

CITY OF LYNN

Notice: Lynn City Council Public Hearing on Tuesday, September 29, 2020 at 5:15PM in the Council Chambers on the following Ordinance: **AMENDING THE ORDINANCE TO PREVENT WAGE THEFT**

WHEREAS, the City of Lynn annually spends hundreds of thousands of dollars purchasing food, apparel and other goods and services; and

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

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

WHEREAS, the practice commonly known as “wage theft”-improperly withholding payment from employees and failing to pay them according to required schedules-harms the well-being of employees, their families, and their communities; and

WHEREAS, low income, immigrant, and limited English proficient workers are most vulnerable to this practice, who represent a high percentage of the population of the Municipality of Lynn; and

WHEREAS, workers in the hospitality service and construction industries are also vulnerable to this practice; 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 vendors to certify to the City their compliance with federal and state wage law, or to report violations and provide a wage bond, strengthens the City’s ability to hire vendors that treat their employees fairly; 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 house vendors debarred for wage law violations; and

WHEREAS, the City desires to ensure that potential and current recipients of licenses issued under 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 Lynn that the City of Lynn Ordinance Code as amended is hereby further amended and adopted as follows:

SECTION 1—Definitions.

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

1. “Employee” – a natural person who performs work for an employer operating within the geographic boundaries of Lynn, but shall not include any bona fide independent contractor as defined by G.L. c. 149, § 148B;
2. “Employer” – any natural person or business, whether or not incorporated or unincorporated, who suffers or permits another to work (1) in the City of Lynn,(2) under a contract to which the City of Lynn or one of its Departments is signatory, or under agreement with the City for tax incentives, or (3) who otherwise maintains a commercial presence in the City of Lynn. This definition excludes:
 - 1) The United States or a corporation wholly owned by the government of the United States; and
 - 2) The Commonwealth of Massachusetts, its subdivisions, and corporate bodies.
3. “Employ,” including as used in the term “employment” – to suffer or permit to work.
4. “Independent contractor” – as defined in G.L. c. 149, § 148B (“Massachusetts Independent Contractor Law”) and any applicable regulations or advisory guidance implementing that statute.
5. “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.
6. “Overtime” – as defined in G.L. c. 151, § 1A.
7. “Prevailing wage” – as defined in G.L. c. 149, §§ 26-27H.
8. “Timely Payment of Wages” – as defined by G.L. c. 149, § 148.
9. “Wage” – as defined by G.L. c. 149, §148.
10. “Wage Theft” – any action by an Employer, his 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.
11. “Application” – an initial application or a renewal of a license or permit.
12. “City Contractor” – an Employer who holds or seeks to hold a contract for goods, services, or labor with the City of Lynn

13. "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.

14. "Stop work order"—as defined in G.L. c. 152, § 25C and 452 C.M.R. § 8.00.

15. "Tax Incentive Plans" shall include any tax incentive plan approved by the City of Lynn to facilitate the construction of new projects or rehabilitation of existing structures. Such tax incentive plans shall include, but are not limited to: (a) a "TIF Agreement" which is a tax increment financing agreement, as such term is defined by G.L. c. 23A, § 3A, c. 40, § 59, and 760 C.M.R. 22.00 *et seq.*; (b) an Economic Development Incentive Program ("EDIP"); (c) Housing Development Incentive Program ("HDIP"); (d) Housing Development Tax Increment Exemption ("TIE") Agreement; (e) Certified Housing Development Tax Credit ("CHDC"); (f) Economic Opportunity Area Credit ("EOAC"); (g) Historic Rehabilitation Tax Credit; (h) Low Income Housing Tax Credit ("LIHTC").

16. "EACC"—Economic assistance coordinating council, as defined by G.L. c. 23A, § 3A and established by G.L. c. 23A, § 3B.

SECTION 2—Wage Theft Advisory Committee.

A. Wage Theft Advisory Committee—defined

There shall be established a Wage Theft Advisory Committee, comprised of one (1) designee submitted by the Lynn City Council, one (1) designee submitted by the Mayor, one (1) representative chosen by the Lynn City Council from a list provided by the North Shore Labor Council, one (1) representative chosen by the Lynn City Council from a list provided by the Lynn Area Chamber of Commerce, one (1) representative chosen by the Lynn City Council from a list provided by the North Shore Latino Business Association, one (1) representative chosen by the Lynn City Council from a list provided by the North Shore Building Trades Council, one (1) representative chosen by the Lynn City Council from a list provided by the Lynn Worker Center, and one (1) representative from the Lynn community chosen by the Lynn City Council from a list provided by New Lynn Coalition. 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.

B. 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 received by the City Solicitor's office, pursuant to Section 3.C of this Ordinance, 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 Lynn at City-sponsored events and in collaboration with other City departments.

C. Reporting Requirements

The City of Lynn 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 G.L. c. 149 and G.L. c. 151, if known.

D. 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 3—Wage Theft Complaint Process.

A. Filing and Receipt of Complaints

The City of Lynn, at the office of the City Solicitor, shall be referred complaints of violations of state law under G.L. c. 149 and c. 151. The City Solicitor's Office shall refer employees affected by wage theft in Lynn to appropriate agencies. Complaints may be filed by an affected employee or any other person.

B. 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.

C. Required Communication with Other City Departments

The City Solicitor's Office shall forward each complaint submitted to the City of Lynn's Purchasing Agent and the Lynn Licensing Commission, the Lynn City Council, to the Wage Theft Advisory Committee. If the complaint pertains to work performed at any property subject to a TIF Agreement, the City Solicitor's office shall also send a copy to the EACC.

Section 4—Requirements for City Contractors.

A. RFP/Bid and Successful Bidder Requirements

1. Every Request for Proposals (RFP) or bid issued by the Purchasing Agent shall include the certification and disclosure requirements imposed by this Section.
2. Every RFP or bid issued by the Purchasing 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 Purchasing Department as the department to whom this must be reported.
3. Every RFP or bid issued by the Purchasing 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 Lynn—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.
4. 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.
5. Successful bidders must either:
 - a. 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.
 - b. 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.
6. Successful bidders must agree to post the notice available at <http://www.mass.gov/ago/docs/workplace/wage/wagehourposter.pdf> in a conspicuous location accessible to all of their employees. To the extent not all employees would have reasonable access to the notice if posted in a single location by the successful bidder, the successful bidder must inform the Purchasing Agent or other City department of the number and location of postings in order to ensure that the successful bidder provides reasonable notice to all of their employees and agrees to make those additional postings.

B. Certification and Disclosures

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

1. 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 G.L. c. 149, G.L. c. 151, or 29 U.S.C. § 201 *et seq.* within five (5) years of their application;
2. In the alternative, the applicant shall disclose to the Purchasing Agent any such criminal or civil judgment, administrative citation, final administrative determination, or debarment and include a copy of the same in their applications.

3. The Purchasing 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.

C. Reporting and Notice Requirements during the Contract Term

1. Upon request by the Purchasing Agent, all City Contractors shall furnish their monthly certified payrolls to the City's Purchasing Agent for all employees working on City contracts.
2. To the extent a contract is for a term of one year or more, a City Contractor will provide the Purchasing Agent with a certification compliant with this Section on the effective date of the contract and at each anniversary thereof until the contract expires.
3. All City Contractors will 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 City Contractor or its sub-contractors within five (5) business days of receipt.
4. To the extent required as set forth at Subsection (D) below, all City Contractors shall maintain a wage bond for the term of the contract(s) with the City.

D. Wage Bonds

1. 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 Lynn 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.
2. 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 employees employed on the specific City of Lynn contract, 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.

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

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

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

F. Requirements for Successors-in-Interest

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

SECTION 5—Requirements for Licensees and Prospective Licensees.

A. Requirements for License Applicants

Any application filed by an Employer to the License 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-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.

B. Requirements for License Holders

Any license or permit issued by the License 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 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, 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. 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 pursuant to Subsection B.

D. Requirements for successors-in-interest

The requirements of this Section, including any sanctions imposed herein, that are applicable to any Employer shall also be applicable to, and effective against, any successor Employer that (i) has at least one of the same principals 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 Tax Incentive Agreement/Plan

A. Certifications and Disclosures

It shall be a special and material condition of any future Tax Incentive Plans that any and all persons, natural or corporate, who are signatories to the Tax Incentive Plans provide the City of Lynn, via its Wage Theft Advisory Committee, with a list of all construction managers, general contractors, lead or prime contractors, 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 Incentive Plans during the term of the Agreement/Plan. An initial list must be provided to the Wage Theft Advisory Committee prior to the start of any work on the property subject to the Tax Incentive Agreement/Plan.

Should any additional or replacement entities be engaged to perform work on the property subject to the Tax Incentive Plans during the term of the Tax Incentive Agreement/Plan, the signatory must provide the name of such entity no later than fourteen (14) days after that entity begins work on the property.

All signatories to the Tax Incentive Agreement/Plan shall further certify that they shall not engage any entity to perform work on the property covered under the Tax Incentive Agreement/Plan which 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 Lynn written notice, via the Wage Theft Advisory Committee, that any person or entity engaged to perform work on a property subject to a Tax Incentive Agreement/Plan 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 TIF Agreement is signed, the Secretary of the Wage Theft Advisory Committee shall write to all signatories to the TIF Agreement within ten (10) 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.

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

B. Special and Material Conditions of TIF Agreements with City of Lynn

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

- (1) The firm must maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with G.L. c.152 and provide documentary proof of such coverage to the Building Inspector to be maintained in the Building Department as a public record;
- (2) The firm must properly classify 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);
- (3) The firm must comply with G.L. c. 149, § 148 with respect to the payment of wages; and
- (4) The firm must be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority.

C. Wage Theft Complaints for Properties Covered by TIF Agreements

The City of Lynn's Wage Theft Advisory Committee shall promptly respond to any complaints for violations of the legal obligations outlined at subsections (B)(1)–(4), including complaints for wage theft, filed through the City Clerk that pertain to work performed at any property subject to a TIF Agreement by sending notice of such complaint to all signatories of the TIF Agreement within thirty (30) days of receiving such complaint. The Wage Theft Advisory Committee 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 Wage Theft Advisory Committee has properly served notice of a complaint upon the signatories to a TIF Agreement pursuant to this subsection, any Employer becomes subject to a federal or state criminal or civil judgment, administrative citation, stop work order, debarment, or final administrative determination resulting from a violation of any of the legal obligations outlined at subsections (B)(1)–(4), and if such judgment, citation, or order is not satisfied or discharged, or the offending Employer replaced on the project, within fourteen (14) days of the entry of such judgment, citation, or order, the parties agree that such an event materially frustrates the public purpose that the TIF Agreement and any certification of the Tax Incentive Agreement/Plan by the City was intended to advance.

D. Termination of TIF Agreements

In the event the public purpose of a Tax Incentive Agreement/Plan or Tax Incentive Agreement/Plan is materially frustrated pursuant to Subsection (A) and/or (C), 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 Incentive Agreement/Plan and petition the EACC for revocation of that portion of its certification of the Tax Incentive Agreement/Plan corresponding to such Tax Incentive Agreement/Plan. If the termination of such Tax Incentive Agreement/Plan is approved by the Council and Mayor, or by the Council over the Mayor's veto, the owner of the property covered by such Tax Incentive Agreement/Plan 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.

E. Requirements for Successors-in-Interest

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

G. Reporting and Notice Requirements during Agreement Term

Upon request by the Wage Theft Advisory Committee, all Employers performing work upon a property subject to a TIF Agreement shall furnish their monthly certified payrolls to the Wage Theft Advisory Committee for all employees providing labor or services at the property subject to such Agreement.

Section 7--Severability

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

This meeting is closed to the public but will be televised live on the Lynn Community Television (LCTV) and also streamed on LCTV Facebook page. The public is welcome to call in “live” any questions or concerns at 781-586-6783 or 781-586-6773.

PER ORDER:

Janet Rowe, City Clerk