

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. No. (415) 554-5184
Fax No. (415) 554-5163
TDD/TTY No. (415) 554-5227

MEMORANDUM

TO: William Scott, Police Chief, Police Department
Carol Isen, Director, Department of Human Resources
Patrick Mulligan, Director, Office of Labor Standards Enforcement
Patrick O'Riordan, Interim Director, Department of Building Inspection
Ben Rosenfield, City Controller, Office of the Controller

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: December 23, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Haney on December 14, 2021:

File No. 211297

Ordinance amending the Police Code to add Article 33O to require owners and covered contractors on certain residential construction projects to maintain a labor compliance bond and to condition release of such bond on specified labor standards compliance for work on the project; and amending the Building Code to require owners of such projects to file a labor compliance bond as a condition of receiving a permit for construction.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: erica.major@sfgov.org.

cc: Diana Oliva-Aroche, Police Department
Mawuli Tugbenyoh, Department of Human Resources
Patty Lee, Department of Building Inspection
John Murray, Department of Building Inspection
Todd Rydstrom, Office of the Controller
Peg Stevenson, Office of the Controller

1 [Police, Building Codes - Bond for Labor Standards Compliance in Certain Residential
2 Construction Projects]

3 **Ordinance amending the Police Code to add Article 33O to require owners and covered**
4 **contractors on certain residential construction projects to maintain a labor compliance**
5 **bond and to condition release of such bond on specified labor standards compliance**
6 **for work on the project; and amending the Building Code to require owners of such**
7 **projects to file a labor compliance bond as a condition of receiving a permit for**
8 **construction.**

9
10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. The Police Code is hereby amended by adding Article 33O, consisting of
19 Sections 3300O.1 through 3300O.10, to read as follows.

20 **ARTICLE 33O: RESIDENTIAL CONSTRUCTION WAGE THEFT PREVENTION ORDINANCE**

21
22 **SEC. 3300O.1. TITLE.**

23 *This Article 33O shall be known as the Residential Construction Wage Theft Prevention*
24 *Ordinance.*

25 **SEC. 3300O.2. FINDINGS.**

1 (a) Existing tools for enforcement of labor standards in the construction industry do not meet
2 the scale of the challenges in that industry. Over 300,000 state-licensed contractors performed more
3 than \$65 billion worth of permitted construction work in California in 2019. During fiscal year 2018-
4 2019, the California Labor Commissioner conducted only 232 inspections in the construction industry,
5 which yielded 336 citations for violations. The Labor Commissioner assessed \$14.8 million in back-
6 wages for these violations—the highest amount of any industry—and \$3.3 million in penalties, but less
7 than 2% of the back wages were collected, along with approximately 16% of the penalties. Resources
8 for investigations and enforcement of the violations that are uncovered are inadequate.

9 (b) The City has an interest in preventing and remedying wage theft and other labor standards
10 violations in the construction industry. Violations of labor standards harm workers and their families,
11 undermine the City’s economic growth, provide employers with an unfair competitive advantage
12 against law-abiding employers, and may create an atmosphere that leads to violations of construction
13 safety and quality standards.

14 (c) California Labor Code Section 2810.5, added by the Wage Theft Protection Act of 2011,
15 requires that all employers at the time of hire provide each employee with a written notice containing
16 the employee’s pay rate and basis thereof (whether by hour, salaried, etc.), regular payday, sick leave
17 benefits, and other specified information. California Labor Code Section 226 requires employers to
18 provide employees with a detailed statement of the employee’s wages, hours worked, all deductions, net
19 wages, and other specified information with the employee’s pay. City labor protections, including the
20 Minimum Wage Ordinance, Administrative Code Section 12R.5(c); Paid Sick Leave Ordinance,
21 Administrative Code Section 12W.6; and Health Care Security Ordinance, Administrative Code Section
22 14.3(f), require employers in the City to maintain and provide the Office of Labor Standards
23 Enforcement access to accurate payroll records and other documentation of compliance. Together,
24 these requirements may help employees identify apparent errors in their pay and benefits so they can
25 be addressed, and they help regulators audit compliance with City and State labor protections.

1 (d) This Article 330, in conjunction with amendments to the Building Code requiring Owners of
2 certain residential construction projects to secure a surety bond for labor compliance as a condition of
3 receiving a permit, will enhance compliance with these requirements in the City. This Article 330 will
4 require Owners to maintain the labor compliance bond required under Building Code Section
5 106A.1.18 and to acknowledge that they may be held responsible, through forfeiture of the bond, for
6 labor violations committed on the project. Further, it will require Covered Contractors to
7 acknowledge their responsibility to comply with all applicable City and State labor standards including
8 notice and recordkeeping requirements and to provide the City with access to their records upon
9 request. Owners will further be required to provide the City with specified information about Covered
10 Contractors, which the City will use to determine if Covered Contractors have any ongoing
11 investigations or unresolved labor violations at the local level or unresolved labor violations at the
12 State level for work on the project. That information will be used to determine if the labor compliance
13 bond required may be released, reduced, or used to remedy a labor violation.

14 (e) The Legislature also has enacted licensing and certification requirements for electrical and
15 fire sprinkler system installations in California Labor Code Section 108.1 and California Health and
16 Safety Code Section 13110, respectively. This Article 330 will enhance compliance with these
17 requirements in the City by requiring Covered Contractors to provide documentation of the
18 certification and registration of electricians and sprinkler fitters.

19
20 **SEC. 33000.3. DEFINITIONS.**

21 For purposes of this Article 330, the following definitions apply.

22 “Agency” means the Office of Labor Standards Enforcement.

23 “Apprentice” means an individual enrolled in an apprenticeship program registered with the
24 California Department of Industrial Relations Division of Apprenticeship Standards.

1 “Bond” means the surety bond required as a condition for a permit for a Project under
2 Building Code Section 106A.1.18, as may be amended from time to time.

3 “City” means the City and County of San Francisco.

4 “Covered Contractor” means a contractor or subcontractor of any tier performing work on a
5 Project the cost of which work exceeds or is expected to exceed \$100,000 or one half of 1% of the
6 permit value of the Project.

7 “DLSE” means the Division of Labor Standards Enforcement of the California Department of
8 Industrial Relations.

9 “Employee” means any person providing labor or services for remuneration for a Covered
10 Contractor on a Project within the geographic boundaries of the City, who is an employee under
11 California Labor Code Section 2775, as may be amended from time to time, including a part-time or
12 temporary employee.

13 “Owner” means the person or persons, firm, corporation, partnership, or other legal entity that
14 owns, individually or jointly with another Owner, a Project.

15 “Project” means a residential development issued a permit under Building Code Section 106A
16 requiring a Bond under Building Code Section 106A.1.18 on or after the effective date of this Article
17 330, to construct, enlarge, alter, repair, improve, or convert a building or a portion thereof that results
18 in the creation or addition of 10 or more residential units within the geographic boundaries of the City.
19 Notwithstanding the foregoing definition, Project does not include a residential development that is
20 subject to local, state, or federal prevailing wage requirements or a valid Project Labor Agreement or
21 Community Workforce Agreement.

22
23 **SEC. 33000.4. REPORTING REQUIREMENTS.**

24 (a) Acknowledgment of responsibilities.
25

1 (1) An Owner of a Project must sign an acknowledgment of the Owner's responsibility
2 for ensuring that each Covered Contractor working on the Project complies with State and local labor
3 protections and that the Owner may be held liable through forfeiture of its Bond under Section 33000.5
4 for labor violations committed on the Project. Such acknowledgments must be provided to the Agency
5 with the initial report under subsection (d)(1).

6 (2) An Owner of a Project must require each Covered Contractor to sign an
7 acknowledgement of their responsibility to comply with all applicable State and local labor protections
8 including but not limited to employee notice and payroll recordkeeping requirements under California
9 Labor Code Sections 226 and 2810.5 and Administrative Code Sections 12R.5(c), 12W.6, and 14.3(f),
10 and to provide the Agency with access to such records under Administrative Code Chapter 12R, 12W,
11 14, and other applicable laws if requested. Such acknowledgments must be obtained by the date on
12 which the Covered Contractor starts work on the Project; provided, however, that if the contractor or
13 subcontractor's work on the project is initially not expected to exceed \$100,000 or one-half of 1% of
14 the value of the Project, such acknowledgment must be obtained within 30 days of the date on which the
15 contractor or subcontractor becomes a Covered Contractor.

16 **(b) Certification of fulfillment of recordkeeping responsibilities.** Prior to the submission of the
17 final report required under subsection (d)(2) of this Section 33000.4, an Owner of a Project must
18 require each Covered Contractor to certify that it has complied with all applicable State and local
19 employee notice and payroll recordkeeping requirements for all Employees performing work on the
20 Project, including but not limited to California Labor Code Sections 226 and 2810.5 and
21 Administrative Code Sections 12R.5(c), 12W.6, and 14.3(f), and will provide the Agency with access to
22 records under Administrative Code Chapters 12R, 12W, and 14, and other applicable laws, if
23 requested. If any Covered Contractor does not complete a certification, the Owner must so report
24 under subsection (d)(2).

25 **(c) Documentation of electrical worker and sprinkler fitter qualifications.**

1 (1) Every Covered Contractor performing work on a Project for which certification is
2 required under California Labor Code Section 108 or 108.2 or registration is required under
3 California Labor Code Section 108.4 shall provide the Owner proof of certification or registration, as
4 applicable, for each certified electrician, registered Apprentice, and registered electrician trainee
5 performing work on the Project.

6 (2) Every Covered Contractor performing work on a Project for which certification or
7 registration is required under Title 19 of the California Code of Regulations Sections 925 or 937-939
8 shall provide the Owner proof of certification or registration, as applicable, for each certified fire
9 sprinkler fitter, Apprentice, or trainee performing work on the Project.

10 **(d) Owner reporting requirements.**

11 (1) Initial report. Within 45 days of the issuance of a permit for a Project requiring a
12 Bond, an Owner must file with the Agency a report that includes each Covered Contractor expected to
13 perform work on the Project, with the Covered Contractor's complete name, contact information for
14 the owner, and State License Board license number; the acknowledgments obtained under subsection
15 (a); and the information obtained under subsection (c).

16 (2) Final report. Prior to requesting the release or reduction of a Bond under Section
17 33000.5(b), the Owner must provide a second report to the Agency that includes each Covered
18 Contractor that performed work on the Project, with the Covered Contractor's complete name, contact
19 information for the owner, and State License Board license; an estimate of the value of the work each
20 Covered Contractor performed and its percentage of the total Project construction cost; any
21 acknowledgments obtained under subsection (a) that were not included in the initial report; the
22 certifications obtained under subsection (b); the name of any Covered Contractor that did not complete
23 the certification required under subsection (b); and the information obtained under subsection (c).

24
25 **SEC. 33000.5. BOND.**

1 **(a) Filing and maintenance of Bond.** *Prior to obtaining a permit under Building Code Section*
 2 *106A, an Owner or Owners of a Project shall file with the Controller a Bond naming the City as*
 3 *exclusive beneficiary, or other acceptable security as determined by the Controller. The Bond shall*
 4 *contain conditions that require the Owner holding the Bond to comply fully with all provisions of this*
 5 *Article 330 and to acknowledge that the Bond or portions thereof may become payable to the City, to*
 6 *be used to satisfy a determination of violation of a City labor protection for work on the Project, under*
 7 *the conditions set forth in Police Code Section 33000.5(d). Subject to subsection (d), the Bond shall be*
 8 *filed and maintained in not less than the following amounts:*

<u>Estimated Project Cost</u>	<u>Bond Amount</u>
<i>Less than \$5,000,000</i>	<i>\$500,000</i>
<i>\$5,000,000 to \$7,500,000</i>	<i>\$750,000</i>
<i>\$7,500,000.01 to \$10,000,000</i>	<i>\$1,000,000</i>
<i>More than \$10,000,000</i>	<i>\$1,250,000</i>

15 *The Controller shall notify the Agency and the Department of Building Inspection when an Owner files*
 16 *such Bond and the amount thereof.*

17 **(b) Request for release or reduction of Bond.** *Not less than 90 days after the Project has been*
 18 *issued a certificate of final completion and occupancy or an amended certificate of final completion*
 19 *and occupancy under Building Code Section 109A, an Owner may file a request with the Controller to*
 20 *release or reduce the Bond. The Controller shall notify the Agency of the request.*

21 **(c) Agency review and report to the Controller.**

22 *(1) Upon receiving notice from the Controller under subsection (b), the Agency shall*
 23 *review whether the Owner and Covered Contractors have complied with the requirements of this*
 24 *Article 330 and whether the reports received under Section 33000.4(d) appear complete and accurate.*
 25 *After providing Owners and Covered Contractors the opportunity to provide additional reporting,*

1 acknowledgements, or certifications, as needed, the Agency shall report to the Controller either (1) the
2 Agency has received and reviewed the reports required under Section 33000.4(d) and the reports
3 appear complete and accurate, and no Owner or Covered Contractor has failed to complete the
4 required acknowledgments under Section 33000.4(a), the required certifications under Section
5 33000.4(b), or the required documentation under Section 33000.4(c); or (2) one or more reports,
6 acknowledgments, certifications, or documentation are missing, incomplete, or appear inaccurate. The
7 Agency shall additionally report the value of the work performed on the Project by a Covered
8 Contractor whose acknowledgments, certifications, or documentation are missing, incomplete, or
9 appear inaccurate. The Agency may open an investigation of an Owner or Covered Contractor whose
10 reports, acknowledgments, or certifications are missing, incomplete, or appear inaccurate, for possible
11 violation of this Article 33O.

12 (2) The Agency shall determine if it has any ongoing investigation or unresolved
13 determination of violation of any law it enforces for work on the Project by any Owner or Covered
14 Contractor. The Agency shall work diligently to promptly resolve any ongoing investigation. After
15 seeking to resolve any unresolved determination of violation, the Agency shall report to the Controller
16 either (1) the Agency has no ongoing investigation or unresolved determination of violation of any law
17 the Agency enforces for work on the Project by an Owner or any Covered Contractor, or (2) the
18 Agency has an open investigation or unresolved determination of violation, as applicable, the parties
19 involved, and the total remedies ordered in any determination of violation, broken down by worker
20 restitution and other remedies.

21 (3) The Agency shall contact the DLSE to seek information on any unresolved citation or
22 determination of violation of any law DLSE enforces for work on the Project by any Owner or Covered
23 Contractor. If the Agency receives a report of any such citation or determination of violation, the
24 Agency shall provide the Owner and Covered Contractor as applicable a point of contact at DLSE to
25 facilitate resolution of the citation or determination violation. The Agency shall report to the

1 Controller either (1) the Agency is not aware of any unresolved citation or determination of violation of
2 any law DLSE enforces for work on the Project by an Owner or any Covered Contractor, or (2) there is
3 such a citation or determination of violation, the parties involved, and the total remedies ordered in
4 any such citation or determination of violation.

5 _____ (4) The Agency shall promptly report any material updates to the foregoing report to the
6 Controller on an ongoing basis.

7 **(d) Controller Bond determination.**

8 _____ (1) Bond release. The Bond may be released if the Agency reports the following under
9 subsection (c) with respect to work on the Project:

10 _____ (A) The Agency has received and reviewed the reports required under Section
11 3300O.4(d) and the reports appear complete and accurate;

12 _____ (B) No Owner or Covered Contractor has failed to complete the required
13 acknowledgments under Section 3300O.4(a), and no Covered Contractor has failed to complete the
14 required certifications under Section 3300O.4(b) or the required documentation under Section
15 3300O.4(c);

16 _____ (C) The City has no ongoing investigation or unresolved determination of
17 violation of any law the Agency enforces for work on the Project by an Owner or Covered Contractor;
18 and

19 _____ (D) The Agency is not aware of any unresolved citation or determination of
20 violation of any law DLSE enforces for work on the Project by an Owner or Covered Contractor.

21 _____ (2) If the Agency reports that an Owner has not submitted a required acknowledgment
22 under Section 3300O.4(a)(1) or one or more of the reports required under Section 3300O.4(d), the
23 Bond shall be maintained without reduction.

24 _____ (3) Bond reduction.

1 (A) If the Agency reports that an Owner has submitted each of the reports
2 required under Section 3300O.4(d) but the required acknowledgments, certifications, or documentation
3 for one or more Covered Contractors is missing, incomplete, or appears inaccurate, the Bond may be
4 reduced, but it shall be maintained at not less than 25% of the value of the work performed on the
5 Project by such Covered Contractor, plus any Bond value required to be maintained under subsections
6 (d)(3)(B) and (d)(3)(C).

7 (B) If the Agency reports that the City has an ongoing investigation of any law
8 the Agency enforces for work on the Project by an Owner or Covered Contractor, the Bond shall be
9 maintained without reduction during the course of the investigation. If the Agency reports that an
10 Owner or Covered Contractor has an unresolved determination of violation of any law the Agency
11 enforces for work on the Project, the Bond may be reduced, but it shall be maintained at not less than
12 125% of the total remedies ordered under the determination of violation, plus any Bond value required
13 to be maintained under subsections (d)(3)(A) and (d)(3)(C).

14 (C) If the Agency reports that an Owner or Covered Contractor has an
15 unresolved citation or determination of violation of any law DLSE enforces for work on the Project, the
16 Bond may be reduced, but it shall be maintained at not less than 125% of the total remedies ordered
17 under the citation or determination of violation, plus any Bond value required to be maintained under
18 subsections (d)(3)(A) and (d)(3)(B).

19 (D) By way of example and not limitation, if an Owner that maintains a Bond for
20 \$1,000,000 requests release or reduction of the Bond, and the Agency reports that one Covered
21 Contractor that did \$400,000 worth of work on the Project failed to file its acknowledgements, and a
22 different Covered Contractor has an unresolved determination of violation of a City ordinance with
23 remedies totaling \$200,000, the Bond may be reduced but shall be maintained at not less than
24 \$350,000, equal to 25% of \$400,000 (or \$100,000) under subsection (d)(3)(A) plus 125% of \$200,000
25 (or \$250,000) under subsection (d)(3)(B).

1 (4) Bond payment to remedy labor violation on the Project.

2 (A) The Bond shall name the City as exclusive beneficiary and may become
3 payable in whole or in part in accordance with this Section 33000.5(d)(4) in the amount of any final
4 determination of violation of any law the Agency enforces, including a violation of this Article 33O,
5 against an Owner or Covered Contractor for work on the Project; provided, however, that the
6 aggregate liability for any and all claims which may arise under such Bond shall in no event exceed the
7 face amount of such Bond regardless of the amount due and owing under a determination of violation.

8 (B) Upon the expiration of the time to file an administrative appeal of such
9 determination of violation if no administrative appeal is filed, or upon exhaustion of administrative and
10 court remedies, as applicable, the Controller shall issue a notice of the liability to the Owner or
11 Owners maintaining the Bond and the Bond surety. Any Owner maintaining the Bond or surety or both
12 may file an appeal of the liability under the procedures set forth in Section 33000.9. The procedures
13 and requirements of Section 33000.9 shall apply to the surety in the same manner as any other
14 Appellant under Section 33000.9.

15 (C) The City shall use such Bond proceeds to satisfy the remedies specified in the
16 determination of violation, prioritizing payment of restitution to workers before payment of any fines,
17 penalties, or other remedies. The remainder of the Bond, if any, shall be maintained under Section
18 33000.5.

19
20 **SEC. 33000.6. RECORD-KEEPING REQUIREMENTS.**

21 (a) Owners and Covered Contractors shall retain records documenting compliance with this
22 Article 33O for a period of four years, and they shall allow the Agency access to such records, with
23 reasonable notice.

1 **(b) If an Owner or Covered Contractor fails to comply with subsection (a), the Agency shall**
2 **presume that the Owner or Covered Contractor, as applicable, has violated this Article 33O, absent**
3 **clear and convincing evidence otherwise.**

4
5 **SEC. 33000.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

6 **(a) It shall be unlawful for any person to interfere with, restrain, or deny the exercise of, or the**
7 **attempt to exercise, any right protected under this Article 33O.**

8 **(b) It shall be unlawful for an Owner or Covered Contractor to take any adverse action against**
9 **any employee working on a Project for exercising rights protected under this Article 33O, including the**
10 **right to file a complaint or inform any person about any alleged violation of this Article; the right to**
11 **cooperate with the Agency in its investigations of alleged violations of this Article; and the right to**
12 **inform any person of that person's possible rights under this Article.**

13 **(c) Protections of this Article 33O shall apply to any person who mistakenly but in good faith**
14 **alleges violations of this Article.**

15 **(d) Taking adverse action against a person within 90 days of the person's filing a complaint**
16 **with the Agency alleging a violation of any provision of this Article 33O; of informing any person about**
17 **an alleged violation of this Article; of cooperating with the Agency or other persons in the investigation**
18 **or prosecution of any alleged violation of this Article; of opposing any policy, practice, or act that is**
19 **unlawful under this Article; or of informing any person of that person's rights under this Article, shall**
20 **raise a rebuttable presumption that such adverse action was taken in retaliation for the exercise of one**
21 **or more of the aforementioned rights. Unless the presumption is rebutted with clear and convincing**
22 **evidence that the adverse action was solely for a reason other than retaliation, the adverse action shall**
23 **be deemed to violate this Section 33000.7.**

24
25 **SEC. 33000.8. IMPLEMENTATION AND ENFORCEMENT.**

1 (a) The Agency is authorized to implement and enforce this Article 33O and may promulgate
2 guidelines or rules for such purposes; provided, however, that the Controller is authorized to
3 implement and enforce Section 3300O.5(a), (b), and (d) and may promulgate guidelines or rules for
4 such purposes. Any guidelines or rules promulgated by the Agency or the Controller shall have the
5 force and effect of law and may be relied on to determine a person’s rights and responsibilities under
6 this Article.

7 (b) Any person who has reason to believe that a violation of this Article 33O has occurred may
8 report the suspected violation to the Agency.

9 (c) The Agency may investigate possible violations of this Article 33O. Where the Agency has
10 reason to believe that a violation has occurred, it may order any appropriate temporary or interim
11 relief to mitigate the violation or maintain the status quo pending completion of a full investigation and
12 administrative determination.

13 (d) Where the Agency determines that a violation has occurred following an investigation that
14 affords due process, including notice of the alleged violation and the right to respond, the Agency may
15 issue a determination of violation and order any appropriate relief to any person whose rights have
16 been violated. Further, pursuant to California Constitution Article XIIC, Section 1(e)(5), the Agency
17 may order the payment of an additional sum as an administrative penalty of \$1,000 for an Owner’s or
18 Covered Contractor’s first violation, \$5,000 for the second violation, and \$10,000 for the third and
19 subsequent violations. For the purpose of this calculation, if multiple people are impacted by the same
20 violation at the same time, the Agency shall treat the violation as a single violation rather than multiple
21 violations. To compensate the City for the reasonable regulatory costs of investigating and remedying
22 the violation, pursuant to California Constitution Article XIIC, Section 1(e)(3), the Agency may also
23 order the violating Hiring Entity to pay to the City an amount that does not exceed the Agency’s
24 investigation and administrative enforcement costs.

1 (e) The determination of violation shall provide notice of the right to appeal the determination
2 to the Controller and that failure to do so within 15 days shall result in the determination becoming a
3 final administrative decision.

4 (f) The determination of violation shall specify a reasonable time period for payment of any
5 relief ordered. The Agency may award interest on all amounts due and unpaid at the expiration of such
6 time period at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil
7 Code, as may be amended from time to time.

8 (g) The remedies and penalties provided under subsection (c) are cumulative.

9 (h) The Agency may require that remedies and penalties due and owing to a person whose
10 rights under this Article 330 were violated to be paid directly to the City for disbursement to the
11 person. The Controller shall hold these funds in escrow for the person. The Agency shall make best
12 efforts to distribute such funds. In the event such funds are unclaimed for a period of three years, the
13 Controller may undertake administrative procedures for escheat of unclaimed funds under California
14 Government Code Sections 50050 et seq., as may be amended from time to time. Subject to the
15 budgetary and fiscal provisions of the Charter, such escheated funds shall be dedicated to the
16 enforcement of this Article 330 or other laws the Agency enforces.

17
18 **SEC. 33000.9. APPEAL PROCEDURE.**

19 (a) An individual subject to a determination of violation of this Article 330 or notice of Bond
20 forfeiture under Section 33000.5(d)(4), as applicable, may file an appeal (“Appeal”) in accordance
21 with the following procedures:

22 (1) The Appellant shall file the Appeal with the Controller and serve a copy on the
23 Agency. The Appeal shall be filed in writing within 15 days of the date of service of the determination
24 of violation or notice of Bond forfeiture, as applicable, and shall specify the basis for the Appeal and
25 shall request that the Controller appoint a hearing officer to hear and decide the Appeal. Failure to

1 submit a timely, written Appeal shall constitute concession, and the determination of violation or Bond
2 forfeiture, as applicable, shall be deemed the final administrative decision upon expiration of the 15-
3 day period. Further, failure to submit a timely, written Appeal shall constitute a failure to exhaust
4 administrative remedies, which shall serve as a complete defense to any petition or claim brought
5 against the City regarding the determination of violation or Bond determination, as applicable.

6 (2) Following the filing of the Appeal and service of a copy on the Agency, the Agency
7 shall promptly afford the Appellant an opportunity to meet and confer in good faith regarding possible
8 resolution of a determination of violation.

9 (3) Within 30 days of receiving an Appeal, the Controller shall appoint an impartial
10 hearing officer who is not part of the Agency and immediately notify the Agency and Appellant.

11 (4) The hearing officer shall promptly set a date for a hearing. The hearing shall
12 commence within 45 days of the date of the Controller's notice of appointment of the hearing officer,
13 and conclude within 75 days of such notice, provided, however, that the hearing officer may extend
14 these time limits for good cause.

15 (5) The hearing officer shall conduct a fair and impartial evidentiary hearing. The
16 Appellant shall have the burden of proving by a preponderance of the evidence that the Agency erred in
17 its determination of violation, or the Controller erred in its Bond determination, as applicable, and/or
18 the relief ordered therein.

19 (6) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a
20 written decision affirming, modifying, or dismissing the determination of violation or Bond
21 determination, as applicable. The hearing officer's decision shall be the final administrative decision.
22 The decision shall consist of findings, a determination, any relief ordered, a reasonable time period for
23 payment of any relief ordered, and notice to the Appellant of the right to appeal by filing a petition for
24 a writ of mandate as described in subsection (a)(7), and that the City may seek enforcement of the final
25 administrative decision in Superior Court upon failure to file a timely appeal.

1 (7) The Appellant may appeal the final administrative decision only by filing in San
2 Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure,
3 Section 1094.5 et seq., as applicable, and as may be amended from time to time.

4 (b) Where an Appellant fails to comply with a final administrative decision within the time
5 period required therein, the Agency may take any appropriate enforcement action to secure
6 compliance, including referring the action to the City Attorney to seek enforcement of the final
7 administrative decision in Superior Court and, except where prohibited by State or Federal law,
8 requesting that City agencies or departments revoke or suspend any registration certificates, permits,
9 or licenses held or requested by the Appellant until such time as the violation is remedied.

10
11 **SEC. 33000.10. WAIVER THROUGH COLLECTIVE BARGAINING.**

12 All or any portion of the applicable requirements of this Article 33O shall not apply to
13 employees of a Covered Contractor who is covered by a bona fide collective bargaining agreement to
14 the extent that such requirements are expressly waived in the collective bargaining agreement in clear
15 and unambiguous terms; provided, however, that a Covered Contractor shall provide an Owner proof
16 of its exemption to be included in the Owner's reports under Section 33000.4.

17
18 Section 2. The Building Code is hereby amended by adding Section 106A.1.18 to read
19 as follows.

20 **106A.1.18. Labor Compliance Bonds for Certain Residential Projects.**

21 With respect to a building or structure that is a Project as defined by Police Code Section
22 33000.3, as may be amended from time to time, a permit shall not be issued under Section 106A on or
23 after the effective date of Police Code Article 33O until the Department has received written
24 confirmation from the Controller that the surety bond required under Police Code Section 33000.5(a)
25 has been filed.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Section 3. Preemption.

Nothing in this ordinance shall be interpreted or applied so as to create any right, requirement, power, or duty in conflict with Federal or State law. The term “conflict,” as used in this Section 2, means a conflict that is preemptive under Federal or State law.

Section 4. Undertaking for the General Welfare.

In undertaking the adoption and enforcement of this ordinance, the City is undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This ordinance does not create a legally enforceable right by any member of the public against the City.

Section 5. Severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause, phrase, and word not declared invalid and unconstitutional without regard to whether any other portion of this ordinance or application thereof would be subsequently declared invalid or unconstitutional.

Section 6. Effective Date.

1 This ordinance shall become effective 30 days after enactment. Enactment occurs
2 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
3 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
4 Mayor’s veto of the ordinance.

5
6 Section 7. Scope of Ordinance.

7 In enacting this ordinance, the Board of Supervisors intends to amend only those
8 words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks,
9 charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly
10 shown in this ordinance as additions, deletions, Board amendment additions, and Board
11 amendment deletions in accordance with the “Note” that appears under the official title of the
12 ordinance.

13
14 APPROVED AS TO FORM:
15 DAVID CHIU, City Attorney

16 By: /s/ _____
17 LISA POWELL
18 Deputy City Attorney

19 n:\legana\as2021\2200026\01571007.docx

LEGISLATIVE DIGEST

[Police, Building Codes - Bond for Labor Standards Compliance in Certain Residential Construction Projects]

Ordinance amending the Police Code to add Article 33O to require owners and covered contractors on certain residential construction projects to maintain a labor compliance bond and to condition release of such bond on specified labor standards compliance for work on the project; and amending the Building Code to require owners of such projects to file a labor compliance bond as a condition of receiving a permit for construction.

Existing Law

The City has a variety of ordinances that provide minimum labor standards that apply to most employees working in the City, including the Minimum Wage Ordinance (Admin. Code Chapter 12R), Paid Sick Leave Ordinance (Admin. Code Chapter 12W), and Health Care Security Ordinance (Admin. Code Chapter 14). Each of these ordinances require employers to maintain records of compliance and to allow the City's Office of Labor Standards Enforcement (OLSE) to access those records upon request.

State law likewise provides certain minimum labor standards and requires employers to provide employees with written statements of employees' pay rate, sick leave, and other specified information at the time of hire and with employee pay. Cal. Labor Code §§ 226, 2810.5.

Amendments to Current Law

The proposed ordinance, which would add Article 33O to the Police Code, would require owners of construction projects that create or add 10 or more residential units to maintain a surety bond for labor compliance for work on the project. An amendment to the Building Code would make filing this bond with the Controller a condition of receiving a permit for construction of such a project.

Police Code Article 33O would require owners to acknowledge that they may be held responsible for labor violations committed on the project, through forfeiture of the bond. Covered Contractors would be required to acknowledge their responsibility to comply with all applicable City and State labor standards including recordkeeping responsibilities, and to certify that they did so at the end of the project. Covered Contractors would further be required to document electrical worker and sprinkler fitter qualifications. Covered Contractors would provide the required acknowledgments, certifications, and other specified information to owners, who would provide the information to OLSE.

After construction is complete, the owner would be able to request release or reduction of the bond. At that time, OLSE would review the reports and would determine if they appear complete and accurate, if any Covered Contractor is subject to an ongoing investigation or unresolved determination of violation by OLSE for work on the project, or if any Covered Contractor is subject to an unresolved determination of violation at the state level for a labor violation for work on the project. That information would be used to determine if the labor compliance bond may be released, reduced, or used to remedy a final, unresolved OLSE determination of violation.

OLSE would implement Article 33O except the bond provisions, which the Controller would implement. The Department of Building Inspection would implement the permit condition added to the Building Code.

Background Information

The proposed ordinance is intended to prevent and enhance remedies for labor standards violations in the construction industry.

n:\legana\as2021\2200026\01571077.docx

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only