

Chapter 377 – Wage Theft Prevention and Enforcement

377.01 – Definitions

(a) “Adverse determination” means a determination that a covered entity has committed wage theft, ~~or payroll fraud~~, or has been found to have violated an obligation under section 377.04, 377.05, 377.06, 377.07, 377.08, 377.09 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.

~~(1) If the covered entity appeals the determination, the adverse determination occurs whenever the initial determination, in whole or part, is confirmed or the appeal is denied. Adverse determination also means that a specified covered entity entered into a contract or agreement with a contractor or subcontractor that was listed by the Wage Theft Prevention and Enforcement Commission prior to the effective date of the contract or agreement as having received an adverse determination within the preceding ~~three (3)~~ four (4) years or fails to comply with an obligation under 377.04, 377.05, 377.06, 377.07, 377.08 or 377.09.~~

(2) A settlement agreement or other agreement entered into by a covered entity to cure any instance of wage theft or payroll fraud prior to the issuance so as to resolve the matter without a final of 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 governmental body shall not constitute an adverse determination.

(3) A settlement agreement or other agreement entered into by a covered entity to cure any instance of a violation of section 377.05, 377.06, 377.07, 377.08, 377.09 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 agreement received Commission approval.

~~(b) “Beneficiary of a Financial Incentive Agreement” means a lessee or tenant of a covered entity that is an employer engaged in commercial activity, including but not limited to a lessee, tenant or occupant, at a location or on a development site covered by a financial incentive agreement.~~

(eb) “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 financial incentive

agreement, City contract for goods or services, a building permit, a commercial license, a business permit, or a vendor registration;

- ~~(2) Covered entity also means any a~~ **A contractor or subcontractor of a covered entity as described in division (b)(1), including, along with any a subcontractor of the contractor, or a subcontractor of a higher-tiered subcontractor of the contractor, that performs work or renders services, or intends to or does perform work or render services, pursuant to, related to, or in furtherance of a financial incentive agreement either at a location or on-site or off-site for a development location covered by a financial incentive agreement; or pursuant to or in satisfaction of a City contract for goods or services.**
- (3) A contractor, a subcontractor of the contractor, or a subcontractor of a higher-tiered subcontractor of the contractor that intends to or does perform work or services, pursuant to or in satisfaction of a City contract for goods or services;** ~~Covered entity also means a beneficiary of a financial incentive agreement. For purposes of this chapter, the City may look beyond the signatory to the bid, application, registration, contract, financial incentive agreement, building permit, commercial license or business permit, or beneficiary of a financial incentive agreement, to the real party in interest or common owner when determining whether a covered entity has a prior adverse determination of wage theft or payroll fraud for purposes of pursuing remedies for an adverse determination.~~
- (4) For purposes of determining whether A covered entity designation is not limited to may look beyond the signatory to the bid, application, registration, contract, or financial incentive agreement, building permit, commercial license or business permit, or beneficiary of a financial incentive agreement, but extends to any the real party in interest or common owner. when determining whether a covered entity has a prior adverse determination of wage theft or payroll fraud for purposes of pursuing remedies for an adverse determination.**
- (5) A beneficiary of a financial incentive agreement;**

~~(d)~~ (c) “Employee” means a person meeting the standard criteria of for an employee under the parameters of the right to control test established by the United States Internal Revenue Service, or its any successor test.

~~(e)~~ (d) “Financial Incentive Agreement” means any contract or other agreement 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. **relating to the construction or real estate development.**

~~(f)~~ (e) “Payroll fraud” means concealing an entity's true 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.

~~(e)~~ (f) "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; any federal statute or regulation comparable to the aforementioned Ohio statutes; any statute or regulation of another state that may apply to a particular agreement; a violation of an existing or former municipal ordinance, 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. , or committing a violation of local, state or federal wage or payroll laws by any other means.

~~(h)~~ (g) "Independent contractor" means a person that meets the standard criteria for of an independent contractor under the parameters of the right to control test established by the United States Internal Revenue Service, or its any successor test.

377.02 Wage Theft Prevention and Enforcement Commission

(a) There is hereby created the Wage Theft Prevention and Enforcement Commission, the duties of which shall include ~~investigating compliance with the provisions of Chapter 377 of the Columbus City Code and related rules and regulations,~~ hearing and determining whether an adverse determination should issue for a violation of Chapter 377, recommending penalties and remedies for a finding of non-compliance with provisions of Chapter 377 ~~and/or certification of resulting in an adverse determination~~ to the City Attorney, approving staff resolutions of allegations of non-compliance with specified provisions of Chapter 377, receiving complaints from residents, workers, and businesses regarding non-compliance with Chapter 377 of Columbus City Codes and related rules and regulations, publishing a monthly list of **businesses, contractors and subcontractors that have received an adverse determination,** and participating in community education programs. , ~~and designating other entities to perform any of these functions on behalf of the Commission.~~

(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(ed) of this section. Members may be reappointed to a new three year terms at the conclusion of their three year term.**

(c) Of the five (5) members comprising the Commission, two (2) members shall be appointed by the Mayor, two (2) members shall appointed by Columbus City Council, and the fifth member shall be appointed by the Commission with the advice and consent of the Mayor and Columbus City Council. **All member appointments shall be subject to a vote by Columbus City 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 January 15, 2020, 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 terms not to exceeding three years.**

(ed) 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.

(fe) The Commission shall receive staff support, to be provisioned by the Department of Finance, equivalent to no less than one (1) full-time employee.

(gf) Upon receipt of a complaint alleging a violation of Chapter 377 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 any instance of a violation of section 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 agreement to the Commission for approval and, if approved by the Commission, no adverse determination shall be made based upon the allegation.
- (2) Where there are reasonable grounds to believe that a violation has occurred and either a settlement agreement has not been reached or 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 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) Hearings on 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 and a description of the subject(s) of the investigation at least thirty (30) days in advance of the public hearing. ~~Prior to making a recommendation to the City Attorney for penalties or remedies, the Commission shall provide a covered entity with notice that it may submit information to the Commission relevant to whether the covered entity has violated this chapter, related rules and regulations, or received an adverse determination. The Commission may, in its discretion, convene a public meeting for the purpose of reviewing information presented to the Commission by a covered entity.~~

(2) The Commission shall provide the covered entity with an opportunity to submit documents, present information 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 Chapter 377 has occurred. A majority vote by the Commission finding a violation shall result in an adverse determination.

- (1) ~~If the potential adverse determination is based on a failure to comply with 377.04, 377.05, 377.06, 377.07, 377.08 or 377.09, the Commission shall vote at a public hearing on whether the covered entity violated one or more of the aforementioned sections. A majority vote by the Commission shall result in finding of an adverse determination.~~
- (2) ~~The Commission shall provide the covered entity with notice and a description of the subject of the vote under 377.02 (g)(1) at least thirty (30) days in advance of the public hearing.~~
- (3) ~~The Commission shall provide the covered entity with an opportunity to submit documents, present information to the Commission and make comments to the Commission during the public hearing prior to a vote.~~
- (4) ~~A covered entity may appeal to the Franklin County Court of Common Pleas whether the Commission abused its discretion in finding a violation of Chapter 377 resulting in an adverse determination for failure to comply with 377.04, 377.05, 377.06, 377.07, 377.08 or 377.09.~~

(ig) The Commission shall provide written notice of the results of its investigation, its findings at hearing, and any recommended penalties and remedies for non-compliance and/or adverse determinations to the covered entity.

(jh) The Commission shall publish and update a monthly list of businesses, contractors and subcontractors that have received an adverse determination from any local, state, or federal body within the preceding ~~three (3)~~ four (4) years.

(ki) The Commission may receive complaints from residents, workers and businesses regarding non-compliance with 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.

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

(mk) The Commission shall issue a report annually to City 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. ~~Said report shall be submitted to City Council prior to or contemporaneously to the issuance of the Tax Incentive Review Committee recommendations to City Council.~~

(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.

377.03 Ineligibility of a covered entity

A covered entity that is listed by the Commission as having received an adverse determination is ineligible to enter into any financial incentive agreement with the City, receive any financial incentives provided by the City, to enter into a City contract for the provision of goods and services, building permits, commercial licenses or business permits, or to register with the City's vendor services portal, 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 as defined in 377.01(e)(2) either on-site or off-site for a at a location or development location site that is associated with covered by a financial incentive agreement with the City, or pursuant to or in satisfaction of a City contract for goods or services, for three (3) four (4) years from the date of the most recent adverse determination against the covered entity. If the adverse determination results from a failure to comply with 377.04, 377.05, 377.06, 377.07, 377.08, or 377.09, the period of ineligibility shall increase to four (4) years.

~~(1) A covered entity shall become eligible for financial incentives provided by the City, City contracts, or to perform work or services pursuant to, related to, or in furtherance of a financial incentive agreement as defined in 377.01(e)(2) at a location or development site covered by a financial incentive agreement, or pursuant to or in satisfaction of a City contract for goods or services after three (3) or four (4) years, whichever is applicable, from the date of the most recent adverse determination. The covered entity does not need to apply for reinstatement.~~

377.04 Covered entity prohibited contracting

- (a) A No covered entity shall that receives or is a party to a financial incentive agreement a City contract for goods or services, contractors of such covered entities, subcontractors of such contractors, and subcontractors of higher tiered or other subcontractors of such contractors, that enter into a contract or agreement for the performance of to perform work or services pursuant to, related to, or in furtherance of a financial incentive agreement as defined in 377.01(e)(2) either on-site or off-site at a development site location that is associated with covered by a financial incentive agreement with the City, or pursuant to or in satisfaction of a City contract for goods or services, with a business, contractor or subcontractor listed by the Commission as having received an adverse determination.
- (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 an entity subject to an adverse determination shall be used to make such a determination by the Commission.
- (c) A finding 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. is ineligible to receive future financial incentives provided by the City, to enter into or bid on City contracts, or to perform work or services pursuant to, related to, or in furtherance of a financial incentive agreement as defined in 377.01(e)(2) at a location or development site covered by a financial incentive

agreement, or pursuant to or in satisfaction of a City contract for goods or services, for ~~three (3)~~ four (4) years from the effective date of the contract or agreement. **If the adverse determination results from a failure to comply with 377.04, 377.05, 377.06, 377.07, 377.08, or 377.09, the period of ineligibility shall increase to four (4) years.**

- (a) The ~~three (3) or four (4)~~ four (4) year period of ineligibility referred to in section 377.03(b) shall not apply if the Commission ~~failed to~~ had not published the name of the contractor or subcontractor that received the adverse determination prior to the date the effective contract or agreement was made.
- (d) Nothing contained in this section 377.03(b) shall limit the reporting or disclosure obligations of a covered entity under this Chapter.
- (e) Nothing contained in this section 377.03(b) shall affect the applicability of other provisions of this Chapter that result in ineligibility and penalties.

377.05 Covered entity reporting obligations

- (a) A covered entity requesting, applying for, negotiating, or bidding ~~for~~ on a financial incentive agreement with the City, a City contract for goods or services, ~~building permit, commercial license or business permit, registering with the City's vendor services portal,~~ or intending to perform work or services **pursuant to, related to, or in furtherance of a financial incentive agreement as defined in 377.01(eb)(2) either on-site or off-site** at a ~~location or~~ development location associated with ~~site covered by~~ 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)~~ four (4) years.
- (b) Continuing obligations – financial incentive agreements
- (1) A covered entity that ~~receives~~ 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 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 ~~receives~~ is a party to a financial incentive agreement with the City shall have a continuing obligation to report adverse determinations known to the covered entity against ~~a contractor of the other covered entity, a subcontractor of the contractor, and a subcontractor of a higher tiered or other subcontractor of the contractor,~~ **entities defined in 377.01(eb)(2)** that perform work or services **pursuant to, related to, or in furtherance of the financial incentive agreement** at a ~~location or on~~ either on-site or off-site at a development location associated with ~~site covered by~~ the financial incentive agreement to which the covered entity is a party no later than thirty (30) days after learning of the adverse determination. The reporting obligation remains in effect for the duration of the financial incentive agreement. ~~between the covered entity and the contractor, the contractor and a subcontractor, and~~

~~a subcontractor and a higher-tiered or other subcontractor of the contractor, to perform work or services pursuant to, related to, or in furtherance of the financial incentive agreement at the location or on a development site covered by the financial incentive agreement, and at all times when the contractor of the covered entity, a subcontractor of the contractor, or a subcontractor of a higher-tiered or other subcontractor of the contractor, performs work or services at the location or on the development site covered by the financial incentive agreement.~~

- (3) ~~A covered entity that is a contractor of a covered entity that performs work or services at a location or on a development site covered by~~ **receives 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 any subcontractor of a higher-tiered or other subcontractor of the contractor, as defined in 377.01(eb)(2), that performs work or services pursuant to, related to, or in furtherance of the financial incentive agreement either on-site or off-site at a location or on a development location associated with site 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 agreement between the covered entity that receives is a party to the financial incentive agreement and the contractor, the contractor and a the subcontractor, and a subcontractor and a higher-tiered or other subcontractor of the contractor. , to perform work or services pursuant to, related to, or in furtherance of the financial incentive agreement at the location or on a development site covered by the financial incentive agreement, and at all times when the contractor of the covered entity, a subcontractor of the contractor, or a subcontractor of a higher-tiered or other subcontractor of the contractor, performs work or services at the location or on the development site covered by the financial incentive agreement.**
- (4) ~~A covered entity that is a subcontractor of a contractor of a covered entity, and a subcontractor of a higher-tiered or other subcontractor of the contractor, that performs work or services at a location or on a development site covered by that~~ **receives is a party to a financial incentive agreement with the City and 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 , including their subcontractors as set forth, above, in this paragraph, as defined in 377.01(eb)(2), that perform work or services pursuant to, related to, or in furtherance of a financial incentive agreement either on-site or off-site at a location or on a development location associated with site 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 agreement between the contractor of a the covered entity that receives is a party to a the financial incentive agreement with the City and a subcontractor, and a subcontractor and a higher-tiered or other subcontractor of the contractor. , to perform work or services pursuant to, related to, or in furtherance of the financial incentive agreement at the location or on a development site covered by the financial incentive agreement, and at all times when the subcontractor of the contractor of a covered entity, or a subcontractor of a higher-tiered or other**

subcontractor of the contractor, performs work or services at the location or on the development site covered by the financial incentive agreement.

(f) A covered entity that receives a financial incentive agreement shall have a continuing obligation to report adverse determinations against a beneficiary of the financial incentive agreement to the City no later than thirty (30) days after the adverse determination. The reporting obligation remains in effect for the duration of time the beneficiary of the financial incentive agreement engages in commercial activity at a location or on a development site covered by a financial incentive agreement or for the duration of the financial incentive agreement, whichever is less.

(g) A beneficiary of a financial incentive agreement shall provide the City with a sworn statement detailing any adverse determination against the beneficiary of the financial incentive agreement no later than thirty (30) days after the adverse determination. The reporting obligation remains in effect for the duration of time the beneficiary of the financial incentive agreement engages in commercial activity at a location or on a development site covered by a financial incentive agreement or for the duration of the financial incentive agreement, whichever is less.

(c) Continuing obligations – City contracts

(1) A covered entity that receives enters into a City contract for goods or services 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 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 receives enters into a City contract for goods or services shall have a continuing obligation to report any adverse determinations known to the covered entity against a contractor of the covered entity, a subcontractor of the contractor, and a subcontractor that contracts with a higher tiered or other subcontractor of the contractor, other covered entities defined in 377.01(cb)(3) 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. The reporting obligation remains in effect for the duration of any agreement between the covered entity that receives enters into the City contract for goods or services and the contractor, the contractor and a subcontractor, and a subcontractor of a higher-tiered or other subcontractor of the contractor, to perform work or services pursuant to or in satisfaction of the contract for goods or services as defined in 377.01(cb)(3), and at all times when the contractor of the covered entity, a subcontractor of the contractor, or a subcontractor of a higher-tiered or other subcontractor of the contractor, performs work or services pursuant to or in satisfaction of the contract for goods and services.

(3) A covered entity that is a contractor of a covered entity that performs work or services pursuant to or in satisfaction of receives 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, and any subcontractor of the contractor, and any subcontractor of a higher-tiered or other subcontractor of the contractor, as defined in 377.01(cb)(3) 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. The reporting obligation remains in effect for the duration of any agreement between the covered entity that receives enters into the City contract for goods or services and the contractor, the contractor and a subcontractor, and a subcontractor of a higher-tiered or other subcontractor of the

~~contractor, to perform work or services pursuant to or in satisfaction of the contract for goods or services as defined in 377.01(cb)(3), and at all times when the contractor the covered entity, or a subcontractor of the contractor, and a subcontractor of a higher tiered or other subcontractor of the contractor, performs work or services pursuant to or in satisfaction of the contract for goods or services.~~

(4) A covered entity that is a subcontractor of a contractor of a covered entity **that receives enters into a City contract for goods and services**, and a subcontractor that contracts with a higher-tiered ~~or other~~ subcontractor ~~of the contractor as defined in 377.01(cb)(3)~~, 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, ~~including their or any subcontractors as set forth, above, in this paragraph,~~ no later than thirty (30) days after learning of the adverse determination. 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, and a subcontractor and a higher-tiered or other subcontractor of the contractor. ~~to perform work or services pursuant to or in satisfaction of the contract for goods or services as defined in 377.01(cb)(3), and at all times when the subcontractor of the contractor of the covered entity, or a subcontractor of a higher tiered or other subcontractor the contractor, performs work or services pursuant to or in satisfaction of the contract for goods or services.~~

(d) A finding 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 Commercial licenses, business permits, and vVendor registration

- (a) A covered entity requesting registering or applying for renewal of a City commercial license, business permit or registration on the vendor services portal shall disclose at the time of registration or application for renewal any adverse determination during the time period since the initial application or previous renewal, whichever is later the three years prior to the time of registration or application for renewal.
- (b) A finding 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 must maintain detailed payroll records and provide requested payroll records to the Commission within **fourteen (14) five (5)** business days of the request. **The Commission may grant an extension to a covered entity based on the a good faith demonstration of a good faith hardship in providing said records in the proscribed time period.** If a covered entity is ~~performing~~ 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 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 the any agency or other investigative body investigating a complaint of wage theft or payroll fraud to release to the City-Commission any and all related evidence, findings, complaints and determinations and to keep authorize the City advised regarding to inquire into the status of the investigation and the final determination. A financial incentive agreement, contract, subcontract, lease or terms of occupancy or other agreement covered by this Chapter must also authorize the release and disclosure of the same.
- (b) A finding 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 shall include in solicitations, agreements, contracts, and subcontracts pertaining to a City project, ~~leases and terms of occupancy~~ a notice 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) The City shall include in financial incentive agreements a ~~notice~~ provision 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 requests for proposals, requests for qualifications, bidding documents, and contracts for goods and services a notice provision 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) 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. The notice shall include contact information for the Commission.
- (e) **The City shall produce a posting and make it available to all covered entities which shall satisfy the notification requirements of 377.08 this section.**
- (f) A finding by the Commission that a covered entity has violated division (a) 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 site covered by a financial incentive agreement as defined in 377.01(eb)(2), or under a City contract for goods or services as defined in 377.01(eb)(3), the covered entity shall provide the following information to the Commission:

(1) The total number of employees and the total number of independent contractors;

(2) A description of the work or services to be performed;

(3) The rate and frequency of pay;

(4) The duration of the work or services;

(5) 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);

(6) 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 377.0910(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 ~~contractors, subcontractors,~~ employees and independent contractors and/or a covered entity for additional information, including payroll records. Upon request, a covered entity shall provide additional information requested by the Commission within **fourteen (14)** ~~seven (7)~~ days. ~~of receipt.~~

(e) If the Commission, or ~~its designee,~~ Commission staff reasonably determines that a worker(s) ~~has~~ may have been misclassified as an independent contractor, the Commission, or ~~its designee~~ 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) A City contract shall not be awarded to an entity that is the subject of a referral described in (e), above, until the issues of whether the individual has been properly classified has been resolved.

(f) The Commission shall make forms available for providing information and reports related to the use of purported independent contractors.

(g) A finding 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 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 377.05, 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 Penalties Remedies

~~(a) This section applies to covered entities not deemed ineligible under section 377.03(a).~~

- (a) Whenever any adverse determination is rendered against a covered entity under this Chapter, or, if the adverse determination is appealed, ~~then~~ whenever the final decision on appeal confirms the adverse determination, in whole or in part, the City ~~will~~ may pursue any available legal, contractual or equitable remedies.
- (b) Upon rendering an adverse determination, the Wage Theft Prevention and Enforcement Commission may, where applicable, recommend to the City Attorney that the City pursue ~~whether or not provided for in the contract or financial incentive agreement, including any of the following:~~
 - (1) Unilateral termination or modification of the financial incentive agreement as recommended by the Tax Incentive Review Council to ~~City Council~~ following receipt of a report and recommendation from the Wage Theft Prevention and Enforcement Commission; ~~note:~~
 - (2) Unilateral reduction of the tax abatement, tax credit, or other incentives by up to 100 percent of the future benefit agreement as recommended by the Tax Incentive Review Council to ~~City Council~~ following receipt of a report and recommendation from the Wage Theft Prevention and Enforcement Commission;
 - (3) Recapture of subsidy and abatement benefits by up to 100 percent of accrued value agreement as recommended by the Tax Incentive Review Council to ~~City Council~~ following receipt of a report and recommendation from the Wage Theft Prevention and Enforcement Commission;
 - (4) Loss of low-interest rate commercial loan benefits;
 - (5) Suspension or revocation of grants;
 - (6) 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;

(7) 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;

(8) 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;

(9) Suspension or revocation of a building permit;

(910) Temporary or Permanent debarment of the contractor or subcontractor for City contracts.

(11) Suspension or revocation of a commercial license or business permit; and

(1012) Informing the relevant City Departments, including the City Auditor, and/or the City Prosecutor, in order to determine if further action is necessary or available.

(e) When the City reduces or terminates a tax abatement, tax credit or other similar tax benefit, the City will set aside a portion of the recaptured revenue, less revenue owed to the Columbus City Public School District, for the Columbus Just Pay Fund.

(ed) The failure of a Covered Entity to provide the Commission or its designee with requested documents within ~~fourteen (14)~~ twenty one (21) business days shall constitute an adverse determination and the City may pursue penalties under 377.11(a)(1) ~~(102)~~, **unless the Commission grants an extension based on the a good faith demonstration of a good faith hardship in providing requested records.**

377.123 Effective Date

The provisions of this section Chapter will be effective after January 1 ~~October 1, 2021~~.

377.134 Effective Date & Incorporation in City contracts and financial incentive agreements

All City contracts and financial incentive agreements entered into on or after January 1, 2021 as defined in 377.01(e) shall incorporate and require all parties to comply with Chapter 377 as a term of said City contract or financial incentive agreement.

377.145 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.

377.156 Just Pay fund

- (a) There is hereby created the Columbus Just Pay Fund. All fees and administrative penalties imposed under this chapter shall be allocated to the 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.

377.167 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.