours before projected date of hire of Apprentices.
 3. Each request for Apprentice dispatch for Construction Work on a Covered Project shall be for not less than an 8 hour day per each Apprentice, or 20% of the estimated Apprentice hours to be worked by the requesting Construction Employer in a particular craft or trade on the Covered Project, whichever is greater.
 4. Each Construction Employer shall fairly consider all Apprentices dispatched by Apprenticeship Programs.
 5. Each Construction Employer shall maintain written records of all requests for Apprentices made to Apprenticeship Programs.
 6. Nothing in this Section shall be construed as prohibiting a Construction Employer from employing Apprentices enrolled in Apprenticeship Programs located outside the geographic area of the Covered Project.

7. Nothing in this Section shall be construed as requiring a Construction Employer to become signatory to a collective bargaining agreement.
 8. Nothing in this Section shall be construed as requiring a Construction Employer to violate the standards of an Apprenticeship Program.
- B. Hours Worked by Apprentices.** A Developer shall use best efforts to ensure that Construction Employers performing Construction Work on a Covered Project employ Apprentices to perform at least one hour of work for every five hours of work performed by journeypersons. Best efforts shall be defined as complying with all applicable Apprentice Hiring Procedures as described in Subsection A of this Section.

17.90.440 Disadvantaged Worker Hiring

- A. Disadvantaged Worker Hiring Procedures.** Each Developer shall ensure that all Construction Employers adhere to the following procedures when hiring and employing Apprentices for Construction Work to be performed on a Covered Project.
1. Each Construction Employer shall provide, as soon as it is available, the following information to the Community Workforce Coordinator for all entry-level Apprentice positions on the Covered Project:
 - a. Description of the position, including the trade and any job requirements for applicants, such as specific qualifications or skills;
 - b. Wages and benefits;
 - c. Desired start date;
 - d. Name and telephone number of the individual at the Construction Employer's business who will be responsible for answering questions regarding the job opening; and
 - e. A description of how applicants should apply for the job.
 2. Each Construction Employer shall make written requests to the Community Workforce Coordinator or applicable hiring hall or Apprenticeship Program (with a copy to the Community Workforce Coordinator) for Disadvantaged Workers to fill all entry-level Apprentice positions on the Covered Project. Such requests shall be made at least 3 business days in advance of new hire start date.
 3. If performing work under a project labor agreement, a Construction Employer shall, to the maximum extent permitted, use Craft Request Forms to request Disadvantaged Workers from union hiring halls for Apprentice positions in a number sufficient to ensure that 25% of all Apprentice work hours on the Covered Project are performed by Disadvantaged Workers. Requests shall be made at least 3 business days in advance of new hire start date.
 4. While performing work on a Covered Project, each Construction Employer shall submit monthly reports to the Office of Equality Assurance using a City-approved form. Such reports must include: a list of Disadvantaged Workers employed on the Covered Project; the trade classification of each such Disadvantaged Worker; the employer of record for each such Disadvantaged Worker; the number of hours worked on the Covered Project by each Disadvantaged Worker; the total wages and benefits earned by each such Disadvantaged Worker; and the demographics of each such Disadvantaged Worker.

- B. **Disadvantaged Worker Hiring Percentage.** A Developer shall use best efforts to ensure that not less than 25% all hours of Construction Work performed on a Covered Project by Apprentices are performed by Disadvantaged Workers. Best efforts shall be defined as complying with all applicable Disadvantaged Worker Hiring Procedures as described in Subsection A of this Section.

17.90.450 Program Elements

- A. **Independent Hiring Decisions.** The hiring percentages and procedures set forth in this Chapter shall not be construed to require a Developer or Construction Employer either to hire any particular individual or to retain any particular individual in employment.
- B. **Relationship to Collective Bargaining Agreements.** A Construction Employer that is signatory to a bona fide collective bargaining agreement governing Construction Work performed on a Covered Project must comply with Sections 17.90.420, 17.90.430, and 17.90.440 of this Chapter only to the extent that such compliance does not require violation of such collective bargaining agreement.
- C. **Posting of Notices.** On all Covered Projects, the Developer shall cause the Notice of Employee Rights to be posted in a conspicuous location and ensure that it remains posted for the duration of project work.
- D. **No Retaliation.** Developer shall ensure that Construction Employers performing Covered Work do not retaliate against any person who seeks to exercise rights under or otherwise assist in the enforcement of provisions of this Section. Rights protected under this Section include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Section; and the right to inform any person of his or her potential rights under this Section and to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Section. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Section shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.
- E. **Access to Jobsite.** Developer shall require Construction Employers to grant the City's representatives access to the site of Covered Projects at reasonable times for the purposes of monitoring and enforcing the provisions of this Chapter.
- F. **Inclusion in Construction Contracts.** Developer shall ensure that the requirements of this Chapter are incorporated into all Construction Contracts.
- G. **Project Labor Agreements.** The provisions of this Chapter concerning prevailing wages and payroll records shall not apply if all Construction Employers performing Construction Work on a Covered Project are parties to a project labor agreement that expressly requires the payment of at least prevailing wages and provides for enforcement of that requirement through a binding arbitration procedure. For purposes of this

Chapter, "project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the California Public Contract Code.

17.90.510. City Obligations.

- A. The City's Office of Equality Assurance (OEA), or such other office or department that the Council shall designate, shall monitor and enforce compliance with the provisions of this Chapter. The OEA shall publish a Notice of Employee Rights. The OEA shall create guidelines and procedures governing the implementation and enforcement of this Chapter. The OEA shall create a standard form for Workforce Projections and Local Workforce Plans.
- B. The OEA shall make available to the public all forms, plans and reports submitted by Developers and Construction Employers pursuant to their obligations under this Chapter.
- C. The Office of Equality Assurance shall maintain, to the fullest extent permitted by law, the confidentiality of any individual's name or other identifying information included in hiring reports provided by Construction Employers in accordance with this Chapter.
- D. The OEA shall conduct a quarterly compliance review with each Developer to address any shortcomings in meeting the Local Resident Hiring, Disadvantaged Worker Hiring and Apprentice Hiring requirements of this Chapter.
- E. Any person may report to the OEA a suspected violation of the provisions of this Chapter or of any contract containing such provisions. The OEA shall keep the identity of any such person confidential to the maximum extent permitted by law.
- F. The OEA shall investigate any suspected violations that are reported to it, and shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other relevant documents.
- G. The OEA shall make every effort to resolve complaints informally, in a timely manner.
- H. The OEA shall take any appropriate enforcement action to secure compliance with this Section.
 - 1. The OEA may issue an Administrative Citation pursuant to Chapter 1.15 of the Code to any Developer that violates this Section
 - 2. Alternatively, the OEA may initiate a proceeding under Chapter 1.14 of the Code by issuing a Compliance Order.
 - 3. The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.
- I. The OEA shall request copies of payroll records from a Construction Employer pursuant to Section 17.90.410.C at the request of an interested party. The OEA shall provide copies of payroll records provided to the City pursuant to this Chapter to interested parties upon request, but such copies shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. City, state, and ZIP code of residence shall not be marked or obliterated. The name and address of the Construction Employer shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.
- J. Community Workforce Coordinator. The City shall:

1. Use best efforts to ensure that, within 90 days of the effective date of this Chapter, work2future designates a Community Workforce Coordinator, provided, however, that provision of this Chapter shall not be construed to require the City or work2future to expend new funds for the Community Workforce Coordinator; and
2. Ensure that the Community Workforce Coordinator maintains an up-to-date list of Disadvantaged Workers who are available for work, with their current contact information and employment qualifications, and provides timely and qualified referrals to developers, contractors, union hiring halls or Apprenticeship Programs who request a Disadvantaged Worker.

17.90.520. Violations.

A. Wage Rate, Local Resident and Apprentice Hiring Requirements.

1. Wage Rates. Developer shall be strictly liable for any failure of a Construction Employer to provide pay prevailing wages as required by Section 17.90.410 of this Chapter.
2. Payroll Records. Developer shall be strictly liable for any failure of a Construction Employer to timely provide complete payroll records upon request by the City as required by Section 17.90.410.C of this Chapter.
3. Local Resident Hiring. Developer shall be in violation of Section 17.90.420 of this Chapter only where (a) the Local Resident Hiring Percentage requirements set forth in Section 17.90.420.B have not been achieved on the Covered Project and (b) any Construction Employer performing Construction Work on the Covered Project did not comply with the requirements set forth in Sections 17.90.420.A.
4. Apprentice Hiring. Developer shall be in violation of Section 17.90.430 of this Chapter only where (a) the Hours Worked by Apprentices set forth in Section 17.90.430.B have not been achieved on the Covered Project and (b) any Construction Employer performing Construction Work on the Covered Project did not comply with the requirements set forth in Sections 17.90.430.A.
5. Disadvantaged Worker Hiring. Developer shall be in violation of Section 17.90.440 of this Chapter only where (a) the Disadvantaged Worker Hiring Percentage requirements set forth in Section 17.90.440.B have not been achieved on the Covered Project and (b) any Construction Employer performing Construction Work on the Covered Project did not comply with the requirements set forth in Sections 17.90.440.A.
6. Overlapping Categories. For purposes of determining compliance with this Chapter, work hours performed by individuals meeting more than one of the definitions of (a) Local Resident, (b) Apprentice or (c) Disadvantaged Worker may be counted toward the requirements of all of the following Sections for which those work hours qualify under the terms of those Sections: 17.90.420.B, 17.90.430.B and 17.90.440.B.
7. Retaliation. Developer shall be strictly liable for any retaliation by a Construction Employer in violation of this Resolution.

- B. **Corrective Action Plans.** In the event that OEA finds a Construction Employer is, for the first time, not in compliance with the any of the provisions set forth in Sections 17.90.420, 17.90.430 or 17.90.440, the OEA shall work with the Construction Employer and any complainant to develop a detailed Corrective Action Plan. If the Construction Employer follows the Corrective Action Plan, the Developer shall not be liable for any monetary penalties or damages for the original finding of noncompliance. A Construction Employer shall not be considered noncompliant following a first determination of noncompliance unless it has first been offered the opportunity to develop a Corrective Action Plan and has either refused or has committed a second violation. Such Corrective Action Plans, or other alternative compliance procedures shall not be available for violations of Sections 17.90.410.A-B of this Chapter, nor for violations of other rights protected by law.

17.90.530. Private Right of Action – Wage Rates. Any person aggrieved by a violation of Section 17.90.410 of this Chapter may bring a civil action in a court of competent jurisdiction against the Developer or other person violating Section 17.90.410 of this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of \$50 to each employee or person whose rights under Section 17.90.410 of this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief.

17.90.540. Penalties and Liquidated Damages.

- A. ~~General. In addition to the penalties described herein, the City may pursue any and all remedies available at law or in equity for violations of this Chapter, including: administrative citation; suspension of City certificates, permits, or licenses; specific performance; injunctive relief; and reimbursement of City's enforcement costs.~~
- B. **Local Resident Hiring, Apprentice Hiring, and Disadvantaged Worker Hiring.** For violations of Sections 17.90.420, 17.90.430 or 17.90.440, penalties shall be up to \$300 per day for each Construction Employer that did not comply with any of those requirements.
- C. **Wage Rates.** For violations of Section 17.90.410.A-B of this Chapter, penalties shall include payment of back wages due with interest plus a civil penalty of up to \$100 per day for each worker who was not paid prevailing wages.
- D. **Payroll Records.** For violations of Section 17.90.410.C of this Chapter, penalties shall be up to \$100 per day for each Construction Employer that does not timely provide complete payroll records upon request by the City.
- E. **Retaliation.** Developer shall be liable for back wages and interest and, additionally, the Developer shall pay to the City a civil penalty in the sum of \$250 per day for each day that retaliation in violation of this Chapter is not fully remedied after the Developer receives notice of such retaliation from the City.
- F. **Appeal Rights.** A Developer may appeal the assessment of civil penalties and other monetary relief before the City. The Developer must request an appeal in writing within 10 calendar days of receipt of the assessment. At the hearing, the Developer will be

allowed to provide evidence that it has complied with all of the applicable provisions of this Chapter. Failure to submit a written request for an appeal within the time frame stipulated in this Section will be deemed a waiver of the right to appeal.

17.90.600 Regulations. The Director of Planning is hereby authorized to promulgate forms, policies and regulations for the implementation of the provisions of this chapter.

17.90.700 Compliance with Applicable Law. The provisions of this Chapter shall be applicable to the extent not prohibited by (a) federal or state law, (b) terms and conditions of a grant or a contract with a governmental agency, or (c) the valid instructions of an authorized representative of any government agency with respect to any grant or contract.

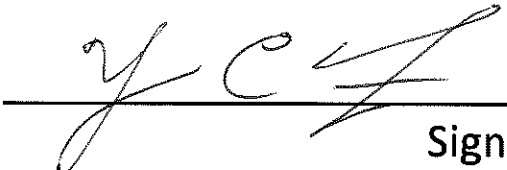
17.90.800 Amendment by the City Council.

This Chapter may be amended by the City Council without a vote of the people as regards the implementation or enforcement thereof, in order to achieve the purposes of this Chapter, but not in a manner that lessens the substantive requirements of the Chapter or its scope of coverage.

17.90.900 Severability

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstances is held to be invalid, the remainder of this Chapter including its application of such part or provision to other persons or circumstances shall not be affected by such a holding and shall continue in full force and effect. To this end, each of the provisions of this Chapter shall be severable.

I, Nancy C Ferguson acknowledge that it is a misdemeanor under state law (section 18650 of the Election Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification on the measure for the ballot.


Signature of Proponent

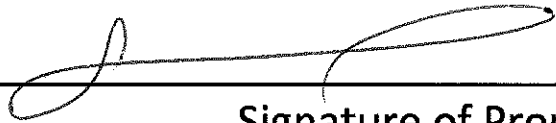
Dated this 5 day of February, 2018

I, Joanna S. Koomas acknowledge that it is a misdemeanor under state law (section 18650 of the Election Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification on the measure for the ballot.

Joanna S. Koomas
Signature of Proponent

Dated this 5th day of February, 2018

I, SARAH VERIEZ acknowledge that it is a misdemeanor under state law (section 18650 of the Election Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification on the measure for the ballot.



Signature of Proponent

Dated this 5 day of FEB, 2018

Notice of Intent to Circulate Petition

Notice is hereby given to the persons whose names appear heron of their intention to circulate the petition within the City of San Jose for the Purpose of placing an ordinance on the November Ballot for voter approval. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

We need the Build Better San Jose Initiative because many major development projects in our city are not paying a fair and livable wage; are not providing local residents with access to employment and training opportunities; and are not adequately investing in our local economy and future skilled workforce. This initiative will help ensure that when large-scale developments are built, they create good jobs, hire local residents, and provide training and career opportunities for local youth, veterans, unemployed and under-employed community members.

Nancy C Ferguson
Joanna S. Kooma
J

Enclosed as stated.