



## Legislation Text

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**File #: 0190-2021, Version: 1**

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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. To that end, Ordinance 1802-2020 created a Wage Theft Prevention and Enforcement Commission, and set forth the procedures by which members of the Commission are to be appointed. Division (d) of Section 377.02 currently provides that all initial appointments of members shall occur no later than January 15, 2021. It is necessary to amend Section 377.02(d) to allow additional time for the initial members of the Wage Theft Prevention and Enforcement Commission to be appointed and seated.

The remedies for violations of Chapter 377 are set forth in Section 377.12. Section 377.12 currently contemplates that financial incentive agreements, including tax increment financing agreements, may be subject to termination for violations of Chapter 377. Tax increment financing agreements, unlike many other financial incentive agreements, provide funding for public infrastructure improvements and other improvements designed to facilitate urban redevelopment within the City of Columbus. These improvements often require bond financing or other front-end financing, which in turn is serviced by the service payments generated by the tax increment financing. Feedback from the community has made clear that rendering tax increment financing agreements subject to termination for violations of Chapter 377 could undermine the ability of entities and the City to secure such front-end financing for such improvements. It is, therefore, necessary to amend Section 377.12 to make clear that tax increment financing agreements which pledge service payments for the repayment of bond or other financing will not be subject to termination based upon a violation of Chapter 377 of the Columbus City Codes.

**FISCAL IMPACT:** No funding is required for this legislation.

**Emergency Justification:** Emergency action is requested in order to ensure that the City has adequate time to appoint members of the Wage Theft Prevention and Enforcement Commission and to ensure that the City may proceed with tax increment financing agreements under current negotiation that will benefit the City of Columbus.

To amend Section 377.02 of the Columbus City Codes to extend the deadline by which the initial members of the Wage Theft Prevention and Enforcement Commission may be appointed and seated; to amend Section 377.12 of the Columbus City Codes to clarify that tax increment financing agreements which pledge tax increment financing service payments for the service of debt will not be subject to termination based upon a violation of Chapter 377 of the Columbus City Codes; and to declare an emergency.

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

**WHEREAS**, Section 377.02 sets forth the procedures by which initial members of the Wage Theft Prevention and Enforcement Commission shall be appointed; and

**WHEREAS**, Division (d) of Section 377.02 requires that initial members of the Wage Theft Prevention and Enforcement Commission be seated by January 15, 2021; and

**WHEREAS**, it is necessary to extend the deadline for initial appointments to the Wage Theft Prevention and Enforcement Commission to April 1, 2021 in order to afford the Mayor and City Council adequate time to make initial appointments, and to provide time for the Wage Theft Prevention and Enforcement Commission to meet in order to appoint the final member of the Commission, as provided in Section 377.02(c); and

**WHEREAS**, tax increment financing agreements, as distinguished from many other types of financial incentive agreements, provide for the financing of public infrastructure improvements and other improvements designed to facilitate urban redevelopment within the City of Columbus; and

**WHEREAS**, the design and construction of such improvements often require bond financing or other front-end financing, which in turn is serviced by the service payments generated by tax increment financing; and

**WHEREAS**, feedback from the community has made clear that in order to maintain access to financing for such improvements it is necessary to amend Section 377.12, which sets forth the remedies for violations of Chapter 377, to clarify that any tax increment financing agreement which pledges service payments for the repayment of bond or other financing will not be subject to termination based upon a violation of Chapter 377 of the Columbus City Codes; **NOW, THEREFORE**,

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

**SECTION 1.** That Section 377.02 of the Columbus City Codes is hereby amended as follows:

**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 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 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.
- (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 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 January 15, 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 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.
  - (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) A majority vote by the Commission shall result in finding of an adverse determination.
    - (2) 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.
- (i) 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.
- (j) 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) years.
- (k) 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.
- (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.

**SECTION 2.** That Section 377.12 of the Columbus City Codes is hereby amended as follows:

**377.12 Remedies**

- (a) Whenever ~~the Wage Theft Prevention and Enforcement Commission renders~~ any adverse determination is ~~rendered~~ against a covered entity ~~under for any violation(s) of this Chapter; or, if the a covered entity appeals any such~~ adverse determination is ~~appealed~~, 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, the Wage Theft Prevention and Enforcement Commission may, where applicable, recommend to the City Attorney that the City pursue any of the following:
- (1) Unilateral termination or modification of the financial incentive agreement, including unilateral reduction of any 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 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) ~~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 Council following receipt of a report and recommendation from the Wage Theft Prevention and Enforcement Commission;~~
  - (32) 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 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.
  - (43) Loss of low-interest rate commercial loan benefits;
  - (54) Suspension or revocation of grants;
  - (65) 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;
  - (76) 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;
  - (87) 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;
  - (98) Permanent debarment for City contracts.

**SECTION 3.** That the existing Sections 377.02 and 377.12 are hereby repealed.

**SECTION 4.** 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.