

CITY OF OAKLAND

# AGENDA REPORT


**TO:** Jestin D. Johnson  
City Administrator

**FROM:** Emily Weinstein  
Director, Housing and  
Community Development

**SUBJECT:** SUPPLEMENTAL RE: Ordinance to  
Establish Construction Workforce  
Related Reporting Standards

**DATE:** June 24, 2024

City Administrator Approval

  
Jestin Johnson (Jul 1, 2024 17:01 PDT)

Date: Jul 1, 2024

## **RECOMMENDATION**

**That The City Council Accept A Supplemental Report Regarding A Proposed Ordinance Adding Chapter 15.80 To The Oakland Municipal Code To Establish Construction Workforce Related Reporting Requirements For Developments With At Least 100 Residential Units Or 100,000 Square Feet Of New Floor Area; And Making Appropriate California Environmental Quality Act Findings**

## **REASON FOR SUPPLEMENTAL**

City staff seeks to raise questions and concerns for consideration on the proposed ordinance adding Chapter 15.80 to the Oakland Municipal Code (OMC). Staff is requesting that the City Council (Council) delay consideration of this proposed ordinance on workforce reporting standards to the first Community and Economic Development Committee in January 2025, with direction to staff to prepare a further supplemental report. This would enable staff to further analyze several of the challenges raised in this report. Staff particularly wishes to call attention to how the proposed ordinance could pose a new barrier for housing construction. If a new barrier to housing construction is enacted before being adequately analyzed, this ordinance could endanger the certification of the City's Housing Element. In a worst-case scenario, loss of the Housing Element certification would cut off Oakland's access to State affordable housing funding and cause the Council to lose control of local land use via imposition of the "Builder's Remedy." The proposed ordinance would generate additional City staffing costs for which a funding source has not yet been identified and have a negative impact on future revenue growth. Implementing this ordinance will require a reduction in other services to offset the cost of implementation.

## **INITIAL QUESTIONS AND CONSIDERATIONS**

- 1. What public policy interest does the Council seek to accomplish with a mandate for market-rate housing, commercial, and industrial development to provide reports pursuant to the proposed ordinance? If Council decides to restrict the application of the proposed ordinance to only affordable housing, what information does Council seek to collect that is not already collected by existing City and State reporting requirements?**

As currently drafted, the proposed ordinance would require a broad suite of workforce reporting for both market-rate and affordable housing, as well as any commercial or industrial project that exceeds the specified 100,000 square-foot threshold. It is unclear what the legal authority would be to use data about the workforce of market-rate housing, commercial, and industrial development to impose any new requirements on these projects. Staff therefore seek clarification on the purpose of collecting this information. If no ready application for this market-rate information exists, the Council may wish to exclude market-rate housing, commercial, and industrial projects from the scope of the proposed ordinance.

If market-rate housing and commercial/industrial projects are excluded in a revised version of the proposed ordinance, the only project type left would likely be City-funded affordable housing. As further discussed in guiding question #2, the City already imposes extensive reporting requirements for such City-funded projects. Staff would welcome clarification from the Council on what new information, if any, the Council would like to secure from this project reporting. This clarity would enable staff to assess options to gather this information and provide better advice to Council on what combination of analysis, system adjustments, and reporting requirements can best generate the desired information.

- 2. Could existing workforce reporting requirements provide the desired data to the Council if the Department of Workplace and Employment Standards (DWES) receives additional investments to enhance their analytical capacity?**

The City of Oakland currently requires significant reporting for City-funded affordable housing developers and other City contractors. This reporting includes:

- Reporting on compliance with Oakland's Small/Local Business Enterprise requirement, which is typically set at 50% for City-funded affordable housing.
- Submission of certified payroll to confirm that City-funded affordable housing complies with the prevailing wage requirement.
- Submission of information to confirm compliance with the 15% apprenticeship requirement that is generally required for City-funded affordable housing.

The information described above touches on several of the reporting requirements in the proposed ordinance. While contractors submit some records electronically into systems such as LCP Tracker; for the most part, contractors send DWES files in PDF, Word, and Excel format. These files are not in a readable data format and need to be manually entered into a data system and formatted to be analyzed and aggregated. DWES is

starting to build its capacity to collect, organize, and utilize data for insights, but has not reported aggregated data on levels of local or minority contractor participation or worker employment. DWES staff review files/records to determine project compliance with the L/SLBE program, prevailing wage, and local employment standards. The department is primarily staffed with compliance officers to review projects, not program analysts or data analysts to aggregate the data and report trends or program evaluations. If there are different compliance and reporting standards for market-rate housing, the DWES compliance staff would need additional training.

Before imposing a new set of reporting requirements on developers, DWES would require additional resources. Given the current fiscal situation, funding would come at a reduction of other services. EWD staff note that one such competing priority is the ongoing effort to streamline the Small/Local Business Enterprise enrollment process for minority-led businesses. Although DWES staff have given some preliminary consideration to how additional funding would enhance their department's analytical capacity, a full budget proposal is not yet available.

**3. Adding additional administrative burden would likely be an impediment to new development of housing, office, and industrial projects in Oakland. How large an impediment would these new requirements be, and could this new burden on housing development result in a loss of certification for Oakland's Housing Element?**

As currently drafted, the proposed ordinance would impose reporting requirements on most new housing, commercial, and industrial development. Complying with the new rules would increase the administrative burden- and therefore cost- of development. Staff have not yet had the opportunity to quantify the added project costs imposed by the proposed ordinance. Staff are therefore unable to accurately assess how much the proposed ordinance could depress the production of new housing, commercial, and industrial space in Oakland.

An impact assessment requires additional analysis by both the Housing & Community Development Department (HCD) and the Economic & Workforce Development Department (EWD). Staff expect a proper analysis of the proposed ordinance would require several months in light of other key City priorities.

The State of California's Housing and Community Development Department ("the State") generally perceives new local requirements on housing development that increase project costs to be a "constraint" on housing development. In order to maintain compliance with State Housing Element law, the City is required to adequately analyze potential constraints on development prior to enactment and, if necessary, adopt compensating policies to offset the lost housing production. If the City fails to adequately analyze a potential constraint on housing development, the State can revoke the City's Housing Element certification. A revoked Housing Element certification would cause the City to be excluded from tens of millions of dollars in State funding opportunities for affordable housing. If the City loses its Housing Element certification, developers would also gain the right to disregard local zoning limits via the "Builder's Remedy." A loss of

Housing Element compliance would also lead to an automatic revocation of the City's Prohousing Designation. If the Prohousing Designation is revoked, the City would be disqualified from receiving, at minimum, an award for our \$1.39 million Prohousing Incentive Program grant application.

**4. Would the proposed ordinance have indirect negative consequences on the City budget if the added administrative burden discourages the construction of taxable projects?**

As noted above, staff have not yet had the opportunity to assess how much the proposed ordinance could depress the production of new housing, commercial, and industrial space in Oakland. Based on the Council's stated desire to use new economic growth to address the City's long-term budget challenges, staff recommend the Council consider an analysis of the proposed ordinance's impact to the City budget. If the proposed ordinance has even a modest impact on new development, there would be commensurate reductions in property and business tax revenue. A staff analysis may be able to quantify any potential economic growth and tax revenue impacts from the proposed ordinance.

**5. The proposed ordinance notes that the Planning and Building Department, is to receive these reports but does not identify any further processing, analysis, or dissemination of the information nor a funding mechanism for these additional duties. In addition to receipt of the required regular report submittals, the proposed Ordinance charges the Planning and Building Department to withhold temporary and final Certificates of Occupancy until the developer has submitted a Final Report. The Ordinance is silent on both the delegation of and on the standard for review of the submittal contents.**

As currently written, the proposed ordinance would condition the issuance of a project's Temporary Certificate of Occupancy and final Certificate of Occupancy on compliance with the reporting requirements contained in the ordinance. The ordinance would therefore impose a new requirement on the Planning and Building Department (PBD) to monitor compliance for submittal. The delegation of the assignment for the compilation of reports for analysis and dissemination is unclear inasmuch as PBD does not have the expertise to make any assessment of the submittal content. The monitoring and enforcement of these construction workforce related standards exceeds PBD's responsibility under its current resource and technical constraints. This function would be more appropriately assigned to DWES, the department that acts as the City's regulatory authority for laws and policies related to labor standards. PBD could serve to receive the information, but it would need to be conveyed to DWES or another entity with content expertise to perform any analysis of the submittal for its intended purpose.

The proposed ordinance requires quarterly reporting in addition to submitting a final report with supporting documentation such as payroll records and benefit reports. With supporting documentation only required at the conclusion of a project, there is no way to validate these reports from developers for accuracy until the completion of a project. Developing mechanisms to receive and validate these reports and supporting

documentation requires substantial staff time and resources. If one of the goals of this proposed ordinance is to publish public reports on these projects, this would also require dedicated resources. Here again, the City needs to identify an appropriate department and office to manage these added requirements if they are to be adopted.

If this ordinance is to be adopted, DWES would be best situated for the information receipt, analysis, and dissemination. Regardless of what department undertakes this responsibility, staff also seeks clarity on if the Council intends to appropriate General Fund ) to accommodate the costs of implementing this new requirement or perform a fee assessment to establish a charge associated with the restrictive permit types cited in the Ordinance. If Council does not intend to make a new appropriation, staff would seek clarity from Council on what duties, programs, and projects to deprioritize. As mentioned above, given the City's fiscal situation, reallocation of resources for this new initiative would need to come at a reduction to other services unless the Council contemplated as new fee to be charged to these developers for the new work associated with this Ordinance.

**6. A major discussion point at the June 11<sup>th</sup> Community and Economic Development Committee was the demographic composition of union and non-union workers. If Council ultimately adopts this ordinance, would the ordinance benefit from a requirement that the demographics of union members and non-members on covered projects be separately reported?**

As currently written, the proposed ordinance contains mandates for covered projects to report on a wide variety of workforce information such as demographics, city of residence, and apprenticeship participation. During the June 11<sup>th</sup> Community and Economic Development Committee meeting, the discussion largely revolved around the workforce characteristics of all-unionized projects versus projects that are not all-unionized. A particular focus of the conversation, as highlighted by Director Flynn's remarks on behalf of the Department of Race and Equity, was the City's inability to secure demographic information on the membership of the Building Trades Unions. Staff seeks to understand if Council intends to add more specific reporting requirements to the draft ordinance to disaggregate demographic information for employees on covered projects by union membership status.

### **FISCAL IMPACT**

Staff have not yet had the opportunity to fully analyze the fiscal impact of the proposed ordinance. If directed by Council to do so, staff can work to prepare a more comprehensive impact analysis for the proposed ordinance and begin to quantify some of the fiscal implications. At present, staff anticipate the possible fiscal impacts:

- An unknown increase in costs for DWES to hire additional staff to analyze and report on the information collected by the proposed ordinance;
- An unknown increase in costs to track project compliance with the ordinance and collect quarterly reporting from covered projects;

- An unknown fee to monetize the costs for the additional services in processing this information;
- An unknown increase in costs for City-funded affordable housing due to the cost of the added administrative burden. This would either reduce the number of units built with existing City affordable housing resources or require an unknown additional investment in affordable housing to compensate for the added expense;
- An unknown decrease in expected revenue growth from business and property taxes if the administrative burden of the new ordinance reduces the rate of market-rate housing, commercial, and industrial development in Oakland.

If the City loses its Housing Element certification as a result of adopting the proposed ordinance without conducting the necessary level of analysis, additional fiscal impacts may include:

- Disqualification of the City's pending \$1.39 million application for the Prohousing Incentive grant program;
- Ineligibility for tens of million of dollars in upcoming State affordable housing funding opportunities for affordable housing projects in Oakland, which would either A) require a corresponding increase in City investment in affordable housing to offset, or B) increase homelessness-related costs on the City budget.

### **PUBLIC OUTREACH / INTEREST**

No public outreach was conducted for the purpose of this supplemental report. If directed to return to Council with a comprehensive analysis of the impacts of the proposed ordinance, staff will work with applicable stakeholders to complete the analysis.

### **COORDINATION**

This report was reviewed by the Department of Workplace and Employment Standards, the Department of Planning & Building, the Economic & Workforce Development Department, the Budget Bureau, and the Office of the City Attorney.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That City Council Accept A Supplemental Report Regarding A Proposed Ordinance Adding Chapter 15.80 To The Oakland Municipal Code To Establish Construction Workforce Related Reporting Requirements For Developments With At Least 100 Residential Units Or 100,000 Square Feet Of New Floor Area; And Making Appropriate California Environmental Quality Act Findings

For questions regarding this report, please contact Caleb Smith, Senior Policy Analyst, at (510) 590-6275.

Respectfully submitted,

*Emily Weinstein*

Emily Weinstein (Jul 1, 2024 16:30 PDT)

---

Emily Weinstein, Director, Housing and  
Community Development

Reviewed by:  
Emylene Aspilla, Director, Workplace and  
Employment Standards

William Gilchrist, Director, Planning and  
Building

Cristy Johnston, Deputy Director, Economic  
and Workforce Development

Prepared by:  
Caleb Smith, Senior Policy Analyst, Housing  
and Community Development