

Title...

To amend various sections of Chapter 377 of the Columbus City Codes to enhance the abilities of the Wage Theft Prevention Commission and clarify language related to covered entities; and to declare an emergency.

Explanation...

On September 21, 2020, City Council passed Ordinance 1802-2020, creating a new chapter of the Columbus City Codes, Chapter 377, Wage Theft Prevention and Enforcement. Chapter 377 sets forth various provisions designed to ensure that entities who commit wage theft or payroll fraud do not do business with, or otherwise benefit from, contracts with the City of Columbus. On January 25, 2021, City Council passed Ordinance 0190-2021, amending Division (d) of Section 377.02 to allow additional time for the initial members of the Wage Theft Prevention and Enforcement Commission to be appointed and seated. Ordinance 0190-2021 also amended Section 377.12 to make clear that tax increment financing agreements which pledge service payments for the repayment of bonds or other financing will not be subject to termination based upon a violation of Chapter 377 of the Columbus City Codes.

This Ordinance further amends Chapter 377 to allow the Wage Theft Prevention Commission to issue a waiver to covered entity that has an adverse determination in certain circumstances. City Departments can now request a waiver on behalf of a covered entity with an adverse determination. This Ordinance also clarifies that Chapter 377 does not apply to past contracts or financial incentive, nor to any amendments to previously executed financial incentive agreements that do not expand the financial incentive provided. It clarifies actions of the Wage Theft Prevention Commission and staff. It also exempts goods contracts from independent contractor reporting requirements.

FISCAL IMPACT: No funding is required for this legislation.

Emergency Justification: Emergency action is requested to ensure that amendments to Chapter 377, pertaining to the enhancement of the abilities of the Wage Theft Prevention Commission and clarification of language related to covered entities, is in effect as soon as possible.

..Body

WHEREAS, on September 21, 2020, City Council passed Ordinance 1802-2020, creating Columbus City Code Chapter 377, Wage Theft Prevention and Enforcement; and

WHEREAS, feedback from the community has contributed to these amendments to various sections of Chapter 377 to enhance the abilities of the Wage Theft Prevention Commission and clarify language related to covered entities; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That Chapter 377 of the Columbus City Codes is hereby amended as follows:

Chapter 377 – Wage Theft Prevention and Enforcement

377.01 – Definitions

(a)

(1) “Adverse determination” means the following

- (A) so long as it is not subject to appeal or contestation, a final adjudication determination by a court of competent jurisdiction, a final action by a state or federal governmental agency, or a final adjudication by arbitrator or arbitral body of competent jurisdiction that a covered entity has committed wage theft, theft or payroll fraud, including, but not limited to, an administrative merit determination, arbitration award or decision, civil judgment, or criminal conviction; or
- (B) so long as it is not subject to an appeal, a final determination by the Wage Theft Prevention and Enforcement Commission that a covered entity has been found to have violated an obligation under section 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09377.09, or 377.10 of the city code. Such a determination includes, but is not limited to, an administrative merit determination, arbitration award or decision, civil judgment, or criminal conviction, including any determination made in or through a court proceeding, administrative hearing, or any other governmental body, including the Wage Theft Prevention and Enforcement Commission.
- (2) If the covered entity appeals or contests the final adjudication, final action, or final determination, the adverse determination becomes effective ~~occurs whenever the~~ that initial adjudication, action, or determination, in whole or part, is affirmed on appeal-confirmed or after the contest, or the appeal or contest is denied.
- (3) A settlement agreement or other agreement entered into by a covered entity to cure or compromise any instance allegations of wage theft or payroll fraud so as to resolve the matter prior to the issuance of an adverse determination without a final administrative merit determination, arbitration award or decision, civil judgment, or criminal conviction, including any determination made in or through a court proceeding, administrative hearing, or any governmental body, or while an appeal is pending shall not constitute an adverse determination.
- (4) A settlement agreement or other agreement entered into by a covered entity and the Wage Theft Prevention and Enforcement Commission staff to cure or compromise any instance of a alleged violation of section 377.03, 377.05, 377.06, 377.07, 377.08, 377.09377.09, or 377.10 of the city code so as to resolve the matter without a hearing on the merits before the Wage Theft Prevention and Enforcement Commission shall not constitute an adverse determination so long as the settlement agreement is approved by the Commission. ~~received Commission approval.~~
- (5) Nothing in this section shall be construed to permit a collateral attack on the jurisdiction of a court, state or federal governmental agency, or an arbitrator or arbitral body to avoid being placed on the adverse determination list.
- (6) No adverse determination shall issue under division (a)(1)(B) of this section against a covered entity described in division (e)(2) or division (e)(3) of this section if the covered entity proves that contract or agreement that rendered it a covered entity failed contain the information required by divisions (a) or (b) of section 377.09 of the city code.
- (7) For any covered entity that is a joint venture, “adverse determination” includes the adverse determinations of the covered entity as well as all persons comprising the joint venture.

- (b) “Adverse determination list” means the list, published by the Wage Theft Prevention and Enforcement Commission and updated at least once every sixty (60) days, of persons that have received an adverse determination within the preceding three (3) years.
- (c) “Affiliate” of a covered entity means, for purposes of this Chapter, a person that directly or indirectly controls the covered entity, is controlled by the covered entity, or is under common control with the covered entity, and is engaged in business activities that are substantially similar to those of the covered entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of an entity.
- (d) “Construction contract” means an agreement entered into on or after the effective date of this Chapter pursuant to which a person promises to perform or performs any construction, improvement, renovation, remodeling, painting, alteration, erection, demolition, removal, digging, or drilling for a development or project, and expressly includes any off-site fabrication or assembly of components or materials if those components or materials are specifically fabricated or assembled for the development or project.
- (e) “Covered entity” means:
- (1) An individual, partnership, corporation, firm, trust, association, or other entity, together with any entity that is the parent of, has a direct or indirect majority ownership interest in, or has direct or indirect management and control of, the entity that requests, bids for, applies for, or receives from the City or is party to, with the City; A person that, on or after the effective date of this Chapter,
 - A. enters into a financial incentive agreement, agreement with the City;
 - B. enters into a City contract for goods or services, including a construction contract; or
 - C. registers or applies for renewal under the process described in City Code Section 3905.01 a vendor registration;
 - (2) A contractor of a covered entity as described in division (b)(1)(A), along with any subcontractor of the contractor, or a subcontractor of a higher-tiered subcontractor of the contractor that, any time on or after the effective date of this Chapter and during the term of the financial incentive agreement, intends to or does perform work or render services, enters into a construction contract pursuant to, related to, or in furtherance of a the financial incentive agreement either on-site or off-site for a development location covered by a financial incentive agreement or enters into an agreement to provide janitorial, maintenance, repair, property management, or landscaping services at the development location covered by the financial incentive agreement.
 - (3) A contractor of a covered entity as described in division (e)(1)(B), a subcontractor of the contractor, or a subcontractor of a higher-tiered subcontractor of the contractor that, on or after the effective date of this Chapter, enters into an agreement to intends to or does perform work or services, pursuant to or in satisfaction of a City contract for goods or services, including a construction contract.
 - (4) A covered entity designation is not limited to the signatory to the bid, application, registration, contract, or financial incentive agreement, but extends to any real party in interest or common owner. No person shall qualify as a covered entity solely because it contracts with a covered entity as described in division (e)(1)(A) to lease space at a development location covered by a financial incentive agreement.

- (f) “Employee” means ~~an individual person~~ meeting the criteria for an employee under the parameters of the right to control test established by the United States Internal Revenue Service, or any successor test.
- (g) “Financial Incentive Agreement” means any contract or other agreement entered into on or after the effective date of this Chapter between the City and a covered entity by which the City provides a tax incentive, tax abatement, tax credit, or other financial incentive to the covered entity including, but not limited to, Community Reinvestment Act tax abatements, tax increment financing agreements, enterprise zone agreements, job incentive agreements, ~~opportunity zone agreements~~, job creation and retention tax credits, downtown office incentive program payments, as well as any commercial loan, commercial grant, or conveyance of city-owned land for less than fair market value.
- (h) “Payroll fraud” means concealing an entity's true payroll tax liability or other financial liability to a government agency from government licensing, regulatory, or taxing agencies through ~~tax evasion or fraud, including but not limited to~~ misclassification of employees, failure to report or underreported payment of wages, or executing a cash transaction while failing to maintain proper records of reporting and withholding.
- (i) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, any other business entity, any alter ego of a person, or any successor of a person.
- (j) "Wage theft" means a violation of the Ohio Prompt Pay Statute, O.R.C. 4113.15; the Ohio Minimum Fair Wage Standards Act, O.R.C. Chapter 4111; Ohio's Minimum Wage Constitutional Amendment, Section 34a of Article II of the Ohio Constitution; O.R.C. Chapters 4109 or 4115; O.R.C. Sections 4113.17, 4113.18, 4113.52, or 4113.61; a violation of ~~an existing or former municipal ordinance, a~~ law of another state, or law of the United States that is substantially equivalent to any of the aforementioned Ohio statutes or the City wage requirement; or any successor to any of these laws ~~or regulations~~.
- (k) “Independent contractor” means a person that meets the criteria for an independent contractor under the parameters of the right to control test established by the United States Internal Revenue Service, or any successor test.
- (l) “Payroll records” means payroll for each pay period exhibiting for each employee paid any wages, the employee’s name, current address, the last four digits of the employee’s social security number, number of hours worked each day during the pay period and the total for each week, the employee’s hourly rate of pay, the employee’s job classification, fringe payments, and deductions from the employee’s wages.
- (m) “Successor” means any person that (i) acquires more than 50 % of the assets of a predecessor , (ii) engages in substantially the same business as the predecessor; and (iii) has more than 50 % of the same ownership as a predecessor .
- (n) “Predecessor” means any person that disposes of more than 50 % of its assets to a successor that thereafter engages in the same business activity and has greater than 50 % of the same ownership.

377.02 Wage Theft Prevention and Enforcement Commission

- (a) There is hereby created the Wage Theft Prevention and Enforcement Commission, the duties and powers of which shall include hearing and determining whether an adverse determination should issue for a violation of ~~Chapter 377, section 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09, or 377.10~~ of the city code; recommending to the City Attorney penalties and remedies for a finding of non-compliance with provisions of Chapter 377 to the City Attorney, section 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09, or 377.10 of the city code; approving settlement agreements to settle or compromise alleged violations of sections 377.03, 377.05, 377.06, 377.07, 377.08, 377.09, and 377.10 of the city code where the covered entity has taken reasonable action to cure, remedy, or correct the action which formed the basis for the alleged violation; approving staff resolutions of allegations of alleging non-compliance with specified provisions of Chapter 377, sections 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09, or 377.10 of the city code; receiving complaints from residents, workers, and businesses regarding non-compliance with Chapter 377 of Columbus City Codes sections 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09, and 377.10 of the city code; and related rules and regulations, publishing a monthly list of businesses, contractors, and subcontractors that have received an adverse determination, publishing and updating the adverse determination list; hearing and determining whether to grant a waiver or other relief pursuant to section 377.02(o)-(r) of the city code to a person with an adverse determination under section 377.01(a)(1)(A); and participating in community education programs.
- (b) The Commission shall be composed of five (5) members. Upon appointment to the Commission, members shall serve for a term not exceeding three years, subject to 377.02(d) of this section. Members may be reappointed to a new three year terms at the conclusion of their term.
- (c) Of the five (5) members comprising the Commission, two (2) members shall be appointed by the Mayor, two (2) members shall be appointed by Council, and the fifth member shall be appointed by the Commission with the advice and consent of the Mayor and Council. All member appointments shall be subject to a vote by Council, with a majority in the affirmative required for appointment.
- (d) The initial appointments to the Wage Theft Prevention and Enforcement Commission shall occur no later than April 1, 2021, and the terms for the initial appointments shall vary to provide for staggered terms:
- (1) Two (2) members shall be appointed for a term not exceeding two years;
 - (2) Three (3) members shall be appointed for a term not exceeding three years;
 - (3) As provided in section 377.02(b), upon expiration of their initial term, any member may be reappointed to a new term not to exceed three years.
- (e) The Commission shall hold public meetings, the intervals between which shall not exceed sixty (60) days. Records of all proceedings shall be maintained and open to the public.
- (f) The Commission shall receive staff support, to be provisioned by the Department of Finance, equivalent to no less than one (1) full-time employee.
- (g) Upon receipt of a complaint alleging that a covered entity has violated a violation of Chapter 377 section 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09, or 377.10 of the city code by a covered entity, Commission staff shall conduct an investigation to determine if a violation has occurred.
- (1) During the course of the investigation, Commission staff may work with a covered entity to attempt to cure or compromise any instance of a alleged violation of section 377.03, 377.05, 377.06, 377.07, 377.08, 377.09, or 377.10 of the city code so as to reach a settlement agreement to resolve the matter. If so reached, Commission staff shall present the proposed

settlement agreement to the Commission for approval and, if approved by the Commission, no adverse determination shall be made based upon the allegation. Notwithstanding anything in this Chapter to the contrary, the Wage Theft Prevention and Enforcement Commission has the authority to settle any alleged violation of section 377.03, 377.05, 377.06, 377.07, 377.08, 377.09, 377.10 prior to a final determination by the Wage Theft Prevention and Enforcement Commission upon a hearing that a violation has occurred.

- (2) Where there are reasonable grounds to believe that a violation has occurred and either a settlement agreement has not been reached or the allegation pertains to a violation of section 377.04, the matter shall be submitted to the Commission for a hearing to determine if a violation has occurred.
 - (3) The covered entity shall ~~by~~be notified by Commission staff of a pending investigation where it is determined that there are reasonable grounds to believe that a violation has occurred. Commission staff shall provide a covered entity with notice that it may submit information to the Commission staff relevant to whether the covered entity has violated this Chapter.
- (h) If the Commission staff determines, based upon its investigation and after reviewing any information provided by the covered entity, that there are reasonable grounds to believe that a violation of section 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09 or 377.10 has occurred, a hearing ~~Hearings~~ on the alleged violations of the provisions of Chapter 377 shall be conducted by the Commission at a meeting open to the public.
- (1) The Commission shall provide the covered entity with notice of the hearing and a description of the subject(s) of the investigation at least thirty (30) days in advance of the public hearing.
 - (2) The Commission shall provide the covered entity with an opportunity to submit documents, present information, call, examine, and cross examine witnesses, and be heard by the Commission during the public hearing and prior to a vote.
 - (3) The Commission shall determine, based on all of the information presented, if a violation of section 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09 or 377.10 of the city code ~~Chapter 377~~ has occurred. ~~A majority vote by the Commission finding a violation shall result in an adverse determination.~~
 - (1) A majority vote by the Commission finding a violation shall result in finding of an adverse determination.
 - (2) A covered entity may appeal to the Franklin County Court of Common Pleas pursuant to the procedures and requirements set forth in Ohio Revised Code Chapter 2506 or any successor thereto. whether the Commission abused its discretion in finding a violation of Chapter 377 resulting in an adverse determination.
- (i) The Commission shall provide written notice of its findings of facts and conclusions of law ~~the results of its investigation, its findings at hearing,~~ and any recommended penalties and remedies for any adverse determination based on a violation of section 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09 or 377.10 of the city code. ~~non-compliance and/or adverse determinations to the covered entity.~~

(j) ~~The Commission shall publish and update the adverse determination list at least once every sixty days. monthly list of businesses, contractors and subcontractors persons that have received an adverse determination from any local, state, or federal body within the preceding three (3) years.~~

(k) ~~The Commission may receive complaints from residents, workers and businesses regarding non-compliance with sections 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09 and 377.10 of the city code. this chapter and related rules and regulations and, in addition to any action that may be taken on the part of the Commission, when appropriate may refer the workers and/or the matter to the United States Department of Labor, the Ohio Department of Commerce or any other appropriate entity for further investigation.~~

(l) ~~The Commission may contract with a qualified non-for-profit organization to assist with investigations and education programs.~~

(m) The Commission shall issue a report annually to Council on its activities and whether it recommends the reduction or revocation of any financial incentives defined in this chapter due to violations of Chapter 377.

(n) A member of the Commission may be removed by a majority vote of the rest of the members for inefficiency, neglect of duty, or malfeasance in office. Such a vote shall only be taken after the member is provided a copy of the charges and an opportunity to be heard in person or by defense counsel.

(o) A covered entity, or any person that reasonably believes it may become a covered entity, may request a waiver from the Commission for an adverse determination which would result in its placement on the adverse determination list. A covered entity shall submit any such waiver request in writing in a manner and form prescribed by the Commission and shall include one or more of the following bases for the grant of said waiver:

(1) There has been a bona fide change in ownership of the covered entity or an affiliate since the adverse determination occurred;

(2) The covered entity or an affiliate of the covered entity has taken significant and verifiable remedial actions to prevent any future adverse determinations from occurring and has complied with the requirements of the determination forming the basis of the adverse determination, including, as applicable satisfaction of the reporting obligation under this Chapter, providing the Commission with documents and information required by this Chapter, and the payment of required back pay, interest, penalties, and fines; and

(3) Other factors that the covered entity believes is relevant to the granting of a waiver.

(p) The Commission shall consider all information submitted by a covered entity or person under 377.02 (o)(1)-(3) and may request additional information from a covered entity or person to determine whether to grant a waiver.

(q) The Commission may grant a waiver to a covered entity or person under 377.02 (o)-(p) by removing a covered entity or person from the 377.02 (j) list, reducing the time period a covered entity or person is on the adverse determination list, or allowing a covered entity or person a one-time waiver to enter into a financial incentive agreement with the City, receive a financial incentive provided by the City, enter into a City contract for goods or services, enter into a construction contract pursuant to, related to, or in furtherance of a financial incentive agreement,

enter into an agreement to provide janitorial, maintenance, repair, property management, or landscaping services at a development location covered by a financial incentive agreement, or enter into an agreement with a covered entity to perform work or services pursuant to or in satisfaction of a City contract for services.

(r) A supermajority vote of the Commission shall be required to grant a waiver to a covered entity under 377.02 (o)-(q).

(s) If the Commission, in the course of performing its duties, discovers evidence or receives a complaint that a person has committed wage theft or payroll fraud, the Commission may refer the matter to the United States Department of Labor, the Ohio Department of Commerce, or any other appropriate entity for further investigation.

(t) A City Department may request a waiver from the Commission on behalf of a covered entity that has an adverse determination which would result in its placement on the adverse determination list. The Commission may grant the waiver if the City Department demonstrates that the inability of the City Department to contract with said covered entity would result in serious disruption to the efficient and orderly operations of the City or the covered entity is a sole source provider of goods or services that are necessary for the efficient and orderly operations of the City.

377.03 Ineligibility of a covered entity

(a) A covered entity requesting, applying for, negotiating, or bidding on a financial incentive agreement with the City, a City contract for goods or services, or intending to perform work or services pursuant to, related to, or in furtherance of a financial incentive agreement either on-site or off-site at a development location associated with a financial incentive agreement with the City, or pursuant to or in satisfaction of a City contract for goods and services. A person that intends to or reasonably believes that it may become a covered entity under this Chapter shall, prior to entering into any agreement that would render the person a covered entity, shall disclose to the Wage Theft Prevention and Enforcement Commission in a manner and form prescribed by the Commission City at the time of request, application, negotiation, bidding, registration, or prior to performing such work or services, whichever occurs first, any adverse determination against the person, a predecessor of the person, or an affiliate of the person during the preceding three (3) years. If the adverse determination is based on the conduct of an affiliate or predecessor, the Wage Theft Prevention and Enforcement Commission or its staff may request additional information concerning the relationship between the prospective covered entity and the affiliate or predecessor.

(b) Any person who discloses an adverse determination pursuant to section 377.03(a) shall not enter into any agreement that would render the person a covered entity until after the next regularly scheduled meeting of the Wage Theft Prevention and Enforcement Commission and thereafter only if the person is not disqualified pursuant to section 377.03(e) and the Wage Theft Prevention and Enforcement Commission has not ordered a hearing pursuant to section 377.03(c).

(c) Upon disclosure of an adverse determination against an affiliate or predecessor, the Wage Theft Prevention and Enforcement Commission staff shall review the information supplied by the prospective covered entity, including any information concerning the relationship between the prospective covered entity and the affiliate or predecessor, and if the staff determines after such review that it is not probable that the prospective covered entity and affiliate are part of a single, integrated enterprise for employment purposes under the standard set forth in section 377.03(d) or alter egos, or that it is not probable that the prospective covered entity was created by a de factor merger of a predecessor under the laws of the State of Ohio, then the staff shall recommend to the

Wage Theft Prevention and Enforcement Commission that the prospective covered entity not be placed on the adverse determination list. If the staff determines after such review that it is probable that the prospective covered entity and affiliate are part of a single, integrated enterprise for employment purposes or are alter egos, or if the staff determines it is probable that the prospective covered entity was created by a de factor merger of a predecessor under the laws of the State of Ohio, or if the staff is unable to make a determination due to the insufficiency of the information provided by the prospective covered entity, then it shall recommend to the Wage Theft Prevention and Enforcement Commission that a hearing is necessary to determine the if the prospective covered entity and affiliate are a single integrated enterprise for employment purposes pursuant to the standard set forth in section 377.03(d) or are alter egos under Ohio law, or if the prospective covered entity was created by a de factor merger of a predecessor under the laws of the State of Ohio, as applicable.

(d) The Wage Theft Prevention and Enforcement Commission shall have the authority to conduct an administrative hearing to determine by a preponderance of the evidence if the prospective covered entity and affiliate are a single integrated enterprise for employment purposes, taking into consideration the following factors: (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control; if the covered entity is an alter ego of the affiliate under the laws of the State of Ohio; or the covered entity was created by a de factor merger of a predecessor under the laws of the State of Ohio.

(1) The Commissions shall provide to the person or prospective covered entity notice of the hearing date, time, and location at least thirty (30) days prior to the hearing.

(2) If a majority of the Commission finds by a preponderance of the evidence that the prospective covered entity and affiliate are a single, integrated enterprise for employment purposes, that the prospective covered entity and affiliate are alter egos under the law of the State of Ohio, that the prospective covered entity was created by a de factor merger of a predecessor under the laws of the State of Ohio, or that the prospective covered entity failed to provide sufficient information responsive to specific requests by the Commission staff to allow the Commission to determine whether the prospective covered entity and affiliate are a single, integrated enterprise for employment purposes or alter egos, or if the prospective covered entity was created by a de facto merger of a predecessor, then the Commission shall create a written report setting forth its findings of fact and conclusions of law and ordering that the prospective covered entity be placed on the adverse determination list.

(3) If the Commission finds that the evidence presented failed to establish by a preponderance of the evidence that the prospective covered entity and affiliate are a single, integrated enterprise for employment purposes or alter egos, or that the prospective covered entity was created by a de factor merger of a predecessor, as applicable, then the Commission shall create a written report setting forth its findings of fact and conclusions of law and indicating that the prospective covered entity is qualified to enter into an agreement that would render it a covered entity.

(4) The final decision of the Commission may be appealed pursuant to the provisions of R.C. Chapter 2506 and any successors thereto.

(5) The prospective covered entity may at any time opt out of or otherwise discontinue the investigation and hearing provided for under this section, but shall not be permitted to enter into any contract that would render it a covered entity pursuant to this chapter until at least three years following the adverse determination against the affiliate that triggered the hearing.

(e) A covered entity that is listed by the Commission as ~~having received an~~ on the adverse determination list is ineligible to enter into any financial incentive agreement with the City, to enter into a City contract for goods ~~and~~ or services, including a construction contract, or to enter into a contract or an agreement to perform work or services pursuant to, related to, or in furtherance of a financial incentive agreement either on site or off site for a development location that is associated with a financial incentive agreement with the City to enter into a construction contract pursuant to, related to, or in furtherance of a financial incentive agreement or an agreement to provide janitorial, maintenance, repair, property management, or landscaping services at the development location covered by a financial incentive agreement, or to enter into an agreement with a covered entity to perform work or services pursuant to or in satisfaction of a City contract for services, including a construction contract, for three (3) years from the date of the most recent adverse determination against the covered entity.

377.04 Covered entity prohibited contracting

- (a) No covered entity shall enter into a construction contract ~~or agreement for the performance of work or services pursuant to, related to, or in furtherance of a financial incentive agreement either on site or off site at a development location that is associated with a financial incentive agreement with the City, an agreement for janitorial, maintenance, repair, property management, or landscaping services for the development location covered by a financial incentive agreement, or an agreement pursuant to or in satisfaction of a City contract for goods or services, including construction contracts,~~ with a person ~~business, contractor or subcontractor listed by the Commission as having received an~~ on the adverse determination list.
- (b) For purposes of determining whether a covered entity has violated this section, the date of the final execution of an agreement or a contract between a covered entity and a person on the ~~an~~ entity subject to an adverse determination list shall be used to make such a determination by the Commission.
- (c) A ~~finding~~ final determination by the Commission that a covered entity has violated division (a) of this section shall constitute an adverse determination and shall result in the covered entity being placed upon the adverse determination list ~~maintained by the Commission~~.
- (d) Nothing contained in this section shall limit the reporting or disclosure obligations of a covered entity under this Chapter.
- (e) Nothing contained in this section shall affect the applicability of other provisions of this Chapter that result in ineligibility and penalties.

377.05 Covered entity continuing reporting obligations

- ~~(a) A covered entity requesting, applying for, negotiating, or bidding on a financial incentive agreement with the City, a City contract for goods or services, or intending to perform work or services pursuant to, related to, or in furtherance of a financial incentive agreement either on site or off site at a development location associated with a financial incentive agreement with the City, or pursuant to or in satisfaction of a City contract for goods and services, shall disclose to the City at the time of request, application, negotiation, bidding, registration, or prior to performing such work or services, whichever occurs first, any adverse determination during the preceding three (3) years.~~
- ~~(b)~~ (a) Continuing obligations – financial incentive agreements

- (1) A covered entity that is party to a financial incentive agreement with the City shall have a continuing obligation to provide the City with a sworn statement describing any adverse determination against the covered entity related to the development covered by the financial incentive agreement no later than thirty (30) days after the adverse determination. The reporting obligation remains in effect for the duration of the financial incentive agreement.
- (2) A covered entity that is a party to a financial incentive agreement with the City shall have a continuing obligation to report any adverse determinations known to the covered entity against any other covered entity that performs work or services pursuant to a construction contract pursuant to, related to, or in furtherance of the financial incentive agreement ~~either on site or off site at a development location associated with the financial incentive agreement to which the covered entity is a party,~~ or an agreement to provide janitorial, maintenance, repair, property management, or landscaping services at the development location covered by a financial incentive agreement only if the adverse determination is related to the development covered by the financial incentive agreement no later than thirty (30) days after learning of the adverse determination. The reporting obligation remains in effect for the duration of the agreement between the covered entity that is a party to the financial incentive agreement and the contractor, or for the duration of the financial incentive agreement, whichever is earlier.
- (3) A covered entity that is a contractor of a covered entity that is a party to a financial incentive agreement with the City shall provide the City with a sworn statement detailing any adverse determination known to the contractor against the contractor, any subcontractor of the contractor, ~~and~~ or any subcontractor of a higher-tiered subcontractor that performs work or services pursuant to a construction contract pursuant to, related to, or in furtherance of the financial incentive agreement ~~either on site or off site at a development location associated with the financial incentive agreement~~ or an agreement to provide janitorial, maintenance, repair, property management, or landscaping services at the development location covered by the financial incentive agreement only if the adverse determination is related to the development covered by the financial incentive agreement no later than thirty (30) days after learning of the adverse determination. The reporting obligation remains in effect for the duration of ~~any~~ the agreement between the covered entity that is a party to the financial incentive agreement and the contractor, or for the duration of the financial incentive agreement, whichever is earlier, ~~the contractor and a the subcontractor, and a subcontractor and a higher tiered subcontractor of the contractor.~~
- (4) A covered entity that is a subcontractor of a contractor of a covered entity that is a party to a financial incentive agreement with the City ~~and~~ or a subcontractor of a higher-tiered subcontractor shall provide the City with a sworn statement detailing any adverse determination known to the subcontractor against the subcontractor or any subcontractors that perform work or services pursuant to a construction contract pursuant to, related to, or in furtherance of a financial incentive agreement ~~either on site or off site at a development location associated with the financial incentive agreement,~~ or an agreement to provide janitorial, maintenance, repair, property management, or landscaping services at the development location covered by the financial incentive agreement only if the adverse determination is related to the development covered by the financial incentive agreement no later than thirty (30) days after learning of the adverse determination. The reporting obligation remains in effect for the duration of ~~any~~ the agreement between the contractor of the covered entity that is a party to the financial incentive agreement with the City and a the subcontractor, and ~~or a the~~ subcontractor and a the higher-tiered subcontractor of the contractor, as the case may be, or for the duration of the financial incentive agreement, whichever is earlier.

(e) (b) Continuing obligations – City contracts

- (1) A covered entity that enters into a City contract for goods or services, including a construction contract, shall have a continuing obligation to provide the City with a sworn statement describing any adverse determination known to the covered entity against the covered entity relating to the City contract for goods or services no later than thirty (30) days after learning of the adverse determination. The reporting obligation remains in effect for the duration of the contract for goods or services.
- (2) A covered entity that enters into a City contract for ~~goods or services~~, including a construction contract, shall have a continuing obligation to report any adverse determinations known to the covered entity against other ~~other~~ covered entities that performs work or services pursuant to or in satisfaction of the contract for ~~goods and~~ services no later than thirty (30) days after learning of the adverse determination only if the adverse determination is related to the work or services performed pursuant to or in satisfaction of the City contract for services. The reporting obligation remains in effect for the duration of the City contract for services or for the duration of any agreement between the covered entity that enters into the City contract for services and the contractor, whichever is earlier. ~~any agreement between the covered entity that enters into the City contract for goods or services and the contractor, the contractor and a subcontractor, and a subcontractor of a higher-tiered subcontractor~~
- (3) A covered entity that is a contractor of a covered entity that enters into a City contract for ~~goods or services~~ shall provide the City with a sworn statement detailing any adverse determination known to the contractor against the contractor, any subcontractor of the contractor, and any subcontractor of a higher-tiered subcontractor of the contractor that performs work or services pursuant to or in satisfaction of the City contract for ~~goods and~~ services no later than thirty (30) days after learning of the adverse determination only if the adverse determination is related to the work or services performed pursuant to in satisfaction of the City contract for services. The reporting obligation remains in effect for the duration of any agreement between the covered entity that enters into the City contract for goods or services and the contractor, or the City contract for services, whichever is earlier. ~~the contractor and a subcontractor, and a subcontractor of a higher-tiered or other subcontractor of the contractor.~~
- (4) A covered entity that is a subcontractor of a contractor of a covered entity that enters into a City contract for ~~goods and~~ services, ~~and or~~ a subcontractor that contracts with a higher-tiered subcontractor that performs work or services pursuant to or in satisfaction of a City contract for ~~goods or~~ services shall provide the City with a sworn statement detailing any adverse determination known to the subcontractor against the subcontractor or any subcontractors no later than thirty (30) days after learning of the adverse determination only if the adverse determination is related to the work or services performed pursuant to in satisfaction of the City contract for services. The reporting obligation remains in effect for the duration of any agreement between the contractor of a covered entity that receives the City contract for ~~goods and~~ services and the subcontractor, or and a subcontractor and a higher-tiered or other subcontractor of the contractor, or the City contract for services, whichever is earlier.

~~(d)~~ (c) A ~~finding~~ final determination by the Commission that a covered entity has violated a provision of this section shall constitute an adverse determination and shall result in the covered entity being placed upon the adverse determination list ~~maintained by the Commission~~.

377.06 Vendor registration

- (a) A covered entity registering or applying for renewal under the process described in section 3905.01 of the city code ~~on the vendor services portal~~ shall disclose at the time of registration or application for renewal any adverse determination during the ~~the~~ three years prior to the time of registration or application for renewal.

- (b) A ~~finding-final determination~~ by the Commission that a covered entity has violated division (a) of this section shall constitute an adverse determination and shall result in the covered entity being placed upon the adverse determination list ~~maintained by the Commission~~.

377.07 Payroll inspection

- (a) A covered entity that has entered into a financial incentive agreement with the City, or is a contractor or subcontractor pursuant to a construction contract pursuant to, related to, or in furtherance of a financial incentive agreement or an agreement to provide janitorial, maintenance, repair, property management, or landscaping services at the development location covered by a financial incentive agreement must maintain ~~detailed~~ payroll records for employees who perform work and services related to the development covered by the financial incentive agreement, and shall provide requested payroll any such records to the Commission upon request within fourteen (14) business days of the request. A covered entity that has entered into a City contract for goods or services or an agreement to perform work or services in furtherance of a City contract for services must maintain payroll records for work and services performed by the covered entity's employees related to the City contract for goods or services or pursuant to or in satisfaction of the City contract for services and shall provide any such records to the Commission upon request within fourteen (14) business days of the request. The Commission may grant an extension to a covered entity based on a good faith demonstration of a hardship in providing said records in the proscribed time period. If a covered entity is performing work or services covered by O.R.C. § 4115.03 the Commission shall request payroll records from the City's prevailing wage coordinator.
- (b) A ~~finding-final determination~~ by the Commission that a covered entity has violated division (a) of this section by failing to provide requested records in a timely manner shall constitute an adverse determination and shall result in the covered entity being placed upon the adverse determination list ~~maintained by the Commission~~.

377.08 Outside Investigations

- (a) A covered entity is required to authorize any agency or other investigative body investigating a complaint of wage theft or payroll fraud to release to the Commission any and all related evidence, findings, complaints and determinations that are not privileged or confidential and that are subject to public disclosure under the laws pertaining to that investigation, and to authorize the City to inquire into the status of the investigation and the final determination to the extent the investigation and final determination are not privileged or confidential and are subject to public disclosure under the laws pertaining to that investigation. ~~A financial incentive agreement, contract, subcontract, or other agreement covered by this Chapter must also authorize the release and disclosure of same.~~
- (b) A ~~finding-final determination~~ by the Commission that a covered entity has violated division (a) of this section shall constitute an adverse determination and shall result in the covered entity being placed upon the adverse determination list ~~maintained by the Commission~~.

377.09 Declaration of reporting obligations

- (a) A covered entity that has entered into a financial incentive agreement with the City or a construction contract pursuant to, related to, or in furtherance of a financial incentive agreement or an agreement to provide janitorial, maintenance, repair, property management, or landscaping services at the development location covered by a financial incentive agreement shall include in solicitations, agreements, contracts, and subcontracts pertaining to a City project the financial incentive agreement,

construction contract pursuant to, related to, or in furtherance of the financial incentive agreement, or the agreement to provide janitorial, maintenance, repair, property management, or landscaping services at the development location covered by a financial incentive agreement a notice setting forth that any entity entering into the contract will be a covered entity pursuant to this Chapter and setting forth the reporting requirements, obligations to review the Commission list of contractors and subcontractors that received an adverse determination prior to entering into a contract or agreement, and penalties for non-compliance as set forth in this Chapter.

- (b) A covered entity that has entered into City contract for services, including a construction contract, or an agreement to perform work or provide services pursuant to or in satisfaction of a City contract for services, shall include in solicitations, agreements, contracts, and subcontracts pertaining to the City contract for services a notice setting forth that any entity entering into the contract will be a covered entity pursuant to this Chapter and setting forth the reporting requirements, obligations to review the Commission list of contractors and subcontractors that received an adverse determination prior to entering into a contract or agreement, and penalties for non-compliance as set forth in this Chapter.
- (c) The City shall include in financial incentive agreements a provision specifying that the party entering into the financial incentive agreement is a covered entity subject to setting forth the reporting requirements, obligations to review the Commission list of contractors and subcontractors that received an adverse determination prior to entering into a contract or agreement, and penalties for non-compliance as set forth in this Chapter.
- (d) The City shall include in requests for proposals, requests for qualifications, bidding documents, and contracts for goods and services a notice provision setting forth that the party that enters into the applicable City contract or registers or applies for renewal under the process described in City Code Section 3905.01 is a covered entity subject to the reporting requirements, obligations to review the Commission list of contractors and subcontractors that received an adverse determination prior to entering into a contract or agreement, and penalties for non-compliance as set forth in this Chapter.
- (c) Covered entities must post a conspicuous notice at all covered locations and development sites indicating that the location or development site is subject to this Chapter as administered by the Commission for the duration of any construction at the covered location or development site if the covered entity is performing work or services pursuant to, related to, or in furtherance of a financial incentive agreement or a City construction contract. The notice shall include contact information for the Commission. After the construction is complete, covered entities shall be required to post a conspicuous notice only if required pursuant to another law to maintain a conspicuous notice and only if there are any outstanding contract(s) pursuant to which the contract counterparty is a covered entity subject to this Chapter.
- (d) The City shall produce a posting and make it available to all covered entities which shall satisfy the notification requirements of division (c) of this section.
- (e) A ~~finding~~ final determination by the Commission that a covered entity has violated division (a), (b), or (d) of this section shall constitute an adverse determination and shall result in the covered entity being placed upon the adverse determination list ~~maintained by the Commission.~~

377.10 Use of Independent Contractors

- (a) If a covered entity utilizes independent contractors to perform work or services on behalf of the covered entity pursuant to, related to, or in furtherance of a financial incentive agreement, ~~at either on-site or off-site development locations associated with the financial incentive agreement~~ including

pursuant to a construction contract or any agreement for janitorial, maintenance, repair, property management, or landscaping services at the development location covered by the financial incentive agreement, or under, ~~or pursuant to, or in satisfaction of~~ a City contract for goods or services, including a City construction contract, the covered entity shall provide the following information to the Commission:

(1) The total number of employees and the total number of independent contractors that are covered entities and the total number of independent contractors that are individuals utilized by the covered entity to perform work or services pursuant to, related to, or in furtherance of the financial incentive agreement, including pursuant to a construction contract or any agreement for janitorial, maintenance, repair, property management, or landscaping services at the development location covered by the financial incentive agreement, or pursuant to or in satisfaction of a City contract for services, as applicable; provided, however, that in the case of a covered entity that is party to a financial incentive agreement with the City, or that enters into a construction contract or any agreement for janitorial, maintenance, repair, property management, or landscaping services at the development location covered by the financial incentive agreement, this requirement shall apply only with respect to employees and independent contractors that perform construction, janitorial, maintenance, repair, property management, or landscaping services at or for the development location covered by the financial services agreement;

(2) For all independent contractors who are individuals identified by the covered entity pursuant to division (a) of this section, the covered entity shall provide

- (a) a description of the work or services to be performed;
- (3b) The rate and frequency of pay;
- (4c) The duration of the work or services;
- (5d) A description of benefits provided to the independent contractor(s), if any, and the costs paid for the benefits by the covered entity and/or the worker(s);
- (6e) A written description and any supporting documents or records indicating the following:

- (i) the nature and degree of the covered entity's control;
- (ii) the permanency of the worker's relationship with the covered entity;
- (iii) the amount of the worker's investment in facilities, equipment or helpers;
- (iv) the amount of skill, initiative, judgement or foresight required for the worker's services;
- (v) the worker's opportunity for profit and loss;
- (vi) the extent of integration of the worker's services into the covered entity's business;
- (vi) other information the covered entity considers relevant to whether the worker is properly classified as an independent contractor.

- (b) In circumstances under which independent contractors subcontract to other independent contractors, independent contractors of covered entities shall provide to covered entities the same information with regard to said subcontractors as defined in Section 377.10(a). A covered entity receiving such a report shall provide a copy to the Commission within seven (7) days of receipt.
- (c) All reports required under this section shall be provided to the Commission no later than twenty one (21) days following the date on which the independent contractor commences work on behalf of the covered entity.
- (d) The Commission may contact employees and independent contractors and/or a covered entity for additional information, including payroll records, necessary or relevant to making the determination

in division (e) of this Section. Upon request, a covered entity shall provide additional information requested by the Commission within fourteen (14) days.

- (e) If the Commission, or Commission staff reasonably determines that any worker(s) that a covered entity is required to provide reporting on pursuant to division (a)(1) of this section may have been misclassified as an independent contractor, the Commission, or staff, may refer the worker(s) and/or the matter to the United States Department of Labor, the Ohio Department of Commerce, or any other appropriate entity for further investigation.
- (f) The Commission shall make forms available for providing information and reports related to the use of purported independent contractors.
- (g) A ~~finding~~ final determination by the Commission that a covered entity has violated any of the reporting provisions of this section shall constitute an adverse determination and shall result in the covered entity being placed upon the adverse determination list ~~maintained by the Commission.~~

377.11 Rules and regulations

- (a) The Commission shall develop rules and regulations for the following:

- (1) Review of financial incentive agreements and City contracts to ensure that provisions required by this Chapter are included.

- (2) Monitoring of financial incentive agreements and City contracts and the submission of required statements to ensure compliance with this Chapter, including reviewing complaints, referring complaints to an appropriate federal or state agency for investigation, and monitoring the outcome of complaints against covered entities for purposes of this Chapter.

- (3) Pursuing remedies, imposing sanctions and levying penalties for failing to timely submit reports and sworn statements required by this chapter, and setting fees for filing disclosures and statements required by this Chapter.

- (4) Protecting victims of wage theft and payroll fraud from retaliation or adverse action resulting from reports made pursuant to or required under this Chapter.

- (5) Publication and updates to the Commission list of ~~businesses, contractors, and subcontractors~~ persons that have received adverse determinations.

- (6) The processing and investigation by Commission staff of complaints made against covered entities for failure to comply with the provisions of Chapter 377.

- (7) Permissible settlement authority and Commission approval process for staff resolution of allegations of violations of section 377.03, 377.05, 377.06, 377.07, 377.08, 377.09 or 377.10 of the city code.

- (b) The adoption and promulgation of any rules or regulations by the Commission shall comply with the provisions of CCC 121.05.

- (c) The Commission shall adopt bylaws governing the conducting of Commission business.

377.12 Remedies

- (a) Whenever the Wage Theft Prevention and Enforcement Commission renders any adverse determination against a covered entity for any violation(s) of ~~section this Chapter~~ 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09 or 377.10 of the city code, or if a covered entity appeals any such adverse determination, whenever the final decision on appeal confirms the adverse determination, in whole or in part, the City may pursue any available legal, contractual or equitable remedies.

(b) Upon rendering an adverse determination for any violation of sections 377.03, 377.04, 377.05, 377.06, 377.07, 377.08, 377.09 and 377.10 of the city code, the Wage Theft Prevention and Enforcement Commission may, where applicable, recommend to the City Attorney that the City pursue any of the following:

- (1) In the case of financial incentive agreements under the Community Reinvestment Area Act and Enterprise Zone Act, unilateral termination or modification of the financial incentive agreement, including unilateral reduction of any the tax abatement, tax credit, or other incentives by up to 100 percent of the future benefit of the financial incentive agreement, as recommended by the Tax Incentive Review Council to Council following receipt of a report and recommendation from the Wage Theft Prevention and Enforcement Commission; provided, however, that no tax abatement shall be terminated or modified to the extent that the tax abatement benefit is recaptured by a payment in lieu of tax, special assessment, community development charge or similar charge levied by the State, the City or another political subdivision to service bond or other debt to finance the design or construction of public infrastructure improvements or any other permissible improvements under the Ohio Revised Code that no tax increment financing agreement shall be terminated or modified if the tax increment financing agreement contemplates that the service payments generated by the tax increment financing shall be used to service bond or other debt to finance the design or construction of public infrastructure improvements or any other permissible improvements under the Ohio Revised Code.
- (2) In the case of financial incentive agreements under the Community Reinvestment Area Act and Enterprise Zone Act, recapture Recapture of subsidy and abatement benefits by up to 100 percent of accrued value agreement as recommended by the Tax Incentive Review Council to Council following receipt of a report and recommendation from the Wage Theft Prevention and Enforcement Commission; provided, however, that no tax abatement shall be recaptured to the extent that the tax abatement benefit is recaptured by a payment in lieu of tax, special assessment, community development charge or similar charge levied by the State, the City or another political subdivision to service bond or other debt to finance the design or construction of public infrastructure improvements or any other permissible improvements under the Ohio Revised Code that no tax increment financing agreement shall be subject to recapture if the tax increment financing agreement contemplates that the service payments generated by the tax increment financing shall be used to service bond or other debt to finance the design or construction of public infrastructure improvements or any other permissible improvements under the Ohio Revised Code.
- (3) Loss of low-interest rate commercial loan benefits;
- (4) Suspension or revocation of grants; provided, however, that no grant agreement shall be suspended or revoked if the grant funds the design or construction of public infrastructure improvements;
- (5) For any covered entity that has violated city code and has an adverse determination under 377.01(a)(1)(A) arising from wage theft or payroll fraud either at a development location covered by a financial incentive agreement or relating to a City contract for goods or services, the City may deem Deeming the covered entity ineligible for future contracts or financial incentive agreements with the City until all victims of wage theft and payroll fraud have been paid in full;

- (6) As a condition of continuing an active or future contract with the City, requiring the posting of a bond or other form of insurance equal to one year of gross wages and a certified monthly payroll report for the duration of the City contract if the covered entity has previously received an adverse determination; provided, however, that this remedy shall not apply to financial incentive agreements;
- (7) For any covered entity that has violated city code and has an adverse determination under 377.01(a)(1)(A) arising from wage theft or payroll fraud either at a development location covered by a financial incentive agreement or relating to a City contract for goods or services, the City may impose a stop work order until all victims of wage theft and payroll fraud have been paid in full and there is full compliance with the terms of this Chapter; provided, that a party to a financial incentive agreement may pay the victims of wage theft and payroll fraud on behalf of a covered entity performing work or services pursuant to, related to, or in furtherance of the financial incentive agreement, in which case the stop work order with respect to such work or services shall be rescinded; provided further, that in case of such payment on behalf of the covered entity, the covered entity shall remain ineligible for future contracts or financial incentive agreements until the party making the payment certifies to the City that it has been repaid by the covered entity for all payments made on behalf of the covered entity;
- (8) Permanent debarment for City contracts.

377.13 Effective Date

- (a) The provisions of this Chapter will be effective January 1, 2021.
- (b) Notwithstanding anything to the contrary in this Chapter, this Chapter does not apply to (1) financial incentive agreements that are amendments to agreements entered into before the effective date of this Chapter unless those amendments expand the financial incentive provided, (2) construction contracts that are entered into pursuant to, related to, or in furtherance of agreements entered into before the effective date of this Chapter, or (3) financial incentive agreements or construction contracts that are entered into pursuant to, related to, or in furtherance of economic development agreements entered into by the City before the effective date of this Chapter.

377.14 Incorporation in City contracts and financial incentive agreements

All City contracts and financial incentive agreements entered into on or after January 1, 2021 shall incorporate and require all parties to comply with Chapter 377 as a term of said City contract or financial incentive agreement.

377.15 Community education and know your rights program

The City and Commission shall partner with employers, labor organizations, and community organizations for the purpose of informing residents of their workplace rights under federal, state, and local law and to communicate the benefits of the Columbus Wage Theft Prevention and Enforcement provisions to businesses, employees, and communities.

377.16 Just Pay fund

- (a) There is hereby created the Columbus Just Pay Fund. The Fund shall be used solely for the purpose of paying expenses related to the administration of this chapter, expanding enforcement of wage and hour laws, and supporting community education on the rights of workers under wage and hour laws.
- (b) The Just Pay fund shall receive deposits transferred from the various funds of the city in an amount necessary to provide resources adequate to support the enforcement of the Columbus Wage Theft Prevention and Enforcement provisions. The amounts transferred from the various funds of the city into the Just Pay fund shall be calculated upon the number of purchase orders and purchase requisitions originating within each fund of the city, multiplied by a fixed dollar amount as determined by the Director of Finance and Management.

377.17 Severability

The invalidity of any section, clause, sentence or provision of this chapter shall not affect the validity of any other part of this chapter which can be given effect without such invalid part or parts.

SECTION 2. That the existing Chapter 377 is hereby repealed.

SECTION 3. That, for the reasons stated in the preamble hereto, which is hereby made a part hereof, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force from and after its passage or approval by the Mayor or ten days after its passage if the Mayor neither approves nor vetoes the same.