

## **Chapter 377 – Wage Theft Prevention and Enforcement**

### **377.01 – Definitions**

(a) “Adverse determination” means a covered entity has committed wage theft or payroll fraud. Such a determination includes 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. 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 four (4) years.

(b) “Beneficiary of a Financial Incentive Agreement” means 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.

(c) “Covered entity” means 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. Covered entity also means any contractor or subcontractor of a covered entity, including a subcontractor of a higher-tiered subcontractor, that performs work or renders services, or intends to perform work or render services, at a location or on a development site covered by a financial incentive agreement or 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.

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

(e) “Financial Incentive” 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, opportunity zone agreements, job creation and retention tax credits, downtown office incentive program payments, any commercial loan, grant, or conveyance of city-owned land for less than fair market value.

(f) "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.

(g) "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; 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) "Independent contractor" means a person that meets the standard of an independent contractor under the parameters of the right to control test established by the United States Internal Revenue Service, or its 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 Columbus City Code and related rules and regulations, recommending penalties and remedies for non-compliance and/or certification of an adverse determination to the City Attorney, 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 contractors and subcontractors that received an adverse determination, 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.

(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 Columbus City Council, and the fifth member appointed by the Commission with the advice and consent of the Mayor and Columbus City Council.

(d) The Commission shall hold public meetings, the intervals between which shall not exceed sixty (60) days.

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

(f) 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.

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

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

(i) The Commission may receive complaints from residents, workers and businesses regarding non-compliance with this chapter and related rules and regulations and 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.

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

(k) 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.

### **377.03 Ineligibility of a covered entity**

- (a) A covered entity is ineligible to receive any financial incentives provided by the City, City contracts, building permits, commercial licenses or business permits, or to register with the City's vendor services portal, or to perform work or services at a location or development site covered by a financial incentive agreement, or pursuant to or in satisfaction of a contract for goods or services, for four (4) years from the date of the adverse determination against the covered entity.
- (b) A covered entity that receives or is a party to a financial incentive agreement or 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 to perform work or services at a location or development site covered by a financial incentive agreement, or pursuant to or in satisfaction of a contract for goods or services, with a contractor or subcontractor listed by the Commission as having received an adverse determination, is ineligible to receive future financial incentives provided by the City, City contracts, or to perform work or services at a location or development site covered by a financial incentive agreement, or pursuant to or in satisfaction of a contract for goods or services, for four (4) years from the effective date of the contract or agreement.

- (1) The four (4) year period of ineligibility referred to in section 377.03(b) shall not apply if the Commission 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.
- (2) Nothing contained in section 377.03(b) shall limit the reporting or disclosure obligations of a covered entity under this Chapter.
- (3) Nothing contained in this section 377.03(b) shall affect the applicability of other provisions of this Chapter that result in ineligibility and penalties.

#### **377.04 Covered entity reporting obligations**

(a) A covered entity requesting, applying for or bidding for a financial incentive agreement, 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 at a location or development site covered by a financial incentive agreement, or pursuant to or in satisfaction of a contract for goods and services, shall disclose at the time of request, application, bidding, registration, or prior to performing such work or services, whichever occurs first, any adverse determination during the preceding four (4) years.

(b) A covered entity that receives a financial incentive agreement 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.

(c) A covered entity that receives a financial incentive agreement shall have a continuing obligation to report adverse determinations against a contractor of the covered entity, a subcontractor of the contractor, 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 the financial incentive agreement no later than thirty (30) days after the adverse determination. The reporting obligation remains in effect for the duration of any 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 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.

(d) A contractor of a covered entity that performs work or services at a location or on a development site covered by a financial incentive agreement shall provide the City with a sworn statement detailing any adverse determination against the contractor, a subcontractor of the contractor, and a subcontractor of a higher-tiered or other subcontractor of the contractor, no later than thirty (30) days after the adverse determination. The reporting obligation remains in effect for the duration of any 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 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.

(e) 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 a financial incentive agreement shall provide the City with a sworn statement detailing any adverse determination against the subcontractor, including their subcontractors as set forth, above, in this paragraph, no later than thirty (30) days after the adverse determination. The reporting obligation remains in effect for the duration of any agreement between the contractor of a covered entity and a subcontractor, and a subcontractor and a higher-tiered or other subcontractor of the contractor, to perform work or services 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.

(h) A covered entity that receives a contract for goods or services 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 contract for goods or services.

(i) A covered entity that receives a contract for goods or services shall have a continuing obligation to report any adverse determinations 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, that performs work or services pursuant to or in satisfaction of the contract for goods and services no later than thirty (30) days after the adverse determination. The reporting obligation remains in effect for the duration of any agreement between the covered entity 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, 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.

(j) A contractor of a covered entity that performs work or services pursuant to or in satisfaction of a contract for goods or services shall provide the City with a sworn statement detailing any adverse determination against the contractor, a subcontractor of the contractor, and a subcontractor of a higher-tiered or other subcontractor of the contractor, no later than thirty (30) days after the adverse determination. The reporting obligation remains in effect for the duration of any agreement between the covered entity 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, 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.

(k) A subcontractor of a contractor of a covered entity, and a subcontractor that contracts with a higher-tiered or other subcontractor of the contractor, that performs work or services pursuant to or in satisfaction of a contract for goods or services shall provide the City with a sworn statement detailing any adverse determination against the subcontractor, including their subcontractors as set forth, above, in this paragraph, no later than thirty (30) days after the adverse determination. The reporting obligation remains in effect for the duration of any agreement between the contractor of a covered entity 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, 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.

### **377.05 Commercial licenses, business permits, and vendor registration**

A covered entity requesting or applying for renewal of a City commercial license, business permit or registration on the vendor services portal shall disclose at the time of application for renewal any adverse determination during the time period since the initial application or previous renewal, whichever is later.

### **377.06 Payroll inspection**

A covered entity must maintain detailed payroll records and provide requested payroll records to the Commission within five (5) business days of the request. 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.

### **377.07 Investigations**

A covered entity is required to authorize the 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 the City advised regarding 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 release and disclosure of the same.

### **377.08 Declaration of reporting obligations**

(a) A covered entity shall include in solicitations, agreements, contracts, subcontracts, 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 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) 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.

### **377.09 Use of Independent Contractors**

(a) If a covered entity utilizes independent contractors to perform work or services on behalf of the covered entity at a location or on a development site covered by a financial incentive agreement, or under a City contract for goods or services, 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 377.09(a).

(1) A covered entity receiving 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 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.

(1) A covered entity shall provide additional information requested by the Commission within seven (7) days of receipt.

(e) If the Commission, or its designee, reasonably determines a worker(s) has been misclassified as an independent contractor, the Commission, or its designee, 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.

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

### **377.10 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 contractors that received adverse determinations.

### **377.11 Penalties**

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

(b) 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 part, the City will pursue any available legal, contractual or equitable remedies, 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;

(10) Temporary or permanent debarment of the contractor or subcontractor;

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

(12) 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.

(c) 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.

(d) The failure of a Covered Entity to provide the Commission or its designee with requested documents within twenty one (21) business days shall constitute an adverse determination and the City may pursue penalties under 377.11 (a)(1)-(12).

### **377.12 Effective Date**

The provisions of this section will be effective after October 1, 2020.

### **377.13 Effective Date & Incorporation in City Contracts**

All City contracts and Financial Incentive agreements 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.

### **377.14 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.

### **377.15 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.

### **377.16 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.