

IN THE YEAR TWO THOUSAND AND TWENTY-ONE

_____ AMENDMENT TO CHAPTER 18 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF HOLYOKE, MASSACHUSETTS 1997

AN ORDINANCE

Be it ordained by the City Council of the City of Holyoke as follows:

SECTION 1. Article II entitled “Building Code” of Chapter 18 entitled “Buildings and Building Regulations” shall be amended:

BY ADDING THE FOLLOWING:

“Division 4 – Wage Theft Ordinance:

Section 18-92. PURPOSE

The purpose of this Ordinance is to ensure that the City of Holyoke awards contracts for goods and services and public construction and grants tax relief agreements only to responsible contractors and sponsors who certify their compliance with wage and hour laws and to provide a means of enforcement through written contracts at the outset of awards and appropriate remedies.

Section 18-93. DEFINITIONS

- A. “Holyoke resident” means any natural person who is domiciled in, and has a principal place of residence is within the City of Holyoke Massachusetts during the entirety of time the person works on a Public Construction Project within the Holyoke. Proof of such residence may include, but is not limited to, the following: a valid Massachusetts Driver’s License or Massachusetts Identification Card, utility bill, proof of voter registration, or such other proof acceptable to the City of Holyoke.

- B. Sponsor – means the recipient of tax relief.

- C. Tax Relief – means any form of tax relief granted by the City of Holyoke under a Tax Increment Finance (“TIF”) Agreement pursuant to M.G.L. c. 40, §59, or pursuant to any other provision of law or regulation authorizing the City of Holyoke to grant tax relief. Tax relief, as defined, shall not include relief granted under M.G.L. c. 59, §5.

- D. “Veteran” means a person who has served in any branch of the United States Arms Forces and was not dishonorably discharged.

Section 18-94. MUNICIPAL CONSTRUCTION CONTRACTS

Whenever the City of Holyoke is procuring construction services subject to the provisions of M.G.L. c. 149, c. 149A, or c. 30, §39M, the following **terms and conditions** shall be incorporated into the procurement documents and made part of the specifications and contract. Any person, company, or corporation shall acknowledge, in writing, receipt of said requirements with their bid or proposal.

- A. All bidders or proposers, contractors, and subcontractors and trade contractors, including subcontractors that are not subject to M.G.L. c. 149, §44F under the bidder for projects subject to M.G.L. c. 149, §44A(2), M.G.L. c. 30, §39M and, proposers under M.G.L. c. 149A, (all collectively referred to as “the Contractor”) shall as a condition for bidding or subcontracting verify under oath and in writing on a form provided by the City of Holyoke at the time of bidding or submittal in response to an RFP or in any event prior to entering into a contract or subcontract at any tier, that the comply with the following conditions for bidding, contracting or subcontracting any, for the duration of the project, shall comply with the following requirements and obligations:
 - 1. The contractor shall not have been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past five years;
 - 2. The contractor shall not within the past five years following a final adjudication by a court or governmental agency to have been in violation of any law relating to providing workers compensation insurance

coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws;

3. The contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the contractor's employees on the project in accordance with M.G.L. c. 152 and shall provide documentary proof of such coverage includes with the contractor's submitted bid to the City of Holyoke.
4. The contractor shall properly classify individuals working on the project, as employees or independent contractors, as the case may be, and treat them accordingly for purposes of prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding. (M.G.L. c. 149, §148B on employee classification);
5. The contractor shall comply with M.G.L. c. 151, §1A and M.G.L. c. 149, §148 with respect to the payment of wages;
6. The contractor shall not discriminate against citizens of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents or Massachusetts, the contractor shall give preference to residents of the City of Holyoke. By giving such preference, the contractor should strive to hire thirty percent (30%) of Holyoke residents that are qualified to work for the contractor on the project. The City shall provide the contractor with local instructions on the preferred means to publicize employment opportunities to City of Holyoke residents.
7. The contractor shall meet the employment diversity goals equal to the Commonwealth of Massachusetts' diversity goals for its construction projects. The contractor shall also strive to hire Veterans.
8. The contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign-in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer and the time of each entry or exiting. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the City on a weekly basis with the certified payrolls.

9. The contractor, prior to bidding or, if not subject to bidding requirements, prior to performing any work on the project, shall sign under oath and provide to the City a certification that they are not debarred or otherwise prevented from bidding for or performing work on a public project in the Commonwealth of Massachusetts or in the City of Holyoke.
 10. The contractor must be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority; and
 11. The contractor must submit weekly to the City of Holyoke certified payrolls for all employees. A certified payroll format shall be provided by the City which shall include the employees full name, address, identifying number, gender and race, and which tabulates hours worked for females, people of color [as defined herein] and residents of the City of Holyoke. Each contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll submitted to the City of Holyoke on which the employee appears.
 12. The contractor agrees to attend all regularly scheduled and/or special meetings convened by the City for the purpose of reviewing workforce hiring commitments in this Ordinance.
- B. A contractor that does not comply with this Ordinance shall be rejected, and no subcontract for work outside the scope of M.G.L. Chapter 149, §44F shall be awarded to a subcontractor of any tier that does not comply with this Ordinance.
- C. All contractors who are awarded or who otherwise obtain contracts on projects subject to M.G.L.c.149, §44A(2), c 149A, or c.30, §39M shall comply with this Ordinance for the entire duration of their work on the project, and an officer of each bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.
- D. Any contractor that fails to comply with shall be, at the sole discretion of the City, subject to one or more of the following sanctions: (1) cessation of work on the project until compliance with this Ordinance is obtained; (2) withholding of payment due under any contract or subcontract until compliance with this Ordinance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the City in the amount of 5% of the dollar value of the contract.
- E. A contractor shall be strictly liable for the violations of this Ordinance by its subcontractors with the exception of violations arising from work performed pursuant to subcontracts that are subject to M.G.L. c.149, §44F. Any contractor

that has been determined by the City of Holyoke or by any court or agency to have violated any of the obligations set forth in this Ordinance shall be barred from performing any work on any future projects for six months for a first violation, three years for a second violation and, upon a judicial finding that a third violation has occurred, may be permanently barred.

Section 18-95. TAX RELIEF & TAX RELIEF AGREEMENTS

Minimum Mandatory Conditions. In addition to any other conditions that may be required in connection with tax increment financing (“TIF”) granted by the City, each Tax Increment Financing Agreement entered into between the City and the Sponsor of such relief shall be subject to and shall to and include the following set of mandatory conditions:

- A. It shall be a special and material condition of this Agreement that any construction manager, general contractor or other lead or prime contractor, or any entity functioning in any such capacity, and any other contractor or subcontractor of any tier or other person that is engaged to perform the construction work during the term of this Agreement on the property that is the subject of this Agreement (hereinafter, collectively and individually, the “TIF contractor”) shall comply with the following qualifications and conditions at all times during their performance of work on the property:
- (1) The TIF contractor has not been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past five years;
 - (2) The TIF contractor has not been found within the past five years following a final adjudication by a court or governmental agency to have been in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, prompt payment laws, earned sick time, or prevailing wage laws;
 - (3) The TIF contractor must maintain appropriate industrial accident insurance, as required by Massachusetts law, sufficient to provide coverage for all the employees of the TIF contractor on the project in accordance with G.L.c.152 and provide documentary proof of such coverage included in the TIF contractor’s submitted bid to the City of Holyoke;

- (4) The TIF contractor must properly classify individuals as employees or independent contractors and treat them accordingly for purposes of minimum wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding. (M.G.L. c.149, §148B on employee classification);
- (5) The TIF contractor must comply with M.G.L. c.151, §1A, and M.G.L. c.149, §148 with respect to the payment of wages;
- (6) The TIF contractor must be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority;
- (8) The TIF contractor shall not discriminate against citizens of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts, the TIF contractor shall give preference to residents of the City of Holyoke. By giving such preference, the contractor should strive to hire thirty percent (30%) of Holyoke residents that are qualified to work for the contractor on the project. The City of Holyoke shall provide the TIF contractor with local instructions on the preferred means to publicize employment opportunities to City residents;
- (9) The TIF contractor shall meet the employment diversity goals equal to the Commonwealth of Massachusetts' diversity goals for its construction projects. The contractor shall also strive to hire Veterans.
- (10) The Sponsor shall submit a list to the City of all the expected contractors to work on the project, prior to the start of any work on the property subject to the TIF agreement. The list shall include the name of the primary contact of each contractor, the Contractor's address and either a phone number or email address. The signatory to the RIF agreement shall provide the City with an updated list within 14 days of any additional or replacement contractors performing work on the project. The Sponsor will provide a final all inclusive list to the City within 30 days of the conclusion of the project.
- (11) The Sponsor and/or the TIF contractor must submit monthly to the City of Holyoke certified payrolls for all contractors and subcontractors. A certified payroll format will be provided by the City that includes the employees full name, address, identifying number, gender and race, and which tabulates hours worked for females, people of color and residents of the City. Each TIF contractor shall provide a copy of the OSHA 10 card

for every employee attached to the first certified payroll they submit on which the employee appears.

- (12) The TIF contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign-in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer and the time of each entry or exiting. Such sign-in/out logs shall be provided to the City on a weekly basis with the certified payrolls.
 - (13) The Sponsor and/or the TIF contractor agrees to attend all regularly scheduled and/or special meetings convened by the City for the purpose of reviewing workforce hiring commitments within this Ordinance.
- B. If any person or entity subject to the foregoing qualifications and conditions fails to comply with any of the foregoing qualifications and conditions with respect to work on the property, the parties agree that such an event materially frustrates the public purpose for which this Agreement (and any certification by the state) was intended to advance. In such an event, the Tax Relief granted by this Agreement shall be terminated upon written notice by the City to the Sponsor, and the Sponsor shall pay to the City an amount equal to the value of any tax relief that was received under this Agreement. When required, the City shall petition the appropriate state agency or body for revocation of the certification or approval of the tax relief and, upon notice of such revocation, the tax relief provided by this Agreement shall be terminated, and, to the extent consistent and permitted by law, the Sponsor shall pay to the City an amount equal to the value of the tax relief that was received under this Agreement.
- C. When seeking tax relief granted by the City, the Sponsor shall as part of the request or application process that any contractor or subcontractor previously determined by the City or by any court or agency to have violated any of the obligations set forth in this Ordinance for the previous five years shall not be hired to perform work on the project.
- D. In the event the Sponsor challenges the City's efforts to invoke forfeiture/clawback provisions of this Agreement, or to obtain revocation by the state, or challenges any decision to revoke any certification or approval of the grant of tax relief by the state the Sponsor shall set aside in an escrow account an amount equal to the full amount of the tax savings that previously would have accrued under this Agreement while any such challenge remains pending. The Sponsor shall have a continuing obligation to contribute to the escrow account amounts equal to the additional tax savings that accrue under this Agreement while its challenge remains pending. The Sponsor shall promptly provide to the

City documentation of its compliance with this obligation. The conditions of the escrow account shall provide that, in the event the Sponsor is unsuccessful in its challenge, the funds in the account shall be paid to the City within 10 days of final decision on its challenge. If the Sponsor's challenge is successful, then the funds in the account shall be released to the Sponsor. The Sponsor's obligations under this subsection shall be judicially enforceable. It is the intent of the parties that Holyoke's residents are third party beneficiaries of this Agreement, and that it may be enforced by a civil proceeding brought by not less than 10 taxable inhabitants.

E. Requirements for Successors-In-Interest

The requirements of this Ordinance, including any remedies imposed herein, that are applicable to any TIF contractor or Sponsor shall also be applicable to, and effective against, any successor TIF contractor or Sponsor that (1) has at least 1 of the same principals or officers as the prior TIF contractor or Sponsor; and (2) is engaged in the same or equivalent trade or activity as the prior TIF contractor or Sponsor."

SECTION 2. If any provision of this Ordinance, or the application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this Ordinance, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid shall not be affected thereby.

SECTION 3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 4. This ordinance shall take effect upon its passage.

APPROVED AS TO FORM:



Kathleen E. Degnan
Assistant City Solicitor