

# *City of Salem*

*In the year Two Thousand and Twenty-Three*

*An Ordinance* to amend an Ordinance relative to wage theft.

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

**Section I.** Chapter 2 of the Code of Ordinances is hereby amended by inserting the following:

## **“ARTICLE XIX. Wage Theft Prevention**

### **Sec. 2-2070. Purpose.**

The Salem City Council has authority to adopt ordinances to protect the health, safety and welfare of all residents of the City of Salem and in adopting this Ordinance shall protect residents from a practice commonly known as “wage theft,” the improper withholding of payment from employees and failing to pay them according to required schedules. Low income, immigrant, and limited English proficient workers, who represent a high percentage of the population of the City of Salem, are most vulnerable to this practice as are workers in the hospitality service and construction industries. Also, through this Ordinance, the City shall ensure that its vendors comply with federal and state wage laws and that City resources are not used to support vendors responsible for wage law violations. And finally, this Ordinance shall ensure that potential and current recipients of tax relief agreements and licenses issued under Massachusetts G.L. chapter 138 and chapter 140 comply with applicable wage laws.

### **Sec. 2-2071. Definitions.**

“Administrative Citation”—a civil citation issued by the attorney general pursuant to 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 a renewal of a license or permit.

“City” -City of Salem and/or any of its political subdivisions or departments.

“Contractor” - a person or entity that holds a contract or seeks to contract with the City of Salem to provide a service, perform work, or provide materials, machinery, or labor necessary to perform work on real property. “Contractor” includes all bidders or proposers, contractors, construction managers, and subcontractors of any tier, including subcontractors that are not subject to M.G.L. Chapter 149, §44F and trade contractors under the bidder.

“Debarment/debarred” - an exclusion from contracting and financial assistance by state or federal entities for a set period of time;

“EACC”—Economic assistance coordinating council, as defined by G.L. c. 23A, § 3A and established by G.L. c. 23A, § 3B.2;

“Employ,” - to suffer or permit to work.

“Employee” – a natural person who performs work for an employer operating within the geographic boundaries of Salem, but shall not include any bona fide independent contractor as defined by G.L. c. 149 § 148B;

“Employer” – any natural person or business, whether or not incorporated or unincorporated, who suffers or permits another to work in the City of Salem, under a contract to which the City of Salem or one of its Departments is a signatory, or under agreement with the City for tax incentives, or who otherwise maintains a commercial presence in the City of Salem. This definition excludes the United States, or a corporation wholly owned by the government of the United States, and the Commonwealth of Massachusetts, its subdivisions, and corporate bodies.

“Independent contractor” – as defined in G.L. c. 149, § 148B (“Massachusetts Independent Contractor Law”) and any applicable regulations or advisory guidance implementing that statute.

“Minimum wage” – as defined at 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 G.L. c. 151 § 1A.

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

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

“Tax Relief” - any issuance of tax relief provided under a Tax Increment Financing Agreement, a Housing Development Exemption Agreement, or any other provision of law or regulation authorizing the issuance of tax relief.

“Tax Relief Agreement” - any Agreement or other form of document governing the terms and conditions of the issuance of Tax Relief by the City of Salem.

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

“Tipped employee” - an employee engaged in an occupation in which they customarily and regularly receive tips in an amount equal to or more than the dollar amount provided in the Fair Labor Standards Act.

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

“Wage Theft” – any action by an Employer, their officers, agents, or employees causing 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.

## **Sec. 2-2072. Wage Theft Compliance Process.**

### **A) Reporting Complaints and Violations**

The City Solicitor’s Office shall create an online complaint form that affected employees, or any other persons, may use to report complaints and violations. Printed notice, a digital copy of which shall be prepared by the Solicitor, shall be displayed in all businesses with employees where mandatory state and

federal labor law posters are and such notice shall specify that complaints can be made anonymously. The notices shall be in all languages spoken by at least 5% of the City population in the most recent United States Census and displayed on the City's web page, City Hall and Annex. The notice shall be provided to all businesses seeking a business certificate from the City Clerk's office.

#### **B) Filing and Receipt of Complaints**

Complaints of violations of state law under G.L. c. 149 and c. 151 may be reported to the office of the City Solicitor. The City Solicitor's office shall refer reports of employees affected by wage theft in Salem to appropriate agencies. Affected employees may fill out complaint forms at the office of the City Solicitor. Complaints may be filed by an affected employee or any other person.

#### **C) Required communication with the Attorney General's Office**

Unless otherwise specified in writing by the complainant, the City shall forward each complaint submitted to it pursuant to G.L. c. 149 and c. 151 to the Commonwealth's Office of the Attorney General within 30 days of receipt.

#### **D) Required communication with other City departments**

The City Solicitor's office shall forward each verified and sustained complaint submitted to the City of Salem's Purchasing Agent, Licensing Board and City Council. If a complaint pertains to work performed at any property subject to a City-issued Tax Increment Financing (TIF) or Tax Increment Exemption (TIE) Agreement, collectively referred to herein as "Tax Relief Agreements," the City Solicitor's office shall also send a copy to the Commonwealth's Economic Assistance Coordinating Council (EACC).

#### **E) Annual Reporting**

The City of Salem shall publish an annual report, through the City Solicitor's office, detailing all verified and sustained wage theft complaints received and action taken in response to such complaints, including specifically the status or final disposition of each complaint.

### **Sec. 2-2073. Requirements for Contractors.**

#### **A) Requests for Proposals (RFP)/Invitation for Bids (Bid) and Successful Bidder Requirements**

1. All bidders or proposers, contractors, and subcontractors, including those that are not subject to M.G.L. Chapter 149, §44F, under the bidder/proposer, shall as a condition for bidding, contracting, 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 requirements of this Ordinance for bidding, contracting or subcontracting and, for the duration of the project, shall comply with the Ordinance requirements and obligations.

2. Every RFP or bid issued by the Purchasing Agent or other City department shall notify bidders/proposers 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/proposer or any of its subcontractors entered within the five (5) years prior to bid submission, as well as any debarments against the bidder/proposer or any of its subcontractors in effect while its bid is pending to the City, and shall further notify bidders/proposers that if they are the successful bidder/proposer, they

and any of their subcontractors have an affirmative duty to report, within five (5) business days of receipt, any criminal or civil judgment, administrative citation, final administrative determination, order, or debarment against the bidder/proposer or any its subcontractors while their contract with the City is in effect. The RFP or bid will identify the City department and individual to whom this must be reported.

3. Every RFP or bid issued by the Purchasing Agent or issuing City department shall notify bidders/proposers that they may not contract with the City if they have been either voluntarily or involuntarily debarred for wage theft 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 Salem—for the entire term of the debarment. Such RFPs or bids shall also notify bidders/proposers that they may not use any subcontractor who has been debarred for wage theft by the federal government or any state or municipal government – including, but not limited to, the City of Salem during the period of that subcontractor’s debarment.

4. Bidders/proposers 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/proposers 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, at its sole discretion, terminate the contract without penalty.

5. Successful bidders/proposers must provide a certification of compliance as required by this Section. To the extent that the bidder/proposer 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.

To the extent a judgment, citation, or final administrative order has been issued against a bidder/proposer 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/proposer must post a bond, to be maintained for the life of the contract, as specified by this Section.

6. Successful bidders/proposers must agree to post the Massachusetts Wage & Hour poster 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, the successful bidder/proposer must inform the Purchasing Agent of the number and location of postings in order to ensure that they provide reasonable notice to all of their employees. If the Purchasing Agent so requires, the successful bidder/proposer must make and post additional posters.

## **B) Certification and Disclosures**

1. All bidders or proposers, contractors, and subcontractors , including those that are not subject to M.G.L. Chapter 149, §44F under the bidder/proposer, shall as a condition for bidding, contracting, 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. Certifies to the Purchasing Agent that neither they nor any of their subcontractors, or contractors below them at any level have been subject to a criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of G.L. c. 149, G.L. c. 151, or 29 U.S.C. § 201 et seq. within five (5) years of their application;
- b. Discloses to the Purchasing Agent or issuing City department any such criminal or civil judgment, administrative citation, final administrative determination, or debarment and include a copy of the same in their applications.

### **C) Notice Requirement**

Every City department issuing an RFP or bids shall notify applicants that they have an affirmative duty to report to said department and the City Solicitor, within five (5) business days of receipt, 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.

### **D) Reporting and Notice Requirements during the Contract Term**

1. 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 City of Salem to be maintained as a public record.
2. 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. (See M.G.L. Chapter 149, §148B on employee classification).
3. Any construction 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 Purchasing Agent upon request and shall be a public record to the extent permitted by law.
4. 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
5. All construction contractors shall furnish their monthly certified payrolls to the City's Purchasing Agent for all employees working on City contracts for the entire duration of the project.
6. All Contractors shall furnish to the Purchasing 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 Contractor or its sub-contractors within five (5) business days of receipt.

7. To the extent required as set forth below, all contractors shall maintain a wage bond for the term of the contract(s) with the City.

#### **E) Wage Bonds**

Any successful bidder/proposer or 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, based on an average of its total labor costs for the past two years, but in no event shall such amount be less than \$5,000. 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. Failure to comply with this section may constitute grounds for modification, suspension, and/or revocation of the contract at the City's discretion and without penalty to the City.

#### **F) Suspension or Revocation of Contract/Wage Theft as Material Breach of Conditions in RFP or Bid**

If a 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 with ten (10) days' notice to said contractor:

- a. Revocation of Contractor's contract with the City;
- b. Suspension of Contractor's contract with the City; and/or
- c. Impose conditions on any future contracts with the City, including, but not limited to, the posting of a wage bond and other reasonable requirements.

#### **G) Applicability**

The requirements of this Section, including any sanctions imposed herein, that are applicable to any 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 under a City contract 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 2-2074. Requirements for Tax Relief Agreements**

#### **A) Minimum Mandatory Conditions**

In addition to any other conditions that may be required in connection with the issuance of any Tax Relief issued by the City of Salem, each Tax Relief Agreement entered into between the City of Salem and the recipient of such Tax Relief shall be subject to and shall include a reference to the mandatory compliance with this Ordinance. The following conditions shall be required:

## 1. Certifications and Disclosures

It shall be a special and material condition of any Tax Relief 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 on the assisted project during the term 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:

- a. Any and all persons, natural or corporate, who are non-government signatories to the Tax Relief Agreement shall provide the City Solicitor with a list of all construction managers, general contractors, lead or prime contractors, subcontractors, 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 Relief Plans during the term of the Agreement. An initial list must be provided to the City Solicitor prior to the start of any work on the property subject to the Tax Relief Agreement.
- b. Should any additional or replacement entities be engaged to perform work on the property subject to the Tax Relief Plans during the term of the Tax Relief Agreement, the signatory must provide to the City Solicitor the name of such entity no later than fourteen (14) days after that entity begins work on the property.
- c. Tax Relief Agreement recipient signatories shall further certify that they shall not engage any entity to perform work on the property covered under the Tax Relief Agreement if such entity is subject to any debarment for any reason, or an unpaid criminal or civil judgment, administrative citation, or final administrative determination for wage theft, and that they shall 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 of a government suspension or debarment, rejection of any bid or disapproval of any proposed contract or subcontract, including pending actions, for lack of responsibility denial or revocation of prequalification or a voluntary exclusion agreement; nor (c) have entities performing work on the property who have been the subject of any governmental determination of a violation of any public works law or regulation, or labor law or regulation or regulation of any OSHA violation deemed “serious or willful” within the five (5) year period preceding the date such Agreement is signed. If, notwithstanding such certification, any interested person gives the City of Salem written notice, via the City Solicitor, that any person or entity engaged to perform work on a property subject to a Tax Relief Agreement is subject to a debarment or an unpaid criminal or civil judgment, administrative citation, or final determination in violation of the certification provisions of this subsection and entered within the five (5) year period prior to the date the Tax Relief Agreement is signed, the City Solicitor shall write to all signatories to the Tax Relief Agreement within ten (10) business days and request that the outstanding judgment or determination be satisfied or that the person or entity subject to such judgment or determination be immediately replaced on the project.
- d. 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.

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.

If the outstanding judgment or determination as specified in this section has not been satisfied, nor the person or entity subject to such judgment replaced on the project, within fourteen (14) days of when the City Solicitor informs the signatories to the Agreement of the outstanding violation, then the Agreement shall provide that such an event materially frustrates the public purpose for which this Agreement and any certification of the Agreement by the City was intended to advance.

## **2. Special and Material Conditions of Tax Relief Agreements with City of Salem**

A. It shall be a special and material condition of any Tax Relief 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 Tax Relief Agreement on the property that is the subject of the Tax Relief Agreement shall comply with the following qualifications and conditions at all times during their performance of work on the property:

- a. 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;
- b. properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding. (G.L. c.149, §148B on employee classification);
- c. comply with G.L. c. 149, § 148 with respect to the payment of wages; and
- d. comply 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.

## **B) Wage Theft Complaints for Properties Covered by Tax Relief Agreements**

The City Solicitor shall promptly respond to any complaints for violations of the legal obligations outlined in this section, including complaints for wage theft that pertain to work performed at any property subject to a Tax Relief Agreement by sending notice of such complaint to all signatories of the Tax Relief Agreement within thirty (30) business days of receiving such complaint. The Solicitor may take appropriate steps to resolve such complaint after such notice is provided, including, but not limited to, arranging informal and voluntary mediations involving the affected worker, the Agreement signatories,



and any implicated contractor or subcontractor of any tier on the project. If, after the Solicitor has properly served notice of a complaint upon the signatories to a Tax Relief 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 in this section and if such judgment, citation, or order is not satisfied or discharged, or the offending Employer replaced on the project, within fourteen (14) 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 Tax Relief Agreement and any certification of the Tax Relief Agreement by the City was intended to advance.

### **C) Termination of Tax Relief Agreements**

In the event the public purpose of a Tax Relief Agreement is materially frustrated pursuant to this Section, the City Council shall hold a public hearing and vote at its next regularly scheduled meeting regarding whether to terminate the tax relief provided by such Tax Relief Agreement and petition the EACC for revocation of that portion of its certification of the Tax Relief Agreement corresponding to such Tax Relief Agreement. If the termination of such Tax Relief Agreement is approved by the City Council, the owner of the property covered by such Tax Relief 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.

### **D) Requirements for Successors-in-Interest**

The requirements of this Section, including any sanctions imposed herein, that are applicable to any bidder, proposer, 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 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 2-2075. Requirements for Licensees and Prospective Licensees.**

### **A) Violations of Wage Laws by Licensees or Permittees**

Any application filed by an Employer to the Salem 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 they have 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.

### **B) Requirements for License Holders**

Any license or permit issued by the Salem 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.

### **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 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, 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 (including tipped 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 Section may constitute grounds for modification, suspension, and/or revocation of the license or permit.

### **Sec.2-2076. 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.

***Section II.*** This Ordinance shall take effect as provided by City Charter.