

## **DRAFT: Somerville Local Hiring Ordinance**

### **I. COVERAGE**

This ordinance shall cover projects receiving a Subsidy from the City valued at over \$50,000, as described below. A “Subsidy” is direct or indirect assistance by the City to a Developer that materially benefits the Developer, including, but not limited to, grants or loans of funds expended or administered by the City, tax abatements or deferrals, issuance of bonds, and infrastructure improvements made for the purpose of facilitating or supporting a development project, land sale, a ground lease, or other project.

### **II. DEFINITIONS**

The following words, as used in this ordinance shall, unless the context otherwise requires, have the following meanings:

***Agency*** shall mean the unit of government, within the structure of the City of Somerville, that is responsible for the application, administration and execution of Community Development Block Grants, projects in the area of housing and employment, and Federal affirmative action programs, currently the OSPCD.

***City*** shall mean the City of Somerville.

***Construction Contractor*** shall mean a prime contractor or a subcontractor performing construction work related to a Covered Project. Lower-tier subcontractors are included in this definition.

***Covered Entity*** shall mean any entity that enters into a contractual commitment to comply with this Ordinance.

***Covered Project*** shall have the meaning set forth in Section I of this ordinance.

***Developer*** shall mean a person, firm, partnership, Limited Liability Company, corporation, joint venture, proprietorship, trust, association, or other entity entering into a disposition and development agreement, an owner participation agreement, a loan agreement, or a similar agreement with the Agency or the City.

***Disadvantaged Worker*** shall mean an individual whose primary place of residence is within the City and who, prior to commencing work on a Covered Project, either (a) has a household income of less than 50% of the AMI or (b) faces at least one of the following barriers to employment: being homeless; being a custodial single parent; having limited English capabilities; receiving public assistance; lacking a GED or high school diploma; having a criminal record or other involvement with the criminal justice system or suffering from chronic unemployment.

**Local Resident** shall mean any person for whom the principal place where that person normally eats and sleeps and maintains his or her normal personal and household effects is within the City limits for the City of Somerville.

**Ordinance** shall mean this Local Hiring Ordinance, in its entirety.

**First Source Referral System** shall mean the system designated by the Agency to provide job referrals and perform related functions with regard to provisions of this Ordinance that concern hiring of employees. The First Source Referral System shall coordinate job training programs with one or more appropriate job training organizations, as necessary and as requested by Tenants.

**Tenant** shall mean a for-profit business or a nonprofit entity that conducts any portion of its operations within a Covered Project. A Developer may be a Tenant only if it engages in retail, office, or industrial operations within a Covered Project, rather than renting or leasing all available spaces to other entities. "Tenant" does not include Construction Contractors of businesses performing work pursuant to short-term contracts. Short-term contracts are on-time, nonrenewable contracts to be completed in less than six months time.

### III. SUMMARY OF LOCAL HIRING REQUIREMENTS

The Prime Contractor is responsible for ensuring that the following Local Hiring Requirements are met. For projects with a Developer, the Developer is jointly and severally responsible with the Prime Contractor for ensuring that these requirements are met.

(1) The following percentages shall be attained for each Covered Project:

For Construction of Covered Projects:

(a) 30% of total work hours by Local Residents. A minimum of 30% of all hours in each trade of Project Work shall be performed by Local Residents.

(b) 10% of total work hours shall be by Disadvantaged Workers. A minimum of 10% of all hours of Project Work in each trade shall be performed by Disadvantaged Workers. These hours may be applied toward the work hour minimums listed in Section III(1)(a).

(c) 30% of all hours worked by construction Apprentices on all Covered Projects shall be performed by Local Residents.

For Tenants in Covered Projects:

(a) Fill 30% of available positions with Local Residents.

(2) The employer retains authority in making individual hiring decisions.

#### IV. IMPLEMENTATION

##### (1) Responsibilities of Developers of Covered Projects

- (a) Coverage. This section applies to any Developer.
- (b) Designation of Contact Person. Within thirty days of having entered into a disposition and development agreement, an owner participation agreement or a similar agreement with the Agency, each Developer shall designate a contact person for all matters related to implementation of this Ordinance. Each Developer shall forward the name, address, and phone number of the designated individual to the Agency. If the contact person changes, the Developer shall immediately notify the Agency.
- (c) Include Local Hiring Ordinance Policy in Contracts. Each Developer entering into any contract, deed or lease relating to the construction, rental, sale, lease, use, maintenance or operation of a Covered Project shall include compliance with the entirety of this Ordinance as a material term of such subcontract, contract, deed, lease or contract.
- (d) Cooperation with Monitoring Efforts. Each Developer shall make available to the Agency all requested records and information relevant to monitoring and enforcement of this Ordinance, including contracts between the Developer and other entities. The Agency shall not use such records and information for any other purpose other than monitoring or enforcement of this Ordinance, and shall not release trade secrets or information regarding employees designated by name. Each Developer shall allow the Agency access to job sites and employees during usual business hours as the Agency deems necessary to monitor compliance with this Ordinance. Each Developer agrees to the provisions of Section V regarding compliance, monitoring and enforcement.
- (e) Reporting Requirements. Within three days of the award of any contract covered by this section, the awarding Developer shall provide to the Agency the following information: the name, address, and telephone number of the business to whom the contract was awarded.

##### (2) Responsibilities of Tenants in Covered Projects

- (f) Coverage. This section applies to all Tenants and to hiring by Tenants for all jobs for which the job site is primarily located within a Covered Project.
- (g) Designation of Contact Person. Within thirty days of having entered into a contract related to operations within a Covered Project, each Tenant shall designate a contact person for all matters related to implementation of this Ordinance. Each Tenant shall forward the name, address, and phone number

of the designated individual to the Agency. If the contact person changes, the Tenant shall immediately notify the Agency.

- (h) Include Local Hiring Ordinance Policy in Contracts. Each Tenant entering into any subcontract, contract, deed or lease relating to the construction, rental, sale, lease, use, maintenance or operation of a Covered Project shall include compliance with the entirety of this Ordinance as a material term of such subcontract, contract, deed, lease or contract.
- (i) Cooperation with Monitoring Efforts. Each Tenant shall make available to the Agency all requested records and information relevant to monitoring and enforcement of this Ordinance. The Agency shall not use such records and information for any other purpose other than monitoring or enforcement of this Ordinance, and shall not release trade secrets or information regarding employees designated by name. Tenants may redact names and social security numbers from requested documents in order to protect the privacy of individual employees. Each Tenant shall allow the Agency access to job sites and employees during usual business hours as the Agency deems necessary to monitor compliance with this Ordinance. Each tenant agrees to the provisions of Section V regarding compliance, monitoring and enforcement.
- (j) Long-Range Planning. As soon as the information is available, each Tenant shall provide to the Agency information regarding the approximate number and type of jobs that will need to be filled and the basic qualifications necessary.
- (k) Initial Hiring Process.
  - (i) Notification of Job Opportunities. At least six weeks prior to a Tenant commencing operations in a Covered Project, the Tenant shall notify the Agency of available job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers' license, etc.) Job qualifications shall be limited to skills directly related to performance of job duties.
  - (ii) Hiring. The Tenant shall use normal hiring practices, including interviews, to consider all applicants referred by the First Source Referral System during a **six week period** after initial notification, or until all open positions are filled, whichever is sooner. The First Source Referral System shall, as quickly as possible, refer qualified applicants for available jobs. The Tenant shall make good faith efforts to fill all available positions with applicants referred by the First Source Referral System. If at the conclusion of the six-week period the

Tenant has been unable to fill all available positions with applicants referred by the First Source Referral System, the Tenant may use other recruitment methods, although the Tenant shall continue to make good faith efforts to hire applicants later referred by the First Source Referral System.

- (iii) Pre-opening Transfer. Provisions of this subsection f are not applicable to a Tenant that is closing a facility located outside Somerville and is transferring the entire staff to a new facility within Somerville. Upon commencing operation in the new facility, such a Tenant is covered by subsection g, below.

Provisions of this subsection f are applicable to Tenants who hire for positions in facilities located outside of Somerville with the intention of transferring such hires to a new facility within Somerville upon commencement of operations for the new facility. All such hires shall be made under the provisions of subsection f.

(l) Ongoing Hiring Process.

- (i) Notification of Job Opportunities. After a tenant has commenced operations in a Covered Project, it shall continue to use the First Source Referral System to fill positions that become available. When a Tenant has positions available, the Tenant shall notify the First Source Referral System of available job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers' license, etc.) Job qualifications shall be limited to skills directly related to performance of job duties.
- (ii) Hiring. The Tenant shall then use standard hiring practices, including interviews, to consider all applicants referred by the First Source Referral System during a **ten day** period after initial notification, or until all open positions are filled, whichever is sooner. The First Source Referral System shall, as quickly as possible, refer qualified applicants for available jobs. The Tenant shall make good faith efforts to fill all available positions with applicants referred through the First Source Referral System. If at the conclusion of the ten-day period the Tenant has been unable to fill all available positions with applicants referred by the First Source Referral System, the Tenant may use other recruitment methods, although the Tenant shall continue to make good faith efforts to hire applicants later referred through the First Source Referral System.

- (m) Safe Harbor Provision. A Tenant who has filled more than 30% of jobs available during a particular quarter with Residents shall be deemed to be in compliance with subsections C. and D., above, for all hiring during that quarter.
- (n) Customized Job Training. The First Source Referral System shall coordinate job training programs with one or more appropriate job training organizations. Prior to hiring for jobs within Covered Projects, Tenants may request specialized job training for applicants they intend to hire, tailored to the Tenants' particular needs, by contacting the First Source Referral System. The First Source Referral System shall then attempt to ensure that these applicants are provided with the requested training through appropriate job training organizations.
- (o) Nondiscrimination. Tenants shall not discriminate against Residents in any terms and conditions of employment, including retention, promotions, job duties, shift assignments and training opportunities.
- (p) Quarterly Reports. Each Tenant shall prepare quarterly reports detailing the employment of Residents. The Agency may assist Tenants by preparing forms to be completed for this purpose. Reports shall be filed within thirty days after the completion of each quarter. Reports shall include, at a minimum, the following information on the Tenants' activities:
  - (i) the percentage of available employment and promotions that have gone to Residents;
  - (ii) a short description of each job that has been filled, and whether a Resident was hired;
  - (iii) for each Resident that was hired, whether that Resident is still employed by the Tenant
  - (iv) descriptions and numbers of jobs that will become available, if known, in the future, and an estimated timetable for availability of such jobs; and
  - (v) any difficulties the Tenant is having with obtaining qualified referrals through the First Source Referral System.

### (3) Responsibilities of Construction Contractors

- (a) Coverage. This section applies to all Construction Contractors and to employment by a Construction Contractor in fulfillment of the Construction Contractor's responsibilities under a contract to perform construction work as part of a Covered Project.

- (b) Designation of Contact Person. At time of award of a contract, each Construction Contractor shall designate a contact person for all matters related to implementation of this Ordinance. Each Construction Contractor shall forward the name, address, and phone number of the designated individual to the Agency. If the contact person changes, the Construction Contractor shall immediately notify the agency.
- (c) Include Local Hiring Ordinance Policy in Contracts. Each Construction Contractor entering into any subcontract, contract, deed or lease relating to the construction, rental, sale, lease, use, maintenance or operation of a Covered Project or any other covered project shall include compliance with the entirety of this Ordinance as a material term of such subcontract, contract, deed or lease.
- (d) Cooperation with Monitoring Efforts. Each Construction Contractor shall make available to the Agency all requested records and information relevant to monitoring and enforcement of this Ordinance. The Agency shall not use such records and information for any other purpose other than monitoring or enforcement of this Ordinance, and shall not release trade secrets or information regarding employees designated by name. Construction Contractors may redact names and social security numbers from requested documents in order to protect the privacy of individual employees. Each Construction Contractor shall allow the Agency access to job sites and employees during usual business hours as the Agency deems necessary to monitor compliance with this Ordinance. Each Construction Contractor agrees to the provisions of Section V regarding compliance, monitoring and enforcement.
- (e) 30% Local Employment Goal. Thirty percent of all work-hours shall be performed by Residents. Each Construction Contractor shall either achieve this goal or demonstrate that it made good faith efforts to do so.
- (f) 10% of total work hours shall by Disadvantaged Workers. A minimum of 10% of all hours of Project Work shall be performed by Disadvantaged Workers. These hours may be applied toward the work hour minimums listed in Section III(1)(a).
- (g) 30% of all hours worked by construction Apprentices on all Covered Projects shall be performed by Local Residents.
- (h) Good Faith Efforts. For purposes of this section, good faith efforts shall mean diligent efforts to locate and employ qualified Residents. Good faith efforts include:

- (i) at least three days prior to hiring for any job, providing to the Agency written notification of employment opportunities for Residents;
  - (ii) working closely and cooperatively with the Agency to locate and employ Residents;
  - (iii) making reasonable modifications to crew structures to facilitate employment of Residents;
  - (iv) maintaining a file on the job site of the names and addresses of each Resident referred to the Construction Contractor from any source, and, for Residents not hired, the reasons therefore; and
  - (v) promptly notifying the Agency in writing if a union hiring hall with which the Construction Contractor has a collective bargaining agreement fails to refer a resident requested by that Construction Contractor.
- (i) Existing Workforce. The existence of a crew or workforce usually employed by a Construction Contractor shall not affect the Construction Contractor's responsibilities under this policy.
  - (j) Nondiscrimination. Construction Contractors shall not discriminate against Residents in any terms and conditions of employment, including retention, promotions, job duties and training opportunities.

## V. COMPLIANCE, MONITORING AND ENFORCEMENT

- (1) Monitoring Activities. The Agency shall monitor compliance with this Policy by Covered Entities. Monitoring Activities may include requests to produce documentation, site visits, interviews, review of required reports, and any other monitoring activities the Agency reasonably finds necessary to assess compliance with this Ordinance. Covered Entities shall cooperate fully with this policy. The Agency may review a Covered Entity's compliance with this Policy either on its own initiative or after receiving a complaint or inquiry from a member of the public or City or Agency staff.
- (2) Liaison Committee. The Agency shall establish a liaison committee which shall meet monthly, in a forum open to the public, to review the Agency's reports, monitor compliance with the provisions of the section, and make recommendations to the Agency and the Board of Aldermen regarding enforcement of this section. The agency shall accept nominations of persons from interested groups including, but not limited to: community-based organizations,



Boston & Greater Boston Building Trades, human rights activist groups, women's organizations, religious institutions and the Somerville Chamber of Commerce.

(3) Agency Enforcement Procedures. The following procedures shall be followed when the Agency staff determines that there has been a violation of the Ordinance:

(a) Notice of Violation. When the Agency staff determines that there has been a violation of this Policy, it shall notify the Covered Entity alleged to be in violation. Such notification shall be in writing, and shall specify with particularity the alleged violation and shall state the precise measures necessary to correct the violation.

(b) Good Faith Resolution Efforts. If the Covered Entity does not correct the violation within ten business days, the Covered Entity and the Agency Staff shall meet and confer in a good faith efforts to hear all sides and to negotiate a resolution.

(c) Referral to City and/or Agency. If the Covered Entity and the Agency staff or designee cannot negotiate a resolution within 45 days of the Notice of Violation, the Agency staff or designee shall refer the matter to the City and/or Agency for enforcement efforts, depending on whether the contract that incorporated this Ordinance was awarded by the City or Agency. At this time the Agency staff may amend the Notice of Violation, and the Covered Entity alleged to be in Violation shall forward to the Agency staff a written statement describing with particularity its position regarding the substance of the Notice of Violation. The Agency staff may refer a matter to the City and/or Agency for enforcement efforts in less than 45 days if it determines that there is a continued violation of the Policy.

(4) Enforcement by the City and/or Agency. If the Agency staff and the Covered Entity cannot negotiate a resolution within a period of time deemed reasonable by the City or Agency, the City and/or Agency may take any or all of the following actions. While any of these actions are pending, City staff and/or Agency staff and the Covered Entity may continue to negotiate a resolution of the dispute.

(a) Arbitration. The City and/or Agency may refer the dispute to binding arbitration to be conducted in accordance with the rules of the American Arbitration Association regarding arbitration of commercial disputes. Each party shall bear its own costs of such arbitration and the parties shall equally split the cost of the arbitrator. The arbitrator, upon hearing the matter, may provide for specific enforcement of this Ordinance, injunctive relief against the Covered Entity, and/or liquidated damages as described below.

- (b) Enforcement by Courts. The City and/or Agency may file a legal action in a court of law to enforce this Ordinance. The court may provide for specific enforcement of this Policy, injunctive relief against the Covered Entity, and/or liquidated damages as described below. The court may award reasonable attorneys' fees and costs to the City or Agency if it prevails in such an action.
- (c) Termination of Contract. The City and/or Agency may suspend or terminate for cause any contract or other agreement between the City and/or Agency and the Covered Entity.
- (d) Withholding of Funds. If the City and/or Agency owes to the Covered Entity any monetary payments pursuant to a contract or debt, the City and/or Agency may withhold funds in an amount specified below as liquidated damages. If the Covered Entity is subcontractor on a City-funded or Agency-funded construction project, the City may withhold progress payments to the prime contractor on that project.
- (e) Suspension or revocation of Construction Permit. If the Covered Entity is performing work requiring a construction permit or similar permit issued by the City, the City may suspend or revoke the construction permit or similar permit, or may issue a stop work order.
- (f) Suspension or revocation of Use or Occupancy Permit. If the Covered Entity is engaging in activities requiring a use or occupancy permit or similar permit issued by the City, the City may suspend or revoke the use or occupancy permit or similar permit.
- (g) Declaration of ineligibility. The City and/or Agency may declare the Covered Entity ineligible for participation in future City public works contracts and/or Agency redevelopment projects for a period of three years or until liquidated damages and other restitution have been paid in full, whichever is longer.
- (h) Liquidated Damages. Because the City and/or Agency's actual damages for breach of the terms of this Ordinance would be extremely difficult to determine, the City, Agency, and Covered Entities designate the following preestimates of damages for noncompliance with this Policy, to function as liquidated damages. Any liquidated damages collected by the City or Agency shall be used for job training of residents.
  - i. Business user hiring an employee without having followed the procedures specified in this Policy: \$1000.

- ii. Covered entity awarding a contract without having followed the procedures specified in this Policy: 10% of the value of this contract.
  - iii. Contractor failure to comply with resident workforce goal/good faith efforts: \$500 per day of noncompliance.
  - iv. Failure to comply with any other provision of this Ordinance: \$500 per day of noncompliance.
- (i) Consequences of Omission of this Policy from Deeds, Leases or Contracts. If a Covered Entity fails to comply with any provision of this Ordinance requiring inclusion of this Policy in any deed, lease, or contract, that Covered Entity shall be, jointly and severally, strictly liable for any damages or attorney's fees incurred due to, or equitable relief made necessary by, that failure of compliance. For purposes of this subsection, the liquidated damages provisions of subsection h, above, shall apply when calculating damages incurred by the City or Agency.