

Guillen, Dora

From: Adam Wood BILD <awood@bildfoundation.org>
Sent: Monday, May 4, 2026 12:37 PM
To: Adam Wood BILD
Subject: BILD Inquiry Re Subcontractor Disclosure Ordinance
Attachments: BILD Letter Requesting Clarification.pdf

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Please see the attached letter wherein we outline areas needing clarification on the proposed subcontractor disclosure ordinance.

Thank you.

-Adam

Adam S. Wood

Administrator
Building Industry Legal Defense Foundation
awood@bildfoundation.org

ph: (949) 777-3860 w: bildfoundation.org
Address: 17192 Murphy Ave., #14445, Irvine, CA 92623



BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION

May 4, 2026

Chairman Doug Chaffee
Orange County Board of Supervisors
400 W Civic Center Drive
Santa Ana, CA 92701

Re: Clarifications on the Proposed Subcontractor Disclosure Ordinance

Dear Chairman and Supervisors,

I am writing to respectfully request clarification regarding certain provisions of the proposed ordinance, specifically Sections 7-1-3(a)(2) and 7-1-3(a)(3). While I appreciate the County's intent to promote fair labor practices and accountability, several aspects of the current language raise concerns about ambiguity, enforceability, and potential unintended legal consequences.

By way of background, the Building Industry Legal Foundation (BILD) is a non-profit mutual benefit corporation providing legal support, research and litigation services dedicated to increasing the production of housing in response to the State's overwhelming shortage.

With respect to Section 7-1-3(a)(2), the requirement that a contractor "verifies that the subcontractors have appropriate workers' compensation insurance" introduces uncertainty. State law already requires that all employers provide/carry workers' compensation insurance. There are robust penalties—including criminal liability—for failing to provide comp coverage, including fines of up to \$100,000. What more is the county seeking to achieve here beyond the protections already provided by the state?

Next, on a more granular level, the phrase "appropriate" as in "appropriate workers' compensation insurance" is not defined and can vary by industry. Can/will the County take the position that permissibly self-insuring is not "appropriate"? Can/will the County take the position that certain heightened requirements for workers' compensation policies are required for coverage to be "appropriate?" The lack of clarity here creates impermissible uncertainty.

Additionally, the term "verifies" is itself undefined. Can the general contractor take the sub's presentation of a WC policy face page as sufficient? Does the GC need to look up on the DIR and WCIRB which insurer provides workers' compensation insurance for a specific employer? Again, without these issues being addressed in the proposed language, legal exposure is created for even the best good-faith actors attempting to comply with county requirements. How does the County plan to address this concern?

Moving to section 7-1-3(a)(3), we examine the required disclosure of "final determinations pertaining to state and federal law code violations and any criminal convictions, judgments, and penalties paid to a government agency within the prior five (5) years from the date of application, including the nature of the violation, the result, penalties assessed, convictions, and judgments."

A “final determination” is undefined and varies by agency. Also, agency “final determinations” can typically be appealed to the trial courts or courts of appeal. At what point does the county consider a determination to be final? Is a decision no longer final if an appeal is later filed?

Next, the criminal conviction disclosure requirement is particularly problematic. There is no carve-out for convictions that were overturned, expunged, or otherwise sealed. Basing denial of a permit on such convictions would constitute a violation of public policy and there is no correlation between the information requested and fair labor practices. Additionally, many Superior Courts restrict access to criminal files in accordance with state law and/or do not disclose dates of birth in criminal files. Thus, there is no reliable way to verify the criminal information disclosed without running a background check on everyone. Is this the intent of the County with this proposed ordinance?

A compounding concern is that the California Civil Rights Department has increased the pace of enforcement actions involving employers unlawfully refusing to hire individuals with criminal histories. This ordinance creates a chilling effect with potentially serious consequences for employers. If a court concluded that the reporting requirements create an across-the-board preference for non-convicts where the conviction has no bearing on the job, that may violate constitutional protections against non-discrimination. How does the proposed county ordinance plan to address this new potential liability for those trying to comply with the proposed language?

As a final note, we will also reference Assembly Bill 2064. This measure has been introduced and is making its way through committees. This bill would add “criminal history” as a new protected characteristic under both the Unruh Civil Rights Act (Civil Code Section 51) and the California Fair Employment and Housing Act (FEHA), significantly expanding the legal obligations of employers, housing providers, and businesses across the state. Is there a plan in place for amending the proposed language in the ordinance should this Assembly Bill become law?

We greatly appreciate your consideration of the questions posed in this letter and look forward to your response.

Sincerely,



Adam Wood
Administrator
Building Industry Legal Defense Foundation
17192 Murphy Avenue, #14445
Irvine, CA 92623