

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Barry Ng

**SUBJECT: WAGE THEFT PREVENTION  
UPDATE**

**DATE:** February 17, 2017

Approved



Date

2/17/17

## INFORMATION

The purpose of this memorandum is to update the City Council regarding Council Priority #1 – Wage Theft Prevention regarding Santa Clara County/Department of Environmental Health’s interest and ability in assisting with outstanding wage judgments in the restaurant and fast food industry.

## BACKGROUND & UPDATE

At the June 23, 2015 City Council Priority Setting Session, wage theft and how to combat it was deemed Council’s highest priority. On May 24, 2016 (Item 4.1), the City Council unanimously:

1. Approved a Wage Theft Prevention Policy (Council Policy 0-44); and
2. Approved an ordinance amending Title 6 of the San Jose Municipal Code to authorize the denial, suspension or revocation of a permit or license issued under Title 6 based upon a final judgment by a court or by final administrative action of an investigatory government agency that a violation of wage and hour laws occurred and has not been satisfied. A listing of Title 6 permits is shown in Attachment C of the staff report. The link to the staff report is provided below.

Links to the staff report and Council Policy 0-44 are:

[http://sanjose.granicus.com/MetaViewer.php?view\\_id=&event\\_id=2137&meta\\_id=573934](http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2137&meta_id=573934)

<http://www.sanjoseca.gov/DocumentCenter/View/62047>

Council Policy 0-44 requires: (1) potential City contractors to disclose prior (within the past five years) wage theft judgments or final administrative orders during the bid and proposal process; (2) City contractors to disclose wage theft judgments and final administrative orders that are issued during the term of their City contract; and (3) City contractors and subcontractors to comply with all wage and hour laws. Under the Council Policy, a current contractor found by a

court or by final administrative action of an investigatory government agency to have violated applicable wage and hours laws, in the five years prior to or during the term of the contract with the City, may be in material breach of its contract with the City if the violation is not fully disclosed and/or satisfied per City contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law including a stipulated remediation plan. Since the Policy has been in place, no potential City contractor nor current City contractor has disclosed a wage theft judgment or final administrative order. City contracts involving “public works” are not subject to this Policy because monitoring and enforcement follows State prevailing wage law (CA Labor Code Sections 1720 – 1815).

And lastly, an additional ground (failing to pay a court or final administrative action for violating applicable wage and hour laws) has been added to Title 6.02.130 to deny, suspend or revoke a permit or license for permits issued under Title 6. If the City receives complaints about Title 6 permittees regarding wage theft, the Office of Equality Assurance will work with the City Attorney’s Office and the department responsible for issuance of the permit or license to investigate the complaint to determine denial, suspension or revocation of the permit or license until the wage judgment is satisfied. To date, no one applying for a Title 6 permit has disclosed a wage theft judgment or final administrative order.

With approval of the Policy, staff committed to work with Santa Clara County staff to determine if there were ways to assist with outstanding wage judgments in the restaurant and fast food industry sector since the restaurant/food industries have accounted for most of the minimum wage violations in San Jose since March 2013. These establishments are permitted and controlled by the County’s Environmental Health Department and not the City.

Office of Equality Assurance (OEA) staff initiated discussions with County Environmental Health staff to determine whether there was interest or authority in pursuing an approach similar to what the City and County of San Francisco uses for health permit applicants.

In San Francisco, anyone applying for a health permit must sign a “Declaration of Healthy and Safe Working Conditions.” By doing so, applicants declare they understand that the business must comply with all local, state and federal labor laws in order to obtain and maintain a valid permit to operate from the Department of Health. San Francisco’s Public Health Director has the ability to hold a business owner responsible for any final wage judgment(s) not satisfied, and has the authority to revoke a health permit as a result of any final wage judgment(s) not satisfied.

According to Santa Clara County’s Environmental Health staff, they permit retail food facilities (restaurants, bars, bakeries and grocery stores that sell food and beverages directly to the consumer) and are only authorized to revoke permits for health and safety code violations that are imminent health hazards, such as no hot water.

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Although the County is unable to assist with outstanding wage judgments in the restaurant and fast food industry, OEA staff will continue to coordinate efforts with the Santa Clara County Wage Theft Coalition to encourage workers who are victims of wage theft to come forward and file complaints with the City as well as monitor developments relating to wage theft and incorporate any additional applicable tools into its current processes or bring forward any additional recommendations as appropriate.

/s/

BARRY NG  
Director of Public Works

For questions, please contact Nina Grayson, Division Manager, at (408) 535-8455.

