

January 11, 2016

Dear Sunnyvale City Council and Staff:

We are writing to request that you support a wage theft ordinance as a study item at the January 29 Council meeting. This vote does not commit the City of Sunnyvale to enact any specific provisions but merely to study the issue and determine the efficacy and the possible contours of such an ordinance.

Wage theft legislation is pro-business. Wage theft legislation is usually supported by responsible businesses which recognize that it protects them from unfair competition by less scrupulous employers. Wage theft laws are also pro-city government because they recoup taxes for the city and the state. Most important, combating wage theft is critical to the welfare of Sunnyvale citizens, particularly those who work in low wage jobs, *where wage theft tends to occur* and where it can have a devastating impact on individuals and families and lead to homelessness and other public health problems.

SB588 is not enough. We understand that the City of Sunnyvale staff is recommending a "no" vote because of their belief that the passage of SB588 will solve the problem. SB588 has given the Labor Commission more potential tools to enforce wage and hour laws. The unfortunate reality, however, is that the Labor Commission is understaffed, underfunded, and underresourced and cannot possibly effectively combat the wage theft epidemic in Sunnyvale and Santa Clara County without the aid and action of local governments.

When SB 588 becomes effective on January 1, 2016, there will already be a huge backlog of wage theft judgments that will not be covered by SB588's enforcement provisions. A Public Records Act request to the Labor Commission revealed that there were over 1000 wage theft judgments in Santa Clara County Superior Court from 2011 to 2014 and, of \$8.4 million awarded by the Labor Commission in 2012 and 2013, only \$2.8 million have been collected. Local government can help remedy this long-standing injustice by requiring disclosure of unpaid judgments over the last 5 years and refusing to contract with or renew the permits of delinquent businesses until they have satisfied the judgments or entered into a remediation plan. Santa Clara County has recently enacted a policy that requires such disclosures and that gives itself the authority to deny contracts to businesses with unpaid wage theft judgments.

Enforcement is not restricted to the Labor Commission. We have also heard the argument that enforcement power is restricted to the Labor Commission and not the cities. However, this view is unfounded. In part 4 of the California Labor Code [Sections 1171-1206 (2012)] pertaining to Wages, Hours, and Working Conditions, Section 1205(b) states: "Nothing in this part shall be deemed to restrict the exercise of local police powers in a more stringent manner."

The California State Legislature enacted AB469 to amend Part 4 of the Labor Code in order to impose notice requirements and stricter penalties for failure to comply with wage and hour provisions. The Assembly's Judiciary analysis cited Sec 1205(b) above and went on to remark

approvingly that "some local jurisdictions (eg. San Jose) can and have exercised their authority to enact local wage-related ordinances that provide for stricter penalties than current state law." Leg. Counsel Dig., Bill Analysis, AB 469, Assembly Committee on Judiciary, Apr. 26, 201, p. 8 (see Appendix, p. 4). In fact, the City of Sunnyvale's minimum wage law, which is substantially similar to San Jose's law, states at Section 3.80.090 (d), Enforcement, that "Except where prohibited by state or federal law, City agencies or departments may revoke or suspend any registration certificate, permit, or license held or requested by the Employer until such time as the violation is remedied." All these provisions reflect the view that state power does not preempt local power in the area of wage and hour law; on the contrary, local authorities are needed, encouraged and enlisted to help justice and fairness prevail.

As a result, there ought to be no legal impediment to extending the provisions of Sunnyvale's minimum wage law regarding the suspension or nonrenewal of violators' permits to the parties against whom wage theft judgments have been recorded in Superior Court. It is also clear that there would be no legal impediment to the City of Sunnyvale's amending its contracting policies to authorize bidders on city contracts to disclose unpaid wage theft judgments and to give the City of Sunnyvale the authority to refuse to contract with these bidders until they pay the judgments or enter into a remediation plan.

Other cities are addressing this issue. The City of San Jose voted in June and again last month to make a wage theft ordinance its number one priority, and is currently drafting such an ordinance. This ordinance is on track to follow the language enacted by Santa Clara County relating to disqualifying bids from contractors with unpaid wage theft judgments as well as permitting the City to revoke or refuse to renew certain types of permits. The City Attorney for San Jose has informed us that the City of San Jose is currently studying the permits that it will include in the ordinance but definitely expects to include police permits. As surrounding cities act to address wage theft violations, businesses that exploit employees will look to re-locate in more "wage theft friendly" cities. We do not want Sunnyvale to be one of these cities.

As mentioned above, the vote on January 29 does not commit the City of Sunnyvale to any particular provisions but merely provides an opportunity to study the issue and determine the efficacy and contours of a possible policy and ordinance. A number of jurisdictions including Los Angeles, Houston, Miami Dade, Chicago, Seattle, and San Francisco have enacted such ordinances with varying provisions which are well worth looking into.

We urge you to vote on January 29 to make a wage theft ordinance a study issue in 2016.

Yours Very Truly,

The Wage-Theft Task Force of the Sunnyvale Democratic Club
(Mike Serrone, Ruth Silver-Taube, Don Veith, Carol Weiss, David Wessel)

The Santa Clara County Wage Theft Coalition