

***BIC Regular Meeting
of
March 15, 2023***

Agenda Item 7

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***Agenda Item 7
Summary***

Building Inspection Commission
March 15, 2023

Agenda Item #7

Review and approval of an ordinance to require project sponsors creating 10 or more units of housing to post a wage theft bond prior to the issuance of the first construction document, as that term would be defined in the ordinance, rather than the first building permit issued, as the law is now.

File No. 230134 – Ordinance amending the Police and Building Codes to require owners of certain residential construction projects to maintain a labor compliance bond at the time of issuance of the first construction document; and clarifying that the bonding requirement applies to projects that submitted an application for a building permit or a complete preliminary permit application pursuant to California Government Code, Section 65941.1, on or after June 6, 2022.

NOTE: Only Building Code amendments are for consideration by the Building Inspection Commission

Existing Law

In 2022, the City enacted Article 330 of the Police Code, which requires owners of construction projects that create or add 10 or more residential or sleeping units to maintain a surety bond for labor compliance for work on the project.

Proposed Amendments to Existing Law

Police Code: The proposed ordinance would amend Article 330 to the Police Code to require project sponsors to post the bond prior to the issuance of the First Construction Document. “First Construction Document” is defined in the ordinance to mean the first building permit issued for a project or, in the case of a site permit, the first building permit addendum issued or other document that authorizes construction of the project.

This effectively reduces the time developers must carry the bond – which can be a significant cost – while still protecting workers from wage theft through all phases of construction. Project sponsors can secure the bond when they are issued a permit to begin construction, rather than at the site permit stage, when no construction is underway.

Building Code: The ordinance would clarify in the building code that the obligation to post the bond applies to projects that have submitted a building permit, or preliminary permit application pursuant to Government Code 65941.1 on or after the effective date of Article 330 of the Police Code (June 6, 2022).

This provision is to comply with SB 330, a state law enacted in January 2020, which prohibits a local agency from adding requirements that project sponsors must comply with after they submit a completed permit application.

***BIC Regular Meeting
of
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***Agenda Item 7
CAC Letter***



March 10, 2023

Building Inspection Commission
49 South Van Ness Avenue
San Francisco, CA 94103

Re: Board of Supervisors Ordinance (File No. 230134) amending the Police and Building Codes to require owners of certain residential construction projects to maintain a labor compliance bond at time of issuance of the first construction document; and clarifying that the bonding requirement applies to projects that submitted an application for a building permit, in addition to other requirements.

Honorable Members of the Commission:

The March 8, 2023 regular meeting of the full Code Advisory Committee (CAC) voted unanimously to make a recommendation to the Building Inspection Commission to approve the changes to Police and Building Code as written in File No. 230134.

The committee went on to pass a motion to inform the Building Inspection Commission that the Code Advisory Committee does not support the original legislation because of the increase in cost to construction in San Francisco. If the original legislation cannot be rescinded, the committee requests documentation regarding labor issues, project sizes, changes to table in order to lower bond amounts and exclude remodel projects.

Respectfully submitted,

A handwritten signature in blue ink that reads "Thomas Fessler".

Thomas Fessler
DBI Technical Services
Secretary to the Code Advisory Committee

cc. Patrick O'Riordan, C.B.O. Director
Neville Pereira, Deputy Director
Christine Gasparac, Deputy Director
Janey Chan, Manager
Stephen Harris, S.E, Chair, Code Advisory Committee

Technical Services Division
49 South Van Ness Avenue – San Francisco CA 94103
Office (658) 652-3720 – www.sfdbi.org

BOARD of SUPERVISORS



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MEMORANDUM

TO: Patrick O'Riordan, Director, Department of Building Inspection
Sonya Harris, Commission Secretary, Building Inspection Commission

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

DATE: February 14, 2023

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by Supervisor Mandelman on February 7, 2023:

File No. 230134

Ordinance amending the Police and Building Codes to require owners of certain residential construction projects to maintain a labor compliance bond at the time of issuance of the first construction document; and clarifying that the bonding requirement applies to projects that submitted an application for a building permit or a complete preliminary permit application pursuant to California Government Code, Section 65941.1, on or after June 6, 2022.

The proposed ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports 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: Patty Lee, Department of Building Inspection

1 [Police, Building Codes - Wage Theft Bonds]

2

3 **Ordinance amending the Police and Building Codes to require owners of certain**
4 **residential construction projects to maintain a labor compliance bond at the time of**
5 **issuance of the first construction document; and clarifying that the bonding**
6 **requirement applies to projects that submitted an application for a building permit or a**
7 **complete preliminary permit application pursuant to California Government Code,**
8 **Section 65941.1, on or after June 6, 2022.**

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.

13

14

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

16

17 Section 1. Findings.

18

19 (a) On _____, the Building Inspection Commission considered this
20 ordinance at a duly noticed public hearing pursuant to Charter Section D3.750-5.

21

22 (b) No local findings are required under California Health and Safety Code Section
23 17958.7 because the amendments to the Building Code contained in this ordinance do not
24 regulate materials or manner of construction or repair, and instead relate in their entirety to
25 administrative procedures for implementing the code and remedies available for enforcing
code violations, which are expressly excluded from the definition of a "building standard" by
California Health and Safety Code Section 18909(c).

26

27

1 Section 2. Article 33O of the Police Code is hereby amended by revising Sections
2 3300O.3 and 3300O.5, to read as follows:

3 **SEC. 3300O.3. DEFINITIONS.**

4 For purposes of this Article 33O, the following definitions apply.

5 * * * *

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

10 "First Construction Document" means the first building permit issued for a Project or, in the
11 case of a site permit, the first building permit addendum issued or other document that authorizes
12 construction of the Project. "Construction Document" shall not include permits or addenda for
13 demolition, grading, shoring, or site preparation work.

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

16 "Project" means a development in Residential Group R, as defined in Building Code
17 Section 310.1, ~~issued a permit under Building Code Section 106.4~~ requiring a Bond under Building
18 Code Section 106A.1.18 that submits an application for a building permit or a complete Preliminary
19 Permit Application pursuant to California Government Code Section 65941.1 on or after the effective
20 date of this Article 33O, to construct, enlarge, alter, repair, improve, or convert a building or a
21 portion thereof that results in the creation or addition of 10 or more residential or sleeping
22 units within the geographic boundaries of the City. Notwithstanding the foregoing definition,
23 "Project" does not include a residential development that is subject to local, state, or federal
24 prevailing wage requirements or a valid Project Labor Agreement or Community Workforce
25 Agreement.

1 **SEC. 3300O.5. BOND.**

2 (a) **Filing and maintenance of Bond.** Prior to obtaining a First Construction
3 Document ~~a permit under Building Code Section 106A~~, an Owner or Owners of a Project shall file
4 with the Controller a Bond naming the City as exclusive beneficiary, or other acceptable
5 security as determined by the Controller. The Bond shall contain conditions that require the
6 Owner holding the Bond to comply fully with all provisions of this Article 33O and to
7 acknowledge that the Bond or portions thereof may become payable to the City, to be used to
8 satisfy a determination of violation of a City labor protection for work on the Project, under the
9 conditions set forth in Police Code Section 3300O.5(d). Subject to subsection (d), the Bond
10 shall be filed and maintained in not less than the following amounts:

11 Estimated Project Cost	11 Bond Amount
12 Less than \$5,000,000	\$500,000
13 \$5,000,000 to \$7,500,000	\$750,000
14 \$7,500,000.01 to \$10,000,000	\$1,000,000
15 More than \$10,000,000	\$1,250,000

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

18 * * * *

19 Section 3. The Building Code is hereby amended by revising Section 106A.1.18 to
20 read as follows.

21 **106A.1.18. Labor Compliance Bonds for Certain Residential Projects.**

22 As the terms "Project" and "First Construction Document" are defined in Police Code Section
23 3300O.3, and may be amended from time to time, a First Construction Document shall not be issued
24 ~~With respect to a building or structure that is a Project as defined by Police Code Section 3300O.3, as~~
25 ~~may be amended from time to time, a permit shall not be issued under Section 106A to a Project that~~

1 filed an application for a building permit or a complete Preliminary Permit Application pursuant to
2 California Government Code Section 65941.1 on or after the effective date of Police Code Article
3 330 ~~until~~ unless the Department has received written confirmation from the Controller that the
4 surety bond required under Police Code Section 33000.5(a) has been filed.

5
6 Section 4. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor's veto of the ordinance.

10
11 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the "Note" that appears under
16 the official title of the ordinance.

17
18 Section 6. Preemption.

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

22
23 Section 7. Undertaking for the General Welfare.

24 In undertaking the adoption and enforcement of this ordinance, the City is undertaking
25 only to promote the general welfare. The City is not assuming, nor is it imposing on its officers

1 and employees, an obligation for breach of which it is liable in money damages to any person
2 who claims that such breach proximately caused injury. This ordinance does not create a
3 legally enforceable right by any member of the public against the City.
4

5 Section 8. Severability.

6 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
7 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
8 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
9 remaining portions or applications of this ordinance. The Board of Supervisors hereby
10 declares that it would have passed this ordinance and every section, subsection, sentence,
11 clause, phrase, and word not declared invalid and unconstitutional without regard to whether
12 any other portion of this ordinance or application thereof would be subsequently declared
13 invalid or unconstitutional.
14

15 APPROVED AS TO FORM:
16 DAVID CHIU, City Attorney

17 By: /s/ _____
18 AUSTIN M. YANG
Deputy City Attorney

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24
25

LEGISLATIVE DIGEST

[Police, Building Codes - Wage Theft Bonds]

Ordinance amending the Police and Building Codes to require owners of certain residential construction projects to maintain a labor compliance bond at the time of issuance of the first construction document; and clarifying that the bonding requirement applies to projects that submitted an application for a building permit or a preliminary permit application pursuant to California Government Code Section, 65941.1, on or after June 6, 2022.

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.

In 2022, the City enacted Article 33O of the Police Code, which requires owners of construction projects that create or add 10 or more residential or sleeping units to maintain a surety bond for labor compliance for work on the project.

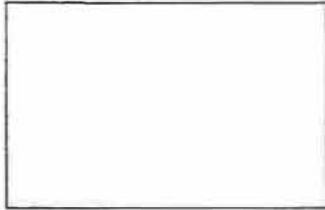
Amendments to Current Law

The proposed ordinance would amend Article 33O to the Police Code to require project sponsors to post the bond prior to the issuance of the First Construction Document, as that term would be defined in the ordinance. In addition, the ordinance would clarify that the obligation to post the bond applies to projects that have submitted a building permit, or preliminary permit application pursuant to Government Code 65941.1 on or after the effective date of Article 33O of the Police Code (June 6, 2022).

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Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



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

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor [redacted] inquires..."
- 5. City Attorney Request
- 6. Call File No. [redacted] from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. [redacted]
- 9. Reactivate File No. [redacted]
- 10. Topic submitted for Mayoral Appearance before the Board on [redacted]

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

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

Sponsor(s):

Mandelman

Subject:

[Police, Building Codes - Wage Theft Bonds]

Long Title or text listed:

Ordinance amending the Police and Building Codes to require owners of certain residential construction projects to maintain a labor compliance bond at the time of issuance of the first construction document; and clarifying that the bonding requirement applies to projects that submitted an application for a building permit or a complete preliminary permit application pursuant to California Government Code Section 65941.1 on or after June 6, 2022.

Signature of Sponsoring Supervisor:



Ordinance to Amend the Labor Compliance Bond Requirement

Building Inspection Commission – Agenda Item #7

March 15, 2023

File No. 230134

Review and approval of an ordinance amending the existing requirement for sponsors creating 10 or more units of housing to post a labor compliance bond prior to the first building permit issued, by instead requiring the bond prior to the issuance of the “first construction document” and applying this requirement to projects with an application submitted after June 6, 2022.

File No. 230134

The way it is now:

As of June 2022, projects that create or add 10 or more residential or sleeping units are required to maintain a surety bond for labor compliance for work on the project in case of wage theft claims.

Proposed amendments:

Amend Article 330 to the Police Code to require project sponsors to post the bond prior to the issuance of the “First Construction Document” rather than the first building permit issued.

Amend the Building Code to clarify the obligation to post the bond applies to projects that have submitted a building permit application or preliminary permit application prior to June 6, 2022 (the date that Police Code 330 was enacted).