

**OFFERED BY COUNCILORS BENJAMIN J. WEBER, JULIA MEJIA, ENRIQUE PEPÉN, BREADON, DURKAN, FERNANDES ANDERSON, FITZGERALD, FLYNN, MURPHY, PEPEN, SANTANA, WORRELL AND LOUIJEUNE**



## **CITY OF BOSTON IN CITY COUNCIL**

### **ORDINANCE PREVENTING WAGE THEFT IN THE CITY OF BOSTON**

**WHEREAS:** “Wage theft” refers to the improper withholding of workers’ earned wages by an employer. Wage theft takes many forms, including the failure to pay employees for work performed, independent contractor misclassification, misclassification of employees as exempt from overtime pay, tip stealing, failure to pay wages in a timely manner, and prevailing wage job misclassification; and

**WHEREAS:** Studies have repeatedly shown that wage theft is concentrated among low-wage workers, and particularly women, minorities, non-citizens, and non-union workers, many of whom do not know their workplace rights or are too worried about retaliation by current or even future employers to bring their claims forward; *and*

**WHEREAS:** Wage theft is often accompanied by employer tax and insurance fraud, with employers failing to pay their payroll taxes, workers compensation premiums, or unemployment insurance premiums; *and*

**WHEREAS:** As a result, wage theft is common in industries such as the hospitality service industry, janitorial services, and construction. For example, in June 2021, a UMass Amherst study estimated that, in Massachusetts, misclassification of employees in the construction industry had led to a shortfall in the state’s unemployment insurance fund for 2019 of between \$24.5 and \$40.6 million; *and*

**WHEREAS:** The City of Boston spends hundreds of thousands of dollars each year on procurement of various goods, services, and labor across every City department and agency; *and*

**WHEREAS:** The City of Boston, as a consumer, must be cognizant of the impact that its consumption has on the workers that provide their labor pursuant to City contracts; *and*

**WHEREAS:** In an effort to combat wage theft, in October 2014, former City of Boston Mayor Martin J. Walsh signed an Executive Order Establishing Requirements for City Contracts in an Effort to Prevent Wage Theft (referred to as “Executive Order”). The Executive Order required City vendors to 1) verify their compliance with federal and state wage laws; 2) report wage law violations; 3) provide a wage bond where such violations existed; and 4) the Order debarred vendors who committed repeated wage violations; *and*

**WHEREAS:** The Executive Order further allowed the Boston Licensing Board to revoke or deny licenses to businesses who commit wage violations. It does not appear, however, that even a single license has been revoked or denied due to wage violations since the Executive Order was enacted; *and*

**WHEREAS:** Wage theft continues to be an issue in Boston, including with businesses that contract with the City. A recent study by Mayor Michelle Wu’s Worker Empowerment Cabinet of wage theft violations issued by the Massachusetts Attorney General’s Office and the United States Department of Labor found that 35 percent of Boston wage theft violations (totaling around \$4.3 million in wages and penalties) involved companies that had a City of Boston license or contract.

**WHEREAS:** Wage theft also makes it harder for honest businesses to compete and creates a race to the bottom for the City’s business community, as well as impeding the City’s economic development and growth; *and*

**WHEREAS:** It has long been recognized that the underlying purpose of the wage laws concerns not only the health and welfare of the workers themselves, but also the public health and general welfare. Accordingly, wage theft directly impacts Boston residents’ health and contributes to the racial wealth gap, making it difficult for the City’s low-wage workers to pay for housing or basic services such as health or child care; *and*

**WHEREAS:** Requiring city contractors, subcontractors and bidders to comply with applicable federal and state wage laws, strengthens the City’s ability to contract with vendors that ensure that workers are properly paid for their work; *and*

**WHEREAS:** Prohibiting the City from contracting with debarred contractors for the period of debarment will help to ensure that City resources are not used to support businesses which either intentionally violate state and federal wage laws or permit such violations to occur on projects they oversee; *and*

**WHEREAS:** Withholding businesses licenses will help the City ensure its workers are treated fairly and that honest business practices that comply with already-existing law are incentivized; *and*

**WHEREAS:** The Boston City Council has a duty to protect employees from predatory employer practices like wage theft; **NOW THEREFORE**

***Be it ordained by the City Council of Boston as follows:***

That the City of Boston Code, Ordinances be amended in Chapter XXIV by adding the following after 24-14:

**25-1: Ordinance preventing wage theft in the City of Boston**

Section 1. Purpose

The purpose of this ordinance is to assure that all workers in the City of Boston are paid in full, for all hours worked on a timely basis and that Boston employers who pay their workers in compliance with applicable wage and hour laws are not undercut by non-compliant employers.

This ordinance will facilitate the enforcement of state and federal wage and hour laws and promote the public welfare of Bostonians. This ordinance is also intended to bolster compliance with the City's existing licensing and permitting requirements.

Section 2. Definitions

A. For the purpose of this Ordinance, the following definitions apply:

1. "Employee" - any natural person who performs work for an employer that provides any services within the City of Boston, but shall not include a bona fide independent contractor as defined by G.L. c. 149, § 148B;

2. "Employer" - any natural person or business, whether or not incorporated or unincorporated, who (1) employs an individual in the City of Boston; (2) employs an individual pursuant to a contract to which the City of Boston or one of its Departments is signatory, or under agreement with the City for tax incentives; or (3) who otherwise maintains a commercial presence in the City of Boston. The use of a subcontractor shall not be a bar to a finding of a person or entity as an employer. An individual may be considered to be an employer in addition to an incorporated business as defined by G.L. c. 149, § 148.

This definition excludes:

1) The United States or a corporation wholly owned by the government of the United States; and

2) The Commonwealth of Massachusetts, its subdivisions, and corporate bodies.

3. "Employ," including as used in the term "employment," is governed by the ABC Test outlined in G.L. c. 149, § 148B ("Massachusetts Independent Contractor Law").

4. "Independent contractor" - as defined in G.L. c. 149, § 148B and any applicable regulations or advisory guidance implementing that statute.

5. “Joint employer” – includes any Employer who suffers or permits an individual to perform work for another entity such as a subcontractor.
6. “Minimum wage” – as defined at G.L. c. 149 §§ 27-27H, 152A, G.L. c. 151, § 1 and 29 U.S.C. § 206 as well as any other state or federal statute or regulation establishing a minimum fair wage for particular occupations or classes of workers.
7. “Overtime” – as defined in G.L. c. 151, § 1A and 29 U.S.C. § 207.
8. “Prevailing wage” – as defined in G.L. c. 149, §§ 26-27H or under federal prevailing wage laws and/or regulations, 40 U.S.C. § 3141, et seq and 41 U.S.C. 351, et seq.
9. “Timely Payment of Wages” – as defined by G.L. c. 149, § 148.
10. “Wage” – as defined by G.L. c. 149, §148 and/or 29 U.S.C § 201.
11. “Wage Theft” – any action or omission by an employer, the employer’s officers, agents, or employees, causing an employer to violate federal or state wage laws, such as 29 U.S.C. § 201 et seq., Massachusetts Wage Act, M.G.L. c. 149, §§ 148, 150, federal or state prevailing wage laws, resulting from claims including those of improper (1) classification as an independent contractor and/or non-employee exempt from federal and state minimum wage and/or overtime laws, or any other alleged misclassification under federal or state laws or any alleged misclassification related to other employment-related claims; (2) deductions from compensation and/or wages; (3) failure to pay minimum wages; (4) failure to provide proper pay stubs or other records related to hours worked, wages earned, and/or payroll deductions; (5) failure to pay, indemnify, and/or reimburse for work-related expenses; (6) failure to pay all wages when due; (7) failure to calculate and/or pay overtime compensation; (8) failure to pay or allow the use of accrued vacation or sick time; and (9) failure to keep and maintain any records required to be kept or maintained under federal and/or state wage and hour laws. This list is not exhaustive.
12. “Application” – an initial application or a renewal of a license or permit.
13. “City Contractor” – an Employer who currently holds or seeks to hold a contract for goods, services, or labor with the City of Boston.
13. “Administrative Citation” – a civil citation issued by the Attorney General of the Commonwealth pursuant to G.L c. 149 § 27C, a civil citation issued by the U.S. Department of Labor pursuant to 29 U.S.C. § 201 et seq. and/or 29 C.F.R. § 578, or any other civil citation for violation of M.G.L. c. 149 or c. 151 and/or 29 U.S.C. § 201 et seq. issued by any other federal, state, or local administrative agency.
14. “Civil Judgment” – a judgment issued by a State or Federal court, including a final adjudication or a ruling on summary judgment, concluding as a matter of law that a contractor

or subcontractor committed wage theft as defined in this Ordinance or misclassification of employees pursuant to Federal law or the law of any State.

15. “Stop work order” – as defined in G.L. c. 152, § 25C and 452 C.M.R. § 8.00.
16. “Subcontractor” – a person other than a materialman or laborer who enters into a contract with a contractor for the performance of any part of such contractor’s contract.
17. “TIF Agreement” – a tax increment financing agreement, as such term is defined by G.L. c. 23A, § 3A, c. 40, § 59, and 760 C.M.R. 22.00 et seq.
18. “TIF Plan” – a tax increment financing plan, as such term is defined by 760 C.M.R. 22.00 et seq.
19. “EACC” – Economic assistance coordinating council, as defined by G.L. c. 23A, § 3A and established by G.L. c. 23A, § 3B.

### **SECTION 3. Office of Labor Compliance and Worker Protection and Wage Theft Advisory Committee.**

#### **Purpose**

The City of Boston’s Office of Labor Compliance and Worker Protection (OLCWP) shall implement and provide oversight of the City’s Wage Theft Prevention activities, including but not limited to community outreach, complaint intake and resolution, coordination with other City departments as set forth below, oversight and performance of this Ordinance’s provisions relative to City procurement as set forth below, and cooperation and coordination with the Commonwealth’s Office of the Attorney General on issues of common concern. The OLCWP shall also develop guidance, policies, and recommendations from time to time in connection therewith. The OLCWP may take on additional duties related to and advancing the purposes of this Ordinance at the request of the Mayor.

#### **Wage Theft Advisory Council**

The Office of the Mayor shall appoint an Advisory Council of seven members with knowledge of the many communities vulnerable to wage theft in the City of Boston and/or experience in combating wage theft.

The Advisory Council shall include one member representing worker centers, one member from a group of three names nominated by the Greater Boston Labor Council, one member from a group of three names provided by the Greater Boston Chamber of Commerce, and one member nominated by the Boston City Council President.

Vacancies on the Council shall be filled as soon as practicable.

The Advisory Council shall meet with the OLCWP on a periodic basis. Consultations between the Advisory Council and the OLCWP shall include, but not be limited to, the establishment and maintenance of a community-based outreach program working with each of the City's communities vulnerable to wage theft to facilitate public education and the eradication of wage theft.

**Powers and Duties of the Office of Labor Compliance and Worker Protection  
Regarding the Prevention of Wage Theft**

**(a) Annual Report to the Office of the Mayor and City Council**

OLCWP shall publish an annual report detailing all wage theft complaints received and actions taken by the OLCWP in response to such complaints, including specifically the status or final disposition of each complaint. The report shall also include civil and criminal judgments issued by the state and federal courts, administrative citations issued by the Attorney General, and final administrative orders, including but not limited to debarments, against Employers pursuant to G.L. c. 149 §§ 26-27H, 148 and G.L. c. 151 §§ 1, 1A, either related to complaints received by the OLCWP, related to current City Contractors, or related to employers who have had a contract with the City of Boston in the last years.

**(b) Employee Rights Posters and Other Public Awareness Measures**

The OLCWP shall require employers within the City of Boston to post a notice informing Employees of Programs and Services of the OLCWP and the protections offered by the City and Massachusetts law. The poster shall be available in English, Spanish, Chinese, Vietnamese, and Portuguese, Cape Verdean Creole and Haitian Creole. The Office of Language and Communication Access shall be consulted on whether any languages should be included.

From time to time, the OLCWP shall also publish materials, advertise, and perform outreach to raise public awareness concerning the OLCWP's programs, compliance with state and federal wage and hour laws, and problems associated with wage theft.

**(c) Wage Theft Complaints Under Massachusetts and Federal Law**

The OLCWP shall receive complaints of violations of law committed by Employers under G.L. c. 149 §§ 26-27H, 148 and G.L. c. 151 §§ 1, 1A and/or under 29 U.S.C. 201, et seq. and federal prevailing wage laws.

The OLCWP shall develop a separate form for violations of state and federal law committed by Employers holding contracts with the City ("Contractor Wage Theft Forms").

The OLCWP shall also assist affected employees in filling out municipal, state, and federal complaint forms at its offices and at City-sponsored events in collaboration with other City departments.

**(d) Transmission of Non-Payment and Prevailing Wage Complaints to Massachusetts Attorney General and U.S. Department of Labor**

Unless otherwise specified in writing by the complainant, the OLCWP shall forward an original of each complaint submitted to it pursuant to G.L. c. 149 §§ 26-27H, 148 and G.L. c. 151 to the Attorney General's office, contemporaneous with receipt.

Unless otherwise specified in writing by the complainant, the OLCWP shall forward an original of each complaint submitted to it pursuant to 29 U.S.C § 201, et seq. and/or federal prevailing wage statutes to the U.S. DOL, Region 1, contemporaneous with receipt.

On a Quarterly basis, the Mayor, personally or through a designee, will meet with the Office of the Attorney General and U.S. DOL, Region 1 to discuss complaints involving Employers within the City of Boston and to better coordinate on issues of wage theft in the City.

**(e) OLCWP Duty to Monitor Wage Theft Complaints Against Employers with Whom the City Holds Contracts for Goods, Services, and/or Labor.**

The OLCWP shall meet with representatives of the Massachusetts Attorney General's Office and the U.S. Department of Labor on a quarterly basis to identify pending investigations and findings of any infractions by those agencies related to work performed by City Contractors. Furthermore, complaints against City Contractors shall be monitored by the OLCWP even after being promptly referred to the relevant State or Federal authorities.

**(f) Voluntary Mediation of Wage Theft Complaints**

The OLCWP may develop and offer mediation to complainants and their respective employers as a means to efficiently resolve wage theft complaints. This service shall be voluntary, meaning that both parties must agree to use the OLCWP to mediate the contents of the complaint in writing. The contents and results of any mediation, as well as the identities of the parties shall be kept confidential to the extent permitted by the Massachusetts General Laws and the City's ordinances.

**(f) Public Database of Wage Theft Ordinance Violations**

The OLCWP shall compile, develop and maintain on the City's website ([www.boston.gov](http://www.boston.gov)) a publicly accessible, searchable database of criminal and civil judgments, final state administrative orders and citations under G.L. c. 149 §§ 26-27H, 148-148C and G.L. c. 151 §§ 1, 1A against City Contractors as defined by this Ordinance. The database shall also include criminal and civil judgments and consent orders, administrative orders and citations, under 29 U.S.C. § 201, et seq., 40 U.S.C. § 3141, et seq and 41 U.S.C. 351, et seq. The OWPC shall include information for City Contractors for the above-mentioned infractions starting three years prior to the date this ordinance goes into effect.

The database will also include any pending litigation in State or Federal court or investigations pending with the Massachusetts Attorney General's Office or the federal Department of Labor regarding current City Contractors that relate to the payment of wages.

**(g) Coordination with City Departments Issuing Permits and Licenses.**

(1) Upon Application. All City of Boston Departments responsible for issuing, suspending, or renewing any license of permit regarding businesses of the kind which the City of Boston contracts for the performance of goods, services, or labor, shall notify the OLCWP at least seven (7) business days preceding any action on any license or permit and identify the action sought, the name and address of the applicant business and all owners of the business. Prior to the Department taking action, the OLCWP will notify the applicable Department involved of any civil or criminal judgments, final administrative orders and citations, and/or debarments, or pending legal action that relates to the payment of wages, against the applicant business and/or its owners under state or federal law, as well as and any pending wage theft complaints received by the City against the applicant and/or its owners, within the last three (3) years.

(2) After Issuance.

- a. Any complaints of wage theft filed against a license or permit holder with the City's Purchasing Agent, Licensing Commission, the City Council, and/or other City departments and offices shall be forwarded promptly to the OLCWP and complaints filed with the OLCWP shall be provided to the same offices. If the complaint pertains to work performed at any property subject to a TIF Agreement, the OLCWP office shall also send a copy to the EACC.
- b. Upon receipt of a new civil or criminal judgment, final administrative order or citation, and/or debarment against a City license or permit holder, the OLCWP will provide notice of the same, with a copy of the decision, to the relevant City Department for review and action consistent therewith.

**(h) OLCWP coordination with the Auditors' Office in Monitoring Compliance with City Procurement Requirements.**

The Auditor's Office shall develop RFP provisions and certifications that require the reporting of wage theft violations and settlements as a condition of securing a contract with the City of Boston for the provision of goods, services, or labor.

**(i) Electronic, Automated Process for Review of Certified Payrolls, Processing of Certified Payrolls, and Investigation of Non-Payments found therein**

The City shall require all City Contractors, and sub-contractors of City Contractors, providing goods, services and/or labor in excess of \$100,000 to provide certified payrolls for each pay period within a contract in an electronic format, specified



by the City Auditor, which will be reviewed by the City Auditor or his/her designee on at least a monthly basis. A City Contractor or sub-contractor of a City Contractor will be notified of any payroll with ten or more apparent discrepancies within 30 business days of discovery.

**(j) Outreach to Community Organizations.**

The OLCWP shall establish and maintain a community-based outreach program working with communities across the City to facilitate public education and the eradication of wage theft.

In partnership with organizations involved in the community-based outreach program, the OLCWP shall create outreach materials that are designed for workers in particular industries.

The OLCWP may develop a grant program for organizations it partners with in performing outreach activities.

**Section 4. Requirements for City Contractors**

**A. RFP/Bid and Successful Bidder Requirements**

Every Request for Proposals (RFP) or bid issued by the City of Boston's Procurement Agent shall include the certification and disclosure requirements imposed by this Section:

1. Every RFP or bid issued shall notify bidders that they have an affirmative duty to report any criminal or civil judgment, administrative citation, or final administrative determination for wage theft against the bidder or any of its subcontractors entered within the three (3) years prior to bid submission, as well as any debarments against the bidder or any of its subcontractors in effect while its bid is pending to the City, and shall further notify bidders that if they are the successful bidder, they and any of their subcontractors have an affirmative duty to report any criminal or civil judgment, administrative citation, final administrative determination, order, or debarment against the bidder or any its subcontractors while their contract with the City is in effect, within five (5) business days of receipt. The RFP or bid will identify the OLCWP as the department to whom this must be reported.

2. Every RFP or bid issued by the Purchasing Agent shall notify bidders that they and their subcontractors have an affirmative duty to report any pending criminal, civil, or administrative action against them, under either federal or state law, for wage theft, in any jurisdiction as a part of their bid package and to include the pleadings therefor in their bid packages. Every RFP or bid issued shall further notify bidders that if they are the successful bidder, they and any of their subcontractors have an affirmative duty to report any criminal, civil, administrative

action for wage theft filed against the bidder or any its subcontractors while their contract with the City is in effect, within five (5) business days of receipt while their contract remains in effect with the City. The RFP or bid will identify the OLCWP as the department to whom this must be reported.

3. Every RFP or bid issued by the City and/or its Departments shall notify bidders that they may not contract with the City if they have been either voluntarily or involuntarily debarred by the federal government, any agency of the Commonwealth of Massachusetts or any other state, or any municipal body – including, but not limited to, the City of Boston – for the entire term of the debarment.
4. Every RFP or bid issued by the City and/or its Departments shall notify bidders that they may not utilize subcontractors on their contracts with the City who have been voluntarily or involuntarily debarred by the federal government, any agency of the Commonwealth of Massachusetts or any other state, or any municipal body-including, but not limited to, the City of Boston -for the entire term of the debarment.
5. Bidders that are subject to municipal, state, or federal debarment for violation of the above laws, either voluntarily or involuntarily, or that have been prohibited from contracting with the Commonwealth or any of its agencies or subdivisions will be deemed not responsible and their bids or proposals shall be rejected. Such bidders shall be deemed not responsible for the entire term of debarment or other stated time period. During the term of a Contract, upon a finding or order of such debarment or prohibition, the City may terminate the contract.
6. Every Request for Proposals (RFP) and/or Grant Application issued by the City, shall include the certification and disclosure requirements included in this Section. All successful Applicants for contracts, grants, and tax incentives shall provide complete and accurate responses to the same.

These certification and disclosure requirements shall include:

- A requirement for documentation reflecting the Applicant’s demonstrated commitment to workforce development within Boston and/or the Commonwealth;
- A requirement that the Applicant will provide a statement of intent concerning efforts that it and its contractors and subcontractors will take to promote workforce development on the project if successful;
- A requirement for documentation reflecting the Applicant’s demonstrated commitment to economic development within Boston and/or the Commonwealth;

- A requirement that the Applicant provide a statement of intent concerning efforts that it and its contractors and subcontractors on this project will take to promote economic development on the project if successful;
- A requirement for documentation reflecting the Applicant's demonstrated commitment to expand workforce diversity, equity, and inclusion in its past projects within Boston and/or the Commonwealth;
- A requirement that the Applicant provide a statement of intent concerning efforts that it and its contractors and subcontractors on this project, will undertake to expand workforce diversity, equity, and inclusion on the project if successful;
- A requirement that the Applicant disclose whether it and each of its contractors and subcontractors on this project, have previously contracted with a labor organization, as defined by Massachusetts General Laws, c. 150A and/or the National Labor Relations Act, Section 2, in the Commonwealth or elsewhere.
- A requirement that the Applicant specify whether it and each of its contractors and subcontractors on this project participates in a state or Federally certified apprenticeship program and the number of apprentices the apprenticeship program has trained to completion for each of the last five (5) years.

7. Successful bidders and their subcontractors must either:

a. Provide a certification of compliance with M.G.L. c. 149, c. 151 and 29 U.S.C. § 201 *et seq.* as required by this Section; a form certification will be attached to each RFP issued by the City. To the extent that the bidder has been in business for less than three years prior to the bid deadline, it shall provide a certification certifying compliance for the entire period of time for which the entity has been in existence.

b. To the extent a judgment, citation, or administrative order has been issued against a bidder within three years prior to its bid, the bidder must provide a copy of the same, in addition to documentation demonstrating that the bidder has paid all damages, fines, penalties, costs, and fees in full. In addition, the bidder must post a wage bond or other comparable form of insurance in an amount equal to the aggregate of one year's gross wages for all employees employed by the bidder in the City of Boston (based on average payroll for the last two years), to be maintained for the life of the contract, as specified by this Section.

c. To the extent a judgment, citation, or administrative order has been issued against a subcontractor of the successful bidder within three years prior to its bid, the bidder must provide a copy of the same, in addition to documentation demonstrating that the sub-contractor has paid all damages, fines, penalties, costs, and fees in full. In addition, the bidder or its subcontractor must post a wage bond or other comparable form of insurance in an amount equal to the aggregate of one year's gross wages for all employees employed by the sub-contractor in the City of Boston (based on average

payroll for the last two years), to be maintained for the life of the contract, as specified by this Section.

8. Successful bidders and their sub-contractors must agree to post the notice available at <http://www.mass.gov/ago/docs/workplace/wage/wagehourposter.pdf> in a conspicuous location accessible to all of their employees. To the extent not all employees would have reasonable access to the notice if posted in a single location by the successful bidder, the successful bidder must inform the Purchasing Agent or other City department of the number and location of postings in order to ensure that the successful bidder and his/her sub-contractor provide reasonable notice to all of their employees and agrees to make those additional postings.

**B. Additional Reporting and Notice Requirements during the Contract Term.**

1. All City Contractors, and/or subcontractors of City Contractors, providing goods, services, or labor in excess of \$100,000 per annum, shall furnish their monthly certified payrolls in an electronic format set forth by the City to the City Auditor and the OLCWP for all employees working on City contracts.

2. To the extent a contract is for a term of one year or more, a City Contractor, and his/her sub-contractors, will provide the City of Boston with a certification compliant with this Section on the effective date of the contract and at each anniversary thereof until the contract expires.

**C. Wage Bonds during the Contract Term.**

1. Any City Contractor or subcontractor of a City Contractor who has had a criminal or civil judgment, administrative citation, final administrative determination, debarment or order, resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 *et seq.* or any other state or federal laws regulating the payment of wages within three (3) years prior to the date the City Contractor submitted its bid(s), shall be required by the City to obtain a wage bond or other comparable form of insurance in an amount equal to the aggregate of one year's gross wages for all employees employed by the City Contractor (or sub-contractor) on the specific City of Contractor contract, based on an average of its total labor costs in the City for the past two years. Such bond must be maintained for the term and any extensions of any Contract, and proof of such bond must be provided upon request by the City.

2. Any City Contractor or sub-contractor of as City Contractor that receives a criminal or civil judgment, administrative citation, final administrative determination, order, or debarment, resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 *et seq.*, or any other state or federal laws regulating the payment of wages during the term of the Contract, and that is not otherwise prohibited from public

contracting, shall be required by the City to obtain a wage bond or other form of comparable insurance in an amount equal to the aggregate of one year's gross wages for employees employed on the specific City of Boston contract, based on an average of its total labor costs on the contract for its duration or two years, whichever is less. Such bond must be maintained for the terms or extensions of any Contract, and proof of such bond must be provided upon request by the City.

**D. Suspension or Revocation of Contract/Wage Theft as Material Breach of Conditions in RFP or Bid**

If a City Contractor is found to be in violation of G.L. c. 149, G.L. c. 151, or 29 U.S.C. § 201 *et seq.*, or this Section, and therefore in breach of its contract with the City, the City may take one or more of the following actions:

1. Revocation of City Contractor's contract with the City;
2. Suspension of City Contractor's contract with the City;
3. Imposing conditions on any future contracts with the City, including, but not limited to, the posting of a wage bond and other reasonable requirements.

**E. Requirements for Successors-in-Interest**

The requirements of this Section, including any sanctions imposed herein, that are applicable to any Employer shall also be applicable to, and effective against, any successor Employer that (i) has at least one of the same principals or officers as the prior Employer; and (ii) is engaged in the same or equivalent trade or activity as the prior Employer.

**F. Additional Requirements for Municipal Construction Contracts.**

Whenever the City is procuring construction services pursuant to G.L. c. 149, c. 149A or c. 30, § 39M, in addition to the other requirements described in this ordinance, the following shall also apply:

1. Construction Bidders:

All bidders, proposers, contractors, and subcontractors or subcontractors shall, as a condition of bidding, contracting, or subcontracting, certify in writing that they shall comply with the following conditions:

- a. The contractor shall maintain or shall obtain documentation from a subcontractor that it maintains an appropriate level of industrial accident insurance sufficient to provide coverage for all employees on the project in accordance with G.L. c. 152 and provide documentary proof of such coverage as a condition of acceptance of their bid.

b. The contractor shall not suffer or permit workers to be misclassified as independent contractors on the project and shall neither suffer nor permit workers to be misclassified for the purposes of prevailing wage or overtime, worker's compensation coverage, social security taxes, and state and federal income tax withholding.

c. The contractor shall not suffer or permit workers on the project to be paid less than their earned wages and that such wages be paid within the time prescribed by federal and Massachusetts law.

d. The contractor will make arrangements to ensure that all workers on the project complete daily sign-in/signout logs listing: the worker's name, the name of the employer, the location of the project, current date, the time of entry and exit from the worksite. The log shall state that employees are entitled to the prevailing wage rate under state law and the rate sheet for the project shall be attached to the log.

e. The sign-in/sign-out logs shall be provided to the OLCWP on a weekly basis.

## 2. Construction Contractors

Contractors or subcontractors awarded or who otherwise obtain projects subject to G.L. c. 149, Sec. 44A(2), c. 149A, of c. 30, Sec. 39M shall comply with each of the obligations set forth above for the entire duration of the project.

## 3. Sanctions for Violations

Any proposer, bidder, trade contractor or subcontractor under the bidder or prosper that fails to comply with any of the obligations set for herein may be subject to the following at the sole discretion of the City of Boston: 1) stop work order on the project until compliance is obtained; 2) withholding of payment due under any contractor or subcontract related to the project until compliance is obtained; 3) debarment; and/or 4) liquidated damages payable to the City of up to five percent of the dollar value of the contract.

## Section 5. Requirements for Licensees and Prospective Licensees.

### **A. Requirements for License Applicants**

Any application filed by an Employer to the City of Boston for any license or permit issued pursuant to M.G.L. c. 138 or M.G.L. c. 140 may be denied if, during the three (3)-year period prior to the date of the application, the applicant Employer has been subject to a federal or state criminal or civil judgment, administrative citation, order, debarment, or final administrative determination resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 *et seq.*, or any other state or federal laws regulating the payment of wages.

In submitting an application for a license or permit under either section, each such Employer-applicant must either:

- (1) certify that the Employer, its officers, and managers have not been found guilty, liable or responsible, in the past three (3) years, in any judicial or administrative proceeding, for any violation of any of the laws set forth above; or
- (2) To the extent an Employer is unable to truthfully make the above certification, provide:
  - a. a true copy of the federal or state criminal or civil judgment, administrative citation, order, debarment, or final administrative determination resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 *et seq.*, or any other state or federal laws regulating the payment of wages, and
  - b. proof that the Employer has paid all associated damages, fines, penalties in full.

#### **B. Requirements for License and Permit Holders.**

Employers holding licenses and permits subject to Chapters 138 or 140 have an affirmative duty to report any criminal or civil decision and/or judgment, administrative citation or final administrative order issued against them for Wage Theft while their licenses or permits are in effect and to provide a true copy of the same, within five (5) business days of receipt, to the OLCWP.

Any license or permit issued under M.G.L. c. 138 or M.G.L. c. 140 to an Employer may be modified, suspended or revoked if, during the term of the license or permit, the licensee or permittee Employer has been subject to a criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 *et seq.* or any other state or federal laws regulating the payment of wages.

Any license or permit issued under M.G.L. c. 138 or M.G.L. c. 140 to an Employer may be modified, suspended or revoked if, during the term of the license or permit, the licensee or permittee Employer fails to timely provide notice and documentation of Wage Theft complaints against the Employer.

#### **C. Wage Bonds for License Holders**

Employers granted a License or Permit that have disclosed a criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 *et seq.* or any other state or federal laws regulating the payment of wages within three (3) years prior to the date they submit their applications, may be required by the City to obtain a wage bond or other form of comparable insurance in an amount equal

to the aggregate of one year's gross wages for all employees, based on an average of its total labor costs for the past two years.

Employers granted a License or Permit who become subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 *et seq.*, or any other state or federal laws regulating the payment of wages during the term of the License or Permit, may be required by the City to obtain a wage bond or other form of comparable insurance in an amount equal to the aggregate of one year's gross wages for all employees, based on an average of its total labor costs for the past two years.

The bond must be maintained for the terms or extensions of any License or Permit, and proof of such bond must be provided upon request by the City. Failure to comply with this Subsection may constitute grounds for modification, suspension, and/or revocation of the license or permit pursuant to Subsection B.

#### **D. Requirements for successors-in-interest.**

The requirements of this Section, including any sanctions imposed herein, that are applicable to any Employer shall also be applicable to, and effective against, any successor Employer that (i) has at least one of the same principals, officers, or managers as the prior Employer; and (ii) is engaged in the same or equivalent trade or activity as the prior Employer.

### Section 6: Requirements for Tax Increment Financing (TIF) Agreements

#### **A. Required Notices and Responses.**

Every solicitation for a project including TIF funding issued by the City, shall include the certification and disclosure requirements included in this Section. All successful Applicants for contracts, grants, and tax incentives shall provide complete and accurate responses to the same.

These certification and disclosure requirements shall include:

- A requirement for documentation reflecting the Applicant's demonstrated commitment to workforce development within Boston and/or the Commonwealth;
- A requirement that the Applicant will provide a statement of intent concerning efforts that it and its contractors and subcontractors will take to promote workforce development on the project if successful;
- A requirement for documentation reflecting the Applicant's demonstrated commitment to economic development within Boston and/or the Commonwealth;



- A requirement that the Applicant provide a statement of intent concerning efforts that it and its contractors and subcontractors on this project will take to promote economic development on the project if successful;
- A requirement for documentation reflecting the Applicant's demonstrated commitment to expand workforce diversity, equity, and inclusion in its past projects within Boston and/or the Commonwealth;
- A requirement that the Applicant provide a statement of intent concerning efforts that it and its contractors and subcontractors on this project, will undertake to expand workforce diversity, equity, and inclusion on the project if successful;
- A requirement that the Applicant disclose whether it and each of its contractors and subcontractors on this project, have previously contracted with a labor organization, as defined by Massachusetts General Laws, c. 150A and/or the National Labor Relations Act, Section 2, in the Commonwealth or elsewhere.
- A requirement that the Applicant specify whether it and each of its contractors and subcontractors on this project participates in a state or Federally certified apprenticeship program and the number of apprentices the apprenticeship program has trained to completion for each of the last five (5) years.

## **B. Additional Certifications and Disclosures.**

It shall be a special and material condition of any future TIF Agreement that any and all persons, natural or corporate, who are signatories to the TIF Agreement provide the City of Boston, via the OLCWP, with a list of all construction managers, general contractors, lead or prime contractors, developers, or any entity functioning in any such capacity, and any other contractor or subcontractor of any tier engaged to perform work on the property subject to the tax increment financing plan during the term of the TIF Agreement. An initial list must be provided to the OLCWP at least thirty (30) business days prior to the start of any work on the property subject to the TIF Agreement. Should any additional or replacement entities be engaged to perform work on the property subject to the TIF Agreement during the term of the TIF Agreement, the signatory must provide the name of such entity no later than ten (10) business days before that entity begins work on the property.

All signatories to the TIF Agreement shall certify that they shall not engage any entity to perform work on the property covered under the TIF Agreement which is subject to debarment for any reason or has been found liable/responsible for any unpaid criminal or civil judgment, administrative citation, or final administrative determination for Wage Theft.

All TIF signatories shall certify that they do not (a) have entities performing work on the property who have been the subject of an indictment, judgment, or grant of immunity, including pending actions, for any business-related conduct constituting a crime under

state or federal law; nor (b) have any entities performing work on the property who have been the subject to voluntary or involuntary debarment under either federal or state law; nor (c) have entities performing work on the property who have been found liable for Wage Theft under state and/or federal law within three (3) years prior to the execution of the TIF Agreement.

If, notwithstanding such certification, any interested person gives the City of Boston written notice, via the OLCWP, that the certification provided by any signatory in the form provided above is materially inaccurate and provide the bases therefore, OLCWP shall write to all signatories to the TIF Agreement within ten (10) business days to request reverification and/or remediation of the certification. Should the signatory fail to come into compliance—by ensuring that the person or entity not in compliance with the terms of the certification fulfills all outstanding obligations under a court or administrative order or is replaced—within fifteen (15) business days of notice, the signatory shall be in material breach of the TIF Agreement because it materially frustrates the public purpose for which this TIF Agreement and any certification of the tax increment financing plan by the City was intended to advance. The consequences of a signatory providing an inaccurate certification and the procedures for remediation will be included in each TIF Agreement.

### **C. Special and Material Conditions of TIF Agreements with City of Boston.**

It shall be a special and material condition of any TIF Agreement that any construction manager, general contractor, or other lead or prime contractor, or any entity functioning in any such capacity, and any other contractor or subcontractor of any tier or other person that is engaged to perform the work during the term of their TIF Agreement on the property that is the subject of the Tax Increment Financing Plan shall comply with the following qualification and condition at all times during their performance of work on the property:

- (1) The firm must maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with G.L. c.152 and provide documentary proof of such coverage to the Building Inspector to be maintained in the Building Department as a public record;
- (2) The firm must properly classify all workers who are employees and treat them accordingly under the tests set forth in M.G.L. c. 149, § 148B for purposes of compensation on both a straight time and overtime basis and coverage under the earned sick time law, and M.G.L. c. 152, § 1(4) for purposes of workers' compensation insurance coverage;
- (3) The firm must comply with G.L. c. 149, § 148, G.L. c. 151 §§ 1, 1A, and 29 U.S.C. § 201, et seq., with respect to the payment of wages and overtime;
- (4) The firm must comply with G.L. c. 149, G.L. c. 151, and 29 U.S.C. § 201, et seq. with respect to prohibitions on

discrimination, adverse action, interference with, restraint, or denial of the exercise of the rights of any person in connection with the assertion or anticipated assertion of their own or others' rights under these laws; and The firm must be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority.

#### **D. Wage Theft Complaints for Properties Covered by TIF Agreements**

Within ten (10) business days of receiving a complaint related to Wage Theft that pertains to work performed at any property subject to a TIF Agreement, the OLCWP shall send notice of such complaint to all signatories of the TIF Agreement.

If, after the OLCWP has properly served notice of a complaint upon the signatories to a TIF Agreement pursuant to this subsection, any Employer becomes subject to a federal or state criminal or civil judgment, administrative citation, stop work order, debarment, or final administrative determination resulting from a violation of any of the legal obligations outlined at subsections (B)(1)-(4), and if such judgment, citation, or order is not satisfied or discharged, or the offending Employer replaced on the project, within fifteen (15) business days of the entry of such judgment, citation, or order, the parties agree that such an event materially frustrates the public purpose that the TIF Agreement and any certification of the tax increment financing plan by the City was intended to advance.

#### **E. Termination of TIF Agreements**

In the event the public purpose of a TIF Agreement or TIF Plan is materially frustrated pursuant to Subsection (A) and/or (C), the OLCWP will promptly refer the matter to the City Council, which shall hold a public hearing and vote at its next regularly scheduled meeting regarding whether to terminate the tax relief provided by such TIF agreement and petition the EACC for revocation of that portion of its certification of the TIF Plan corresponding to such TIF Agreement. If the termination of such TIF Agreement is approved by the Council and Mayor, or by the Council over the Mayor's veto, the owner of the property covered by such TIF Agreement shall forfeit the receipt of any funds or future tax benefits and/or shall return any such funds already received in connection with the project.

In the event the owner of the property challenges a revocation of tax relief, the owner shall set aside an amount equal to the full amount of the tax savings that previously would have accrued under the agreement into an escrow account while any such challenge remains pending. The conditions of the escrow account shall provide that, in the event the owner is unsuccessful in challenging the tax relief revocation, the full amount of the escrow account will be paid to the City. Residents of the City will be acknowledged as third-party beneficiaries of such an agreement and may enforce the

agreement's provisions in a civil proceeding brought by not less than 10 taxable inhabitants.

**F. Requirements for Successors-in-Interest**

The requirements of this Section, including any sanctions imposed herein, that are applicable to any Employer shall also be applicable to, and effective against, any successor Employer that (i) has at least one of the same principals or officers as the prior Employer; and (ii) is engaged in the same or equivalent trade or activity as the prior Employer.

**Section 7. Severability**

If any provision of this Ordinance is held invalid or unenforceable by any court, such a holding does not invalidate or render unenforceable any other provision of the Ordinance, and the rest of the Ordinance shall remain in full force and effect.

**Filed in Council: August 7, 2024**