

Offered by Councilor Ricardo Arroyo, Mejia, Flynn, Campbell, Edwards, Bok, Wu, Breadon, Essaibi-George, Flaherty, O'Malley and Baker



## CITY OF BOSTON IN CITY COUNCIL

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

**WHEREAS:** Labor and employment practices such as illegal misclassification of employees, lack of economic and social benefits associated with regular employment, and off-the-books employment are harmful to employee rights; *and*

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

**WHEREAS:** In June 2021, a UMass Amherst study estimated that in Massachusetts, misclassification of employees in the construction industry had led to \$24.5 million to \$40.6 million in shortfall in the state's unemployment insurance fund for 2019; *and*

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

**WHEREAS:** The high cost of wage theft to the City, its business community, and its residents impedes the City's economic development and growth; *and*

**WHEREAS:** Requiring city contractors, subcontractors and bidders to comply with applicable federal and state wage laws, strengthens the City's ability to hire vendors that treat their employees fairly; *and*

**WHEREAS:** Due to the pervasiveness of wage theft in the construction industry, significant financial incentives are necessary to motivate property owners and their general contractors to take steps sufficient to ensure that wage theft does not occur on their projects; *and*

**WHEREAS:** Prohibiting the City from contracting with debarred vendors for the period of debarment will help to ensure that City resources are not used to support house vendors debarred for wage law violations; *and*

**WHEREAS:** Studies have repeatedly shown that wage theft is concentrated among low-wage workers, and particularly women, minorities, non-US citizens, and non-union workers; *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 provide municipal legislative guidelines to enforce state and federal regulations around fair contracting practices. This ordinance will lay out requirements for municipal contracts with City of Boston departments and agencies.

### Section 2. Definitions

“Boston resident” -- means any person for whom the principal place of residence is within the City of Boston during the entirety of time the person works on a Public Construction Project within the City of Boston. Proof of such residence may include, but is not limited to, the following: a valid Massachusetts Driver’s License or Massachusetts Identification Card, utility bills, proof of voter registration, or such other proof acceptable to the City of Boston.

“Employee” – a natural person who performs work for an employer operating within the geographic boundaries of the City of Boston.

“Employer” – any natural person or business, whether or not incorporated or unincorporated who suffers or permits another to work (1) in the City of Boston, (2) under contract to which the City of Boston or one of its Departments is signatory, or (3) who otherwise maintains a commercial presence in the City of Boston. This definition excludes:

- i) The United States as a corporation wholly owned by the government of the United States; and
- ii) The Commonwealth of Massachusetts, its subdivisions and corporate bodies.

“Employ,” including as used in the term “employment” – to suffer or permit to work.

“Minimum wage” – as defined in M.G.L. c. 151, § 1 as well as any other state or federal statute or regulation establishing a minimum fair wage for particular occupations or classes of workers.

“Overtime” – as defined in M.G.L. c. 151, § 1A

“Prevailing wage” – as defined in M.G.L. c. 149, §§ 26-27H.

“Timely Payment of Wages” – as defined by G.L. c. 149, § 148.

“Wage” – as defined by M.G.L. c. 149, § 148.

“Wage Theft” – an action by an Employer, his officers, agents or employees causing the Employer not to make a timely and/or complete payment of wages, to pay the minimum wage or prevailing wage, or to pay overtime earned and owing to an employee.

“Application” – an initial application or renewal of a license or permit.

“City Contractor” – an Employer who holds or seeks to hold a contract for goods, services or labor with the City of Boston.

“Administrative Citation” – a civil citation issued by the attorney general pursuant to M.G.L. c. 149 § 27C, a civil citation issued by the 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.

“Stop work order” – as defined in M.G.L. c. 152, § 25C and 452 C.M.R. § 8.00.

“TIF Agreement”—a tax increment financing agreement, as such term is defined by M.G.L. c.23A, § 3A, c. 40, § 59, and 760 C.M.R. 22.00 et seq.

“TIF Plan”—a tax increment financing plan, as such term is defined by 760 C.M.R. 22.00 et seq.

“EACC”—Economic Assistance Coordinating Council, as defined by M.G.L. c. 23A, § 3A and established by M.G.L. c. 23A, § 3B.

“Procurement Agent” -- any responsible City official that negotiates and authorizes municipal contracts for City of Boston departments and agencies.

## Section 3. Wage Theft Advisory Committee

### **1. Membership**

There shall be established a Wage Theft Advisory Committee, comprised of one (1) designee submitted by the Boston City Council, one (1) designee submitted by the Mayor, and one (1) representative from various advocacy groups. Members of the Wage Theft Advisory Committee may be reappointed annually and must be appointed no later than the second meeting of the new year.

### **2. Duties**

The Wage Theft Advisory Committee will meet at least once every two months to review Wage Theft Complaints and provide advice to the City Council on the implementation and effectiveness of the wage theft ordinance. In addition, each year the Committee shall elect from among its members a volunteer Secretary who shall receive wage theft complaints from the Attorney General's office and received by the Corporation Counsel's office, and coordinate any response to such complaint that is required by the Ordinance. In addition, members of the Wage Theft Advisory Committee may offer education, guidance, and referrals to employees affected by wage theft in Boston at City-sponsored events and in collaboration with other City departments.

### **3. Reporting Requirements**

The City of Boston shall publish an annual report, through the Wage Theft Advisory Committee detailing all wage theft complaints received and action taken in response to such complaints, including specifically the status or final disposition of each complaint, where available. The report shall also include civil and criminal judgments issued by the state and federal courts, administrative citations, and final administrative orders, including but not limited to debarments, against Employers pursuant to M.G.L. c. 149 and M.G.L. c. 151, if known.

### **4. Conflict of Interest**

For purposes of this ordinance no member of the Wage Theft Advisory Committee shall participate in any proceeding concerning a beneficiary, a covered vendor, or a covered employee, if the member or any member of his or her immediate family has a direct or indirect financial interest in said individual or in the award of a service contract, subcontract or assistance or the granting of relief to said individual.

#### Section 4. Wage Theft Complaint Process.

##### **1. Filing and Receipt of Complaints**

The City of Boston, at the office of the Corporation Counsel shall receive complaints of violations of state law under G.L. c. 149 and c. 151. The Corporation Counsel's Office shall assist workers in filing complaints and referring the complaint to the appropriate agencies. Complaints may be filed by an affected employee or any other person.

##### **2. Required Communication with Attorney General's Office**

On a biannual basis, a representative from the City will request to meet with the Office of the Attorney General to discuss complaints involving City employers and to better coordinate on issues of wage theft in the City.

##### **3. Required Communication with Other City Departments**

The Corporation Counsel's Office shall forward each complaint submitted to the City of Boston Procurement Department, the Inspectional Services Department, and the Boston City Council to the Wage Theft Advisory Committee. If the complaint pertains to work performed at any property subject to a TIF Agreement, the Corporation Counsel's office shall also send a copy to the EACC.

#### Section 5. Requirements for City Contractors

##### **1. RFP/Bid and Successful Bidder Requirements**

Every Request for Proposals (RFP) or bid issued by the Procurement Agent shall include the certification and disclosure requirements imposed by this Section.

- A) Every RFP or bid issued by the Procurement Agent 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 five (5) 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 judgement, 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 Procurement Department as the department to whom this must be reported.

- B) Every RFP or bid issued by the Procurement Agent 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. Such RFPs or bids shall also notify bidders that they may not use any subcontractor who has been debarred by the federal government or any state or municipal government during the period of that subcontractor's debarment.
- C) 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.
- D) Successful bidders must either:
  - 1) Provide a certification of compliance as required by this Section. To the extent that the bidder has been in business for less than five years it shall provide a certification certifying compliance for the entire period of time for which the entity has been in existence; or
  - 2) To the extent a judgment, citation, or final administrative order has been issued against a bidder within five years prior to its bid, provide a copy of the same, in addition to documentation demonstrating that all damages, fines, costs, and fees have been paid. In addition, the bidder must post a bond, to be maintained for the life of the contract, as specified by this Section.
- E) Successful bidders must agree to post the notice available at <https://www.mass.gov/doc/massachusetts-wage-hour-laws-poster/download> 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 Procurement Agent or other City department of the number and location of

postings in order to ensure that the successful bidder provides reasonable notice to all of their employees and agrees to make those additional postings.

## **2. Certification and Disclosures**

The Procurement Agent entering into contracts on behalf of the City shall adopt the attached certification and disclosure requirement for all applicants providing:

- A) That an applicant certify to the Purchasing Agent that neither they nor any of their subcontractors have 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, G.L. c. 151, or 29 U.S.C. § 201 et seq. within five (5) years of their application;
- B) In the alternative, the applicant shall disclose to the Procurement Agent any such criminal or civil judgment, administrative citation, administrative determination, or debarment and include a copy of the same in their applications.
- C) The Procurement Department, when issuing an RFP or bids shall notify applicants that they have an affirmative duty to report any criminal or civil judgment, administrative citation, final administrative determination, order, or debarment against them or any of their subcontractors related to Wage Theft and occurring while the contract is in effect to the department within five (5) business days of receipt.

## **3. Reporting and Notice Requirements During the Contract Term**

- A) Upon request by the Procurement Agent, all City Contractors shall furnish their monthly certified payrolls to the City's Procurement Agent for all employees working on City contracts.
- B) To the extent a contract is for a term of one year or more, a City Contractor will provide the Procurement Agent with a certification compliant with this Section on the effective date of the contract and at each anniversary thereof until the contract expires.
- C) All City Contractors will furnish to the Procurement Agent any criminal or civil judgment, administrative citation, final administrative determination, order, or debarment related to Wage Theft and issued during the term of their contract(s)

with the City against the City Contractor or its subcontractors within five (5) business days of receipt.

- D) To the extent required as set forth in this ordinance, all City Contractors shall maintain a wage bond for the term of the contract(s) with the City.

#### **4. Wage Bonds**

- A) Any successful bidder or City Contractor or subcontractor who has had 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 five (5) years prior to the date it submits its bids or proposals, and that is not otherwise prohibited from public contracting shall be required by the City to obtain a wage bond or other form of suitable insurance in an amount equal to the aggregate of one year's gross wages for all employees employed on the specific City of Boston contract. 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.
- B) If a license or permit holder has had such license or permit revoked, suspended, or denied pursuant to this section, the City of Boston shall require the license or permit holder to deposit a bond of no less than \$5,000. The bond shall be payable to the City of Boston and shall be conditioned that the license or permit holder shall, for a definite future period, not exceeding two years, pay its employees in accordance with the provisions listed in this section, and shall be further conditioned upon the payment by the license or permit holder to its employees of any final judgment, settlement agreement, or other decision ordering the payment of wages based on allegations of violations of any of the laws set forth in this section. If, within 14 days after demand for the bond, the license or permit holder fails to deposit the bond, City of Boston may suspend, revoke, or deny such license or permit until the bond has been properly deposited with the City of Boston.
- C) Any City Contractor or subcontractor 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 suitable insurance in an amount equal to the aggregate of one year's gross wages for all.

#### **5. 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 M.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:

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

#### **6. 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 6. Requirements for Licensees and Prospective Licensees

#### **1. Requirements for License Applicants**

Any application filed by an Employer to the Licensing Board for any license issued pursuant to M.G.L. c. 138 or M.G.L. c. 140 may be denied if, during the five-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. Each such applicant shall certify that she has not been found guilty, liable or responsible, in the past five years, in any judicial or administrative proceeding, for any violation of any of the laws set forth above.

#### **2. Requirements for License Holders**

Any license or permit issued by the Licensing Board 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. The City will conduct a hearing within 30 days from the time it becomes aware of a final determination.

### **3. Posting Requirements**

Any Employer for whom there is has been a final determination that the employer is in 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 shall post notice of such a violation. Using a form provided by the City and displaying it on-site, in a conspicuous and accessible location, and in English and the primary language of the employee(s) at the particular workplace. The posting shall remain in place until any determination or judgement of wage theft is paid in full including all related fees and penalties. An employer found in violation of an order to post notice under this section shall be liable to a fine of not more than \$300.00. Each day during which a violation exists shall constitute a separate offense.

### **4. Conciliation Process**

In order to facilitate compliance, the City of Boston, shall provide a conciliation process for employers who have been found in 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 lieu of license revocation, the City of Boston will arrange a meeting within 30 days at the request of the parties and during this period any revocation of a license shall be held in abeyance. If the employer agrees to a payment plan to pay off any judgment, the City will not take any action to revoke or suspend the employer's license. During the course of any conciliation process, the employer will follow the posting requirements in Section 6, subsection 3 of this ordinance.

### **5. 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 five (5) years prior to the date they submit their applications, or 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, shall be required by the City to obtain a wage bond or other form of suitable insurance in an amount of no less than \$5,000 an up to a maximum aggregate of one year's gross wages for all employees, based on an average of its total labor costs for the past two years. Such 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.

## **6. 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. Requirements for Tax Increment Financing (TIF) Agreements**

In addition to any other conditions that may be required in connection with tax increment financing or housing development exemption relief granted by the City, each Tax Increment Financing Agreement and each Housing Development Exemption Agreement entered into between the City and the recipient of such relief shall be subject to and shall include the following set of mandatory conditions:

1. It shall be a special and material condition of this 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 construction work during the term of this Agreement on the property that is the subject of this Agreement (hereinafter, collectively and individually, the “contractor”) shall comply with the following qualifications and conditions at all times during their performance of work on the property:
  - A) The contractor has not been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past five years;

- B) The contractor has not been found within the past five years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, earned sick time, wage and hour laws, prompt payment laws, or prevailing wage laws;
- C) The contractor must maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. c.152 and provide documentary proof of such coverage as part of the application process, or prior to commencing any work to the Inspectional Services Department to be maintained as a public record;
- D) The contractor must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of minimum wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding (MG.L. c.149, §148B on employee classification);
- E) The contractor must comply with M.G.L. c. 151, §1A and M.G.L. c. 149, § 148 with respect to the payment of wages;
- F) The contractor 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; and
- G) The contractor shall not discriminate against citizens of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts, however, shall give preference to residents of the City of Boston.
- H) The applicant shall submit a list to the City of all the expected contractors to work on the project as part of the applicant's request for tax relief. The list shall include the name of the primary contact, the Contractor's address and either a phone number or email address. The applicant will provide a final all inclusive list to the City within 30 days of the conclusion of the project.
- I) The applicant and/or the contractor must submit monthly to Inspectional Services Department certified payrolls for all contractors. A certified payroll format will be

provided by the City that includes the employees full name, address, identifying number, gender and race, and which tabulates hours worked for females, people of color and residents of the City. Each contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears.

- J) The contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in and sign-out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer and the time of each entry or exiting. Such sign-in and sign-out logs shall be provided to the City on a weekly basis with the certified payrolls and shall be a public record.
  - K) The contractor agrees to attend all regularly scheduled and/or special meetings convened by the City for the purpose of reviewing workforce hiring commitments set out by Chapter 4-4.2 of the Boston City Code (Promoting Minority and Women-Owned Business Enterprises in the City of Boston).
  - L) Complaints concerning compliance with the qualifications and conditions set forth above shall be directed to the Inspectional Services Department responsible for project compliance, who shall investigate the complaint and make a determination as soon as administratively feasible and notify the complaining party and the contractor and applicant or its designee. Such complaints must be submitted in writing no later than 270 days following the completion of the construction project.
2. If any person or entity subject to the foregoing qualifications and conditions fails to comply with any of them with respect to work on the property, the parties agree that such an event materially frustrates the public purpose for which this Agreement and any certification by the state was intended to advance. In such an event, the City shall petition the appropriate state agency or body for revocation of the certification and, upon such revocation, the tax relief provided by this Agreement shall be terminated and the property owner shall pay to the City an amount equal to the value of the tax relief already received under this Agreement.
  3. The applicant certifies as part of the application process that any contractor or subcontractor previously determined by the City or by any court or agency to have violated any of the obligations set forth in this section for the previous five years shall not be hired to perform work on the project.

4. In the event the owner of the property challenges the termination of the tax relief provided by this Agreement and/or the revocation by the state of any certification, the owner shall set aside in an escrow account an amount equal to the full amount of the tax savings that previously would have accrued under this Agreement while any such challenge remains pending. The owner of the property shall have a continuing obligation to contribute to the escrow account amounts equal to the additional tax savings that accrue under this Agreement while its challenge remains pending. The owner shall promptly provide to the City with documentation of its compliance with this obligation. The conditions of the escrow account shall provide that, in the event the owner is unsuccessful in its challenge, the funds in the account shall be paid to the City. The owner's obligations under this subsection shall be judicially enforceable. It is the intent of the parties that the residents of this municipality are third party beneficiaries of this Agreement, and that it may be enforced in a civil proceeding brought by not less than ten (10) taxable inhabitants.

#### Section 8. Municipal Construction Contracts

Whenever the City of Boston is procuring construction services subject to the provisions of M.G.L. Chapter 149, Chapter 149A or Chapter 30, §39M, the following shall be incorporated into the procurement documents and made part of the specifications and contract. Any person, company or corporation shall acknowledge, in writing, receipt of said requirements with their bid or proposal.

1. All bidders or proposers, contractors, and subcontractors and trade contractors, including subcontractors that are not subject to M.G.L. Chapter 149, §44F, (the "contractor") under the bidder for projects subject to M.G.L. Chapter 149, §44A(2), M.G.L. Chapter 30, §39M and, proposers under M.G.L. Chapter 149A, shall as a condition for bidding or subcontracting verify under oath and in writing at the time of bidding or submittal in response to an RFP or in any event prior to entering into a contract or subcontract at any tier, that they comply with the following conditions for bidding, contracting or subcontracting and, for the duration of the project, shall comply with the following requirements and obligations:
  - A) The contractor shall not have been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past five (5) years;
  - B) The contractor shall not have been found within the past five (5) years by a court or governmental agency in violation of any law relating to providing workers

compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, earned sick time, wage and hour laws, prompt payment laws, or prevailing wage laws;

- C) The contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Chapter 152 and provide documentary proof of such coverage included with the contractor's submitted bid to the Inspectional Services Department to be maintained as a public record;
- D) The contractor shall properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding. (M.G.L. Chapter 149, §148B on employee classification).
- E) The contractor shall comply with M.G.L. Chapter 151, §1A and M.G.L. Chapter 149, § 148 with respect to the payment of wages;
- F) The contractor shall not discriminate against citizens of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts, however, shall give preference to residents of the City of Boston. The City shall provide the contractor with local instructions on the preferred means to publicize employment opportunities to City residents.
- G) The contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer and the time of each entry or exiting. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the City on a weekly basis with the certified payrolls and shall be a public record.
- H) The contractor, prior to bidding or, if not subject to bidding requirements, prior to performing any work on the project, shall sign under oath and provide to the City a certification that they are not debarred or otherwise prevented from bidding for

or performing work on a public project in the Commonwealth of Massachusetts or in the City.

- I) The contractor 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; and
  - J) The contractor must submit weekly to the Inspectional Services Department certified payrolls for all employees. A certified payroll format will be provided by the City that includes the employees full name, address, identifying number, gender and race, and which tabulates hours worked for females, people of color and residents of the City. Each contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears.
  - K) The applicant and contractor agrees to attend all regularly scheduled and/or special meetings convened by the City for the purpose of reviewing workforce hiring commitments in Chapter 8-9 of the Boston City Code (Establishing the Boston Residents Jobs Policy).
2. A proposal or bid submitted by any general bidder or by any trade contractor or subcontractor under the general bidder or proposer that does not comply with any of the foregoing conditions for bidding shall be rejected, and no subcontract for work outside the scope of M.G.L. Chapter 149, §44F shall be awarded to a subcontractor of any tier that does not comply with the forgoing conditions.
  3. All bidders or proposers and all trade contractors and subcontractors under the bidder or proposer who are awarded or who otherwise obtain contracts on projects subject to M.G.L. c.149, §44A(2), c 149A, or c.30, §39M shall comply with each of the obligations set forth in paragraph A above for the entire duration of their work on the project, and an officer of each bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.
  4. Any proposer, bidder, trade contractor or subcontractor under the bidder or proposer that fails to comply with any one of obligations set forth in Section 8, subsection 1 above for any period of time shall be, at the sole discretion of the City, subject to one or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is



obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the City in the amount of 5% of the dollar value of the contract.

5. In addition to the sanctions outlined above, a proposer, general bidder or contractor shall be equally liable for the violations of its subcontractor with the exception of violations arising from work performed pursuant to subcontracts that are subject to M.G.L. c.149, §44F. Any contractor or subcontractor that has been determined by the City or by any court or agency to have violated any of the obligations set forth above shall be barred from performing any work on any future projects for six months for a first violation, three years for a second violation and permanently for a third violation

### Section 9. Municipal Building Permits

In addition to any other conditions that may be required in connection with the issuance of building permits under the Inspectional Services Department, each building permit issued in connection with the construction, reconstruction, installation, demolition, maintenance or repair of any commercial building estimated to cost not less than \$10 Million or in connection with a residential building with 75 or more units shall be subject to and shall include the following set of mandatory permit conditions:

1. It shall be a material condition of this Permit 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 or entity that is engaged to perform the construction work on the property that is the subject of this Permit (hereinafter, collectively and individually, the “contractor”) shall comply with the following qualifications and conditions at all times during their performance of work on the project:
  - A) The contractor has not been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past five years;
  - B) The contractor has not been found within the past five years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, prompt payment laws, or prevailing wage laws;
  - C) The contractor 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 Inspectional Services Department to be maintained as a public record;

- D) The contractor must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of minimum wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding. (M.G.L. c.149, §148B on employee classification);
  - E) The contractor must comply with M.G.L. c. 151, §1A and M.G.L. c. 149, § 148 with respect to the payment of wages; and
  - F) The contractor 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.
2. If any person or entity that is subject to the foregoing fails to comply with any of the qualifications and conditions with respect to work on the project, this Permit shall be deemed temporarily suspended and all construction work on the entire project shall cease immediately upon issuance of a stop work order by the Inspectional Services Department or their designee until further notice.
  3. In the event the permit is granted, the applicant for the permit shall be responsible for ensuring that all contractors performing construction work on the property comply with the conditions set forth in this section for the duration of work on the project. If any person or entity that is subject to those Minimum Mandatory Conditions fails to comply with any of the qualifications and conditions with respect to work on the project, and in addition to any other penalties or consequences provided by law, the Inspectional Services Department or their designee shall issue a stop work order with respect to all construction work on the entire project until the violation is remedied. Once the Inspectional Services Department or their designee determines that the violation has been remedied, he/she shall withdraw the stop work order and construction on the project may proceed.

## Section 9. Worker Safety

### **1. Safety Concerns and History**

The City of Boston in issuing a permit or a license is hereby authorized to deny any application or revoke or suspend a permit or license including renewals issued to any person, corporation or business entity with a history of engaging in unsafe, hazardous or dangerous practices based on work safety histories or safety concerns. Work safety histories or safety concerns shall include information obtained by affidavit for each permit application and shall include Occupational Safety and Health Administration violation reports or other information presented to or documented by the City of Boston. As part of the permit application, any person, corporation or business entity applying for a permit must present a signed affidavit informing the department issuing the permit or license of any and all Occupational Safety and Health and Administration violations, currently outstanding or resolved.

#### Section 10. Severability

If any provision of this Ordinance, or the application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this Ordinance, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid shall be not affected thereby.

**Filed in Council:            October 13, 2021**