

CHELSEA WAGE THEFT ORDINANCE

WHEREAS, the City of Chelsea annually spends hundreds of thousands of dollars purchasing goods and services; and

WHEREAS, THE City of Chelsea, as a consumer intends to be cognizant of the impact that our consumption has on the workers that provide services throughout Chelsea, and

WHEREAS, the Chelsea City Council has authority to adopt ordinances to protect the health, safety and welfare of all residents of the City of Chelsea; and

WHEREAS, a significant percentage of the population of the City of Chelsea are foreign born immigrants, speak a language other than English at home, and the population is vulnerable to exploitation; 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;

, (2) under contract to which the city or one of its Departments is signatory, or (3) who otherwise maintains a commercial presence in the city.

WHEREAS, the City Council hereby further finds and determines that, due, to the pervasiveness of Wage Theft in the construction industry, significant financial incentives are necessary to motivate property owners and their general contractors 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 Purchasing Department from contracting with debarred vendors for the period of Debarment will help to ensure that City resources are not used to support vendors debarred for wage law violations; and

WHEREAS, the City desires to ensure that potential and current recipients of licenses issued under M.G.L chapter 138 and chapter 140 comply with applicable wage laws;

NOW, THEREFORE, BE IT ORDAINED BY THE City Council of the City of Chelsea that the City of Chelsea Ordinance Code as amended is hereby further amended and adopted as follows:

Sec. 2-284. Wage theft.

Administrative citation-a civil citation issued by the attorney general court 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,

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 Chelsea

Debarment-A determination by appropriate state or federal authority that the vendor or business can no longer bid or otherwise participate in public contracts. These determinations are made pursuant to statutes including but not limited to M.G.L. c. 152 & 25C, 29 USC & 201 et seq. 29 CFR & 578,

Employ-including as used in the term employment means to suffer or permit to work.

Employer-any natural person or business, whether or not incorporated or unincorporated who suffers or permits another to work (1) in the city (2) under contract to which the city or one of its Departments is signatory, or (3) who otherwise maintains a commercial presence in the city. This definition excludes the United States as a corporation wholly owned by the government of the United States and the Commonwealth of Massachusetts, its subdivisions and corporate bodies.

Employee-a natural person who performs work for an Employer operating within the geographic boundaries of Chelsea.

Independent Contractor-As defined in G.L. c. 149 & 148B and any applicable regulations or advisory guidance

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 Employees

Overtime-as defined in M.G.L. c. 151, & 1A 29 U.S.C. & 201 et. Seq.

Prevailing Wage-as defined in M.G.L. c. 149, & 26-27H.

Stop Work Order-as defined in M.G.L. c. 152, & 25C and 452 C.M.R. & 8.02.

TIF Agreement-a tax increment financing plan, as such term is defined by 760 C.M.R. 22.00 et. Seq,

Wage-as defined by M.G.L. c. 149, & 148.

Wage Theft-an action by an Employer, his or her officers, agents or employees causing an Employer not to make a timely and/or complete payment of Wages, not to pay the Minimum Wage or Prevailing Wage or not to pay Overtime earned and owing to an Employee.

2. City Contract Requirements

The following section shall be incorporated into the City of Chelsea's Standard Contract General Conditions Form as of July 1, 2016 and amended June XX 2022 APPLY TO EVERY NEW CONTRACT AND EVERY RENEWAL TERM OF A CONTRACT ENTERED INTO AFTER THAT DATE.

- 1) A City Contractor certifies that neither it nor any of its subcontractors have been subject to a federal or state criminal or civil judgement, administrative citation final administrative determination, order or debarment

resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, the Fair Labor Standards Act or any other state or federal laws regulating the payment of wages within three years prior to the date of the contract, or certifies that it has provided copies of any and all of the above to the city prior to the date of the contract and any required wage bond or insurance, and certifies that while the contract is in effect, it will report any instance of the above to the city within five days of the City Contractors receipt.

(a) The following provisions shall be included in any request for proposals invitation for bids or request for qualifications issued by the city on or after July 1, 2016.

- i. Prospective vendors must provide the following certification or disclosures in writing to the purchasing agent with their bids or proposals. Failure to provide the following shall result in rejection of the bid or proposal.
- ii. Prospective vendors must certify that neither they or any of their subcontractors have been subject to a federal or state criminal or civil judgement, administrative citation, final administrative determination, order or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, the Fair Labor Standards Act or any other state or federal laws regulating the payment of wages within three years prior to the date vendors submit their bids or proposals; or
- iii. Prospective vendors must disclose any such criminal or civil judgement, administrative citation final administrative determination, order or debarment and include copy (ies) with their bids or proposals.
- iv. Prospective vendors are notified that they must report any such criminal or civil judgement, administrative citation final administrative determination order or debarment from a violation of M.G.L. c. 149, M.G.L. c. 151, the Fair Labor Standards Act or any other state or federal laws regulating the payment of wages while any of their bids or proposals to the purchasing agent official is pending and, if awarded a contract, during the term of the resulting contract, within five days of vendors receipt.
- v. Prospective vendors that are subject to a state or federal debarment for violation of the above laws, either voluntarily, 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 vendors 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.
- vi. Vendor(s) awarded a contract that have disclosed a federal or state criminal or civil judgement administrative citation, final administrative determination, order or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, the Fair Labor Standards Act or any other state or federal laws regulating the payment of wages within three years prior to the date they submit their bids or proposals, or vendor(s) awarded a Contract that receive a federal or state criminal or civil judgement, administrative citation, order or final administrative determination resulting from a violation of M.G.L. C. 149, M.G.L. c. 151, THE Fair Labor Standards Act or any other state or federal laws regulating the payment of wages during the term of the contract and that are not otherwise prohibited from public contracting may 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, 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 contract, and proof of such bond must be provided upon request by the city.
- vii. Vendors) awarded a contract that have disclosed a federal or state criminal or civil judgement

administrative citation, final administrative determination, order or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, the Fair Labor Standards Act or any other state or federal laws regulating the payment of wages within three years prior to the date they submit their bids or proposals and through the contract term shall furnish their monthly certified payrolls to the purchasing agent for all employees working on such contract.

3. Licensee and prospective license Requirements

- a) Any Application filed by an Employer to the Licensing Commission for any license issued pursuant to M.G.L. c. 138 or M.G.L. c. 140 may be denied if, during the five (5) year period to the date of the Application, the applicant Employer has been subject to a federal or state criminal or civil judgement, Administrative Citation, order, Debarment, or final 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 (5) years, in any judicial or administrative proceeding, for any violation of any of the laws set forth above.
- b) Any license or permit issued by the Licensing Commission 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, the licensee Employer has been subject to a criminal or civil judgement, 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. Upon notice of a violation as described herein the City Solicitor shall request that the matter be placed on the next Licensing Committee agenda.
- c) Any Employer for whom there 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 three hundred dollars (\$300.00). Each day during which a violation exists shall constitute a separate offense.
- d) In order to facilitate compliance, the Licensing Commission, may 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 Solicitor or designee will arrange a meeting within thirty (30) days at the request of the parties and during this period any revocation or suspension of a shall be held in abeyance. During the course of any conciliation process, the Employer will follow the posting requirements in Sub section C. if the Employer can demonstrate a compliance plan to satisfy any related penalty imposed by the AG's office or a civil judgement, the Licensing Commission shall hold any action pursuant to Subsection B in abeyance.
- e) Wage Bonds
 - I. Employers granted a License or Permit that have disclosed a criminal or civil judgement, 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 judgement, administrative citation, final administrative determination, order 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 twenty-five thousand dollars (\$25,000) and 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 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 Paragraph 10.

- II. The shall be held by the City of Chelsea and shall be conditioned that the contract recipient shall fulfill the payment to its Employees of any final judgement, settlement agreement, or other decision ordering the payment to its Employees of any final judgement settlement agreement, or other decision ordering the payment of Wages. If, within fourteen (14) days after demand for the bond, the license fails to deposit the bond, the City of Chelsea License Commission may suspend, revoke, or deny such license until the bond has been properly deposited with the City of Chelsea,

4. Tax Increment Financing (TIF) Agreement Requirements

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 of Chelsea, each Tax Increment Financing Agreement and each Housing Development Exemption Agreement entered into between the City of Chelsea and the recipient of such relief shall be subject to and shall include language to effect the following:

- a) 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 the Agreement on the property that is the subject of the 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;
 - i. 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.
 - ii. 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;
 - iii. The contractor must maintain appropriate industrial accident insurance sufficient to provide coverage for all 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;
 - iv. The contractor must properly classify employees as statutory employees rather than independent contractors and treat them accordingly for purposes of Minimum Wages and Overtime, workers compensation insurance coverage social security taxes and state and federal income tax withholding. M.G.L. c. 149, &1488 on employee classification;
 - v. 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;
 - vi. 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

- vii. The property owner shall submit a list to the City of all the expected contractors to work on the project as part of its 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 property owner will provide a final all-inclusive list to the City within thirty (30) days of the conclusion of the project.
- b) 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 the 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 the Agreement.
- c) In the event the owner of the property challenges the termination of the tax relief provided by the 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 the 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 the Agreement while its challenge remains pending. The owner shall promptly provide to the City with documentation of its compliance with this pending. The owner shall promptly provide to the City, with documentation of its compliance with this obligation. The condition 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 will be established that the residents of this municipality shall be considered third party beneficiaries of the agreement for the purposes of this municipality shall be considered third party beneficiaries of the agreement for the purposes of enforcing the above provisions in a civil proceeding brought by not less than ten (10) taxable inhabitants.

5. Major Building Permit Requirements

- a) In addition to any other conditions that may be required in connection with the issuance of building permits under M.G.L. c. 40A 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 ten million dollars (\$10,000,000) or in connection with a residential building with thirty (30) or more units shall be subject to and include the following set of mandatory conditions. 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.
 - i .) 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 (5) years;
 - ii .) The contractor has not been found within the past five (5) years by a court of 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 Employees as independent contractors payment of Employer payroll taxes, Employee income tax withholding wage and hour laws,

prompt payment laws or Prevailing Wage law

- iii .) The contractor must maintain appropriate industrial accident insurance sufficient to provide coverage for all Employees on the project in accordance with M.G.L. c. 152 and provide documentary proof of such coverage to the Inspectional Service Department to be maintained as a public record;
 - iv .) 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, social security taxes and state and federal income tax withholding (M.G.L. c. 149 & 148B on employee classification
 - v .) 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
 - vi .) 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. 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 temporary suspended and all construction work on the entire project shall cease immediately upon issuance of a Stop Work Order by the Director of the Inspectional Services Department or his/her designee until further notice by him/her.
- b) Remedies: 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 Minimum Mandatory Conditions required by Subsection A 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 Director of the Inspectional Services Department or his/her designee shall issue a Stop Work Order with respect to all construction work on the entire project until the violations is remedied. Once the Director of the Inspectional Services Department or his/her designee determines that the violation has been remedied, he/she shall withdraw the Stop Work Order and construction on the project may proceed.
- c) Appeals. Any person aggrieved by a Stop Work Order issued by the Director of the Inspectional Services Department or his/her designee shall have the appeal rights through the office of the City Solicitor

6. Wage Theft Complaint Process

Any City Department upon notification of a wage theft complaint about a City Contractor, a TIF Holder, or Major Building Permit Holder shall forward said complaint Immediately to the City Solicitor. The City Solicitor shall notify the City of Chelsea Purchasing Agent, the Chelsea Licensing Commission, the Chelsea City Council, and the Attorney General's Office of the complaint. If the complaint pertains to work performed at any property subject to a TIF Agreement, the City Solicitor shall also send a copy to the City Manager & Assessor.