

CITY OF SOMERVILLE
ORDINANCE NO. 2019-24
In City Council December 12, 2019

Somerville Wage Theft Ordinance

WHEREAS, the City of Somerville annually spends hundreds of thousands of dollars purchasing goods and services; and

WHEREAS, the City of Somerville, as a consumer intends to be cognizant of the impact that our consumption has on the workers that provide services throughout Somerville; and

WHEREAS, the Somerville City Council has authority to adopt ordinances to protect the health, safety and welfare of all residents of the City of Somerville; and

WHEREAS, a significant percentage of the population of the City of Somerville are immigrants, over 24% of the city is foreign-born, over 29% speak a language other than English at home, the population is vulnerable to exploitation; and

WHEREAS, the high cost of Wage Theft to the City, its business community, and its residents impedes the City's economic development and growth; and

WHEREAS, requiring City contractors, subcontractors and bidders to comply with applicable federal and state wage laws, strengthens the City's ability to hire vendors that treat their Employees fairly;

WHEREAS, the City Council hereby further finds and determines that, due to the pervasiveness of Wage Theft in the construction industry, significant financial incentives are necessary to motivate property owners and their general contractors to take steps sufficient to ensure that Wage Theft does not occur on their projects; and

WHEREAS, prohibiting the Purchasing Department from contracting with debarred vendors for the period of Debarment will help to ensure that City resources are not used to support vendors debarred for wage law violations; and

WHEREAS, the City desires to ensure that potential and current recipients of licenses issued under M.G.L. c. 138 and c. 140 comply with applicable wage laws;

WHEREAS, the City desires to ensure that potential and current recipients of building permits issued by the City of Somerville comply with applicable federal and state wage laws;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Somerville that the City of Somerville Code of Ordinances as amended is hereby further amended and adopted as follows:

CHAPTER 9. OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE III. OFFENSES AGAINST THE PERSON.

DIVISION 2. WAGE THEFT

SECTION 9-34. Definitions.

For the purpose of this ordinance, the following definitions apply, except where the context clearly indicates a different meaning:

Administrative Citation – a civil citation issued by the attorney general pursuant to M.G.L. c. 149 § 27C, a civil citation issued by the Department of Labor pursuant to 29 U.S.C. § 201 et seq. and/or 29 C.F.R. § 578, or any other civil citation for violation of M.G.L. c. 149 or c. 151 and/or 29 U.S.C. § 201 et seq., issued by any other federal, state or local administrative agency.

Application – an initial application or renewal of a license or permit.

City Contractor – an employer who holds or seeks to hold a contract for goods, services or labor with the city.

Debarment – A determination by appropriate state or federal authority that the vendor or business can no longer bid or otherwise participate in public contracts. These determinations are made pursuant to statutes including but not limited to, M.G.L. c.29, § 29F, M.G.L. c.30, § 39R, M.G.L. c.149, § 27C, M.G.L. c.149, § 44C, M.G.L. c.149, § 148B, M.G.L. c.152, § 25C, 29 U.S.C. §201 et seq. and 29 C.F.R. § 578.

EACC – Economic Assistance Coordinating Council, as defined by M.G.L. c. 23A, § 3A and established by M.G.L. c. 23A, § 3B.

Employ – including as used in the term “employment” means to suffer or permit to work.

Employer – any natural person or business, whether or not incorporated or unincorporated who suffers or permits another to work (1) in the city, (2) under contract to which the city or one of its Departments is signatory, or (3) who otherwise maintains a commercial presence in the city. This definition excludes the United States as a corporation wholly owned by the government of the United States; and the Commonwealth of Massachusetts, its subdivisions and corporate bodies.

Employee – a natural person who performs work for an Employer operating within the geographic boundaries of Somerville.

Minimum Wage – as defined in M.G.L. c. 151, § 1 as well as any other state or federal statute or regulation establishing a minimum fair wage for particular occupations or classes of Employees.

Overtime – as defined in M.G.L. c. 151, § 1A, 29 U.S.C. § 201 et seq.

Prevailing Wage – as defined in M.G.L. c. 149, §§ 26-27H.

Stop Work Order – as defined in M.G.L. c. 152, § 25C and 452 C.M.R. § 8.02.

TIF Agreement – a tax increment financing agreement, as such term is defined by M.G.L. c.23A, § 3A, c. 40, § 59, and 760 C.M.R. 22.00 et seq.

TIF Plan – a tax increment financing plan, as such term is defined by 760 C.M.R. 22.00 et seq.

Timely Payment of Wages – as defined by M.G.L. c. 149, § 148.

Wage – as defined by M.G.L. c. 149, § 148.

Wage Theft – an action by an Employer, his/her officers, agents or employees causing an Employer not to make a timely and/or complete payment of Wages, not to pay the Minimum Wage or Prevailing Wage, or not to pay Overtime earned and owing to an Employee.

SECTION 9-35. Wage Theft Advisory Committee.

A. Structure.

1. There shall be established a Wage Theft Advisory Committee, comprised of 11 total designees, 1 designee submitted by the city council, 1 designee submitted by the mayor, and 1 designee from each of the following identified organizations, chosen by the city council, from a list provided respectively by each of the following identified organizations: the Greater Boston Labor Council, The Welcome Project, the Brazilian Workers Center, the Massachusetts Coalition for Occupational Safety and Health, the Somerville Chamber of Commerce, the New England Regional Council of Carpenters, the Metro Building Trades Council, Our Revolution Somerville and the Somerville Community Corporation.
2. Designees of the Wage Theft Advisory Committee shall be appointed for a term of 3 years, notwithstanding initial appointments, and must be appointed no later than the second meeting of the new year. In order to stagger the terms of the designees, the initial appointments of the designee from the city council, the mayor, and Greater Boston Labor Council shall be for 1 year; the initial appointments for the designee from the Brazilian Workers Center, the Massachusetts Coalition for Occupational Safety and Health, the Somerville Chamber of Commerce and the New England Regional Council of Carpenters shall be for 2 years. The remaining initial appointments (the designees from the Metro Building Trades Council, Our Revolution Somerville, the Somerville Community Corporation, and the Welcome Project) shall be for 3 years.

B. Duties.

1. The Wage Theft Advisory Committee (“WTAC”) will meet at least once every two months to review Wage Theft complaints and provide advice to the city council on the implementation and effectiveness of the wage theft ordinance.
2. In addition, each year the Committee shall elect from among its members a volunteer Secretary who shall receive Wage Theft complaints from the Attorney General’s office; or received by the city solicitor’s office; or received by any member of the WTAC. Said secretary and/or designees of the Committee shall coordinate any response to such complaint that is required by the ordinance. In addition, members of the WTAC may offer education, guidance, and referrals to Employees affected by wage theft in Somerville.

C. Annual Report.

The city shall publish an annual report, through the Wage Theft Advisory Committee detailing all wage theft complaints received and action taken in response to such complaints, including specifically the status or final disposition of each complaint, where available. The report shall also include civil and criminal judgments issued by the state and federal courts, administrative citations, and final administrative orders, including but not limited to debarments, against employers pursuant to M.G.L. c. 149 and M.G.L. c. 151, if known.

D. Conflict of Interest.

For purposes of this ordinance no member of the Wage Theft Advisory Committee shall participate in any proceeding concerning a beneficiary, a covered vendor, or a covered employee, if the member or any member of his or her immediate family has a direct or indirect financial interest in said individual or in the award of a service contract, subcontract or assistance or the granting of relief to said individual.

SECTION 9-36. Wage Theft Complaint Process.

A. Filing of Complaints.

Any city department upon notification of a wage theft complaint shall forward said complaint immediately to the WTAC. The WTAC shall notify the city purchasing agent, the licensing commission, the city council, and the attorney general's office of the complaint. If the complaint pertains to work performed at any property subject to a TIF Agreement, the WTAC shall also send a copy to the EACC.

B. Required Communication with Attorney General.

On a biannual basis, a representative from the WTAC will request to meet with the office of the attorney general to discuss complaints involving employers in the city and to better coordinate on issues of wage theft in the city.

SECTION 9-37. Requirements for City Contractors.

A. RFP, Bid and Successful Bidder Requirements.

1. Every Request for Proposals (RFP) or bid solicited by the purchasing agent shall include the certification and disclosure requirements imposed by this section.
2. Every RFP or bid solicited by the purchasing agent shall notify bidders that they have an affirmative duty to report and provide a copy of any criminal or civil judgment, administrative citation, or final administrative determination for wage theft against the bidder or any of its subcontractors entered within the 5 years prior to bid submission, as well as any debarments against the bidder or any of its subcontractors in effect while its bid is pending to the city, and shall further notify bidders that if they are the successful bidder, they and any of their subcontractors have an affirmative duty to report any criminal or civil judgement, administrative citation, final administrative determination, order, or debarment against the bidder or any its subcontractors while their contract with the city is in effect, within 5 business days of receipt. The RFP or bid will identify the purchasing department as the department to whom this must be reported.
3. Every RFP or bid solicited by the purchasing agent shall notify bidders that they may not contract with the city if they have been either voluntarily or involuntarily debarred by the federal government, any agency of the Commonwealth of Massachusetts or any other state for the entire term of the debarment. Such RFPs or bids shall also notify bidders that they may not use any subcontractor who has been debarred by the federal government or any state government during the period of that subcontractor's debarment.
4. Bidders that are subject to state, or federal debarment for violation of M.G.L. c.149, M.G.L. c. 151, 29 U.S.C. § 201 et seq. or any other state or federal laws regulating the payment of wages, either voluntarily or involuntarily, or that have been prohibited from contracting with the Commonwealth or any of its agencies or subdivisions will be deemed not responsible and their bids or proposals shall be rejected. Such bidders shall be deemed not responsible for the entire term of debarment or other stated time period. During the term of a contract, upon a finding or order of such debarment or prohibition, the city may terminate the contract.
5. Successful bidders must agree to post notices in accordance with M.G.L. c. 151 § 16 in a conspicuous location accessible to all of their employees in english and the primary language of the employee(s) at the particular workplace. If not all employees would have

reasonable access to the notice if posted in a single location by the successful bidder, then the successful bidder must inform the purchasing agent or other city department of the number and location of postings in order to ensure that the successful bidder provides reasonable notice to all of their employees. The successful bidder must also agree to make those additional postings.

B. Certification and Disclosures.

The purchasing agent entering into contracts on behalf of the city shall adopt certification and disclosure requirements for all bidders providing:

1. That a bidder certify to the city that neither the bidder nor any of the bidder's subcontractors have been subject to a criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, or 29 U.S.C. § 201 et seq. within 5 years of their application.
2. In the alternative, the bidder shall disclose to the purchasing agent any such criminal or civil judgment, administrative citation, administrative determination, or debarment and include a copy of the same in their application. To the extent a judgment, citation or final administrative order has been issued against a bidder within 5 years prior to its bid, the bidder must provide a copy of the same, in addition to documentation demonstrating that all damages, fines, costs, and fees have been paid. In addition, the city may, upon recommendation of the WTAC, require the bidder to post a bond, to be maintained for the life of the contract, as specified by Subsection D.
3. The purchasing department, when issuing an RFP or bids shall notify bidders that they have an affirmative duty to report any criminal or civil judgment, administrative citation, final administrative determination, order, or debarment against them or any of their subcontractors related to wage theft and occurring while the contract is in effect to the department within 5 business days of receipt.

C. Reporting and Notice Requirements.

1. If not already stipulated in the contract terms or otherwise required by law, upon request by the purchasing agent, all city contractors shall furnish their monthly certified payrolls to the city official requesting such payroll reports for all employees working on city contracts.
2. All city contractors will furnish to the purchasing agent any criminal or civil judgment, administrative citation, final administrative determination, order, or debarment related to wage theft and issued during the term of their contract(s) with the city against the city contractor or its sub-contractors within 5 business days of receipt.
3. To the extent required as set forth at Subsection D below, all city contractors shall maintain a wage bond for the term of the contract(s) with the city.

D. Wage Bonds.

1. Any recipient of a city contract within the scope of Section 9-37 that has disclosed a criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 et seq. or any other state or federal laws regulating the payment of wages within 5 years prior to the date they submit their applications, or city contractors granted a contract who become subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 et seq., or any other state or federal laws

regulating the payment of wages during the term of the contract, shall be required by the city to obtain a wage bond or other form of suitable insurance in an amount of no less than \$25,000 and up to a maximum aggregate of one year's gross wages for all employees employed on a specific city project, based on an average of its total labor costs for the past two years. Such bond must be maintained for the terms or extensions of any contract, and proof of such bond must be provided upon request by the city. Failure to comply with this Subsection may constitute grounds for modification, suspension, and/or revocation of the contract pursuant to Subsection A.

2. The bond shall be held by the city and shall be conditioned that the contract recipient shall fulfill the payment to its employees of any final judgment, settlement agreement, or other decision ordering the payment of wages. If, within 14 days after demand for the bond, the contract recipient fails to deposit the bond, the city may suspend, revoke, or deny such contract until the bond has been properly deposited with the city.

E. Sanctions for Violations.

If a city contractor is found to be in violation of M.G.L. c. 149, M.G.L. c. 151, or 29 U.S.C. §201 et seq., or this section, and therefore, in breach of its contract with the city, the city may take one or more of the following actions:

1. Revocation of city contractor's contract with the city;
2. Suspension of city contractor's contract with the city;
3. Imposing conditions on any future contracts with the city, including, but not limited to, the posting of a wage bond and other reasonable requirements.

SECTION 9-38. Requirements for Licenses and Prospective Licensees

A. Requirements for Applicants.

Any application filed by an employer to the licensing commission for any license issued pursuant to M.G.L. c. 138 or M.G.L. c. 140 may be denied if, during the 5 year period prior to the date of the application, the applicant employer has been subject to a federal or state criminal or civil judgment, administrative citation, order, debarment, or final determination resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 et seq., or any other state or federal laws regulating the payment of wages. Each such applicant shall certify that she has not been found guilty, liable or responsible, in the past 5 years, in any judicial or administrative proceeding, for any violation of any of the laws set forth above.

B. Requirements for Licensees.

Any license or permit issued by the licensing commission under M.G.L. c. 138 or M.G.L. c.140 to an employer may be modified, suspended or revoked if, during the term of the license, the licensee employer has been subject to a criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 et seq., or any other state or federal laws regulating the payment of wages. Upon notice of a violation as described herein, the WTAC shall request that the matter be placed on the next licensing commission agenda.

C. Posting Notices of Violations.

Any employer for whom there has been a final determination that the employer is in violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 et seq., or any other state or federal laws regulating the payment of wages shall post notice of such a violation. Using a form provided by the city and displaying it on-site, in a conspicuous and accessible location, and in english and the primary language of the employee(s) at the particular workplace. The posting shall remain in place until any determination or judgment of wage theft is paid in full including all related fees and penalties. An employer found in violation of an order to post notice under this section shall be liable to a fine of not more than \$300.00. Each day during which a violation exists shall constitute a separate offense.

D. Conciliation Process.

In order to facilitate compliance, the licensing commission may provide a conciliation process for employers who have been found in violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 et seq. or any other state or federal laws regulating the payment of wages. In lieu of license revocation pursuant to Subsection B, the city will arrange a meeting within 30 days at the request of the parties and during this period any revocation or suspension of a license pursuant to Subsection B shall be held in abeyance. During the course of any conciliation process, the employer will follow the posting requirements in Subsection C. If the employer can demonstrate a compliance plan to satisfy any related penalty imposed by the attorney general's office, or a civil judgement, the licensing commission shall hold any action pursuant to Subsection B in abeyance.

E. Wage Bonds.

1. Employers granted a license or permit that have disclosed a criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 et seq. or any other state or federal laws regulating the payment of wages within 5 years prior to the date they submit their applications, or employers granted a license or permit who become subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order, or debarment resulting from a violation of M.G.L. c. 149, M.G.L. c. 151, 29 U.S.C. § 201 et seq., or any other state or federal laws regulating the payment of wages during the term of the license or permit, shall be required by the city to obtain a wage bond or other form of suitable insurance in an amount of no less than \$25,000 and up to a maximum aggregate of one year's gross wages for all employees, based on an average of its total labor costs for the past two years. Such bond must be maintained for the terms of any license or permit, and proof of such bond must be provided upon request by the city. Failure to comply with this Subsection may constitute grounds for modification, suspension, and/or revocation of the license or permit pursuant to Subsection B.
2. The bond shall be held by the city and shall be conditioned that the contract recipient shall fulfill the payment to its employees of any final judgment, settlement agreement, or other decision ordering the payment of wages. If, within 14 days after demand for the bond, the licensee fails to deposit the bond, the city may suspend, revoke, or deny such license until the bond has been properly deposited with the city.

SECTION 9-39. Requirements for Tax Increment Financing Agreements.

Minimum Mandatory Conditions. In addition to any other conditions that may be required in connection with tax increment financing or housing development exemption relief granted by the city, each tax increment financing agreement and each housing development exemption agreement entered into between the city and the recipient of such relief shall be subject to and shall include language to effect the following:

A. Qualifications and Conditions.

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 the agreement on the property that is the subject of the agreement (hereinafter, collectively and individually, the “contractor”) shall comply with the following qualifications and conditions at all times during their performance of work on the property:

1. The contractor has not been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past 5 years.
2. The contractor has not been found within the past 5 years by a court or governmental agency 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, earned sick time, wage and hour laws, prompt payment laws, or prevailing wage laws.
3. The contractor must maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. c.152 and provide documentary proof of such coverage as part of the application process, or prior to commencing any work to the inspectional services department to be maintained as a public record.
4. The contractor must properly classify employees as statutory employees rather than independent contractors and treat them accordingly for purposes of minimum wages and overtime, workers compensation insurance coverage, social security taxes and state and federal income tax withholding. (M.G.L. c.149, §148B on employee classification).
5. The 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 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.
7. The property owner shall submit a list to the city of all the expected contractors to work on the project as part of its request for tax relief. The list shall include the name of the primary contact, the contractor’s address and either a phone number or email address. The property owner will provide a final all-inclusive list to the city within 30 days of the conclusion of the project.
8. The property owner and/or the contractor must submit certified payrolls monthly to the city for all contractors. A certified payroll format will be provided by the city that includes the employees’ full name, address, identifying number, gender, race and which tabulates hours worked for females, people of color and residents of the city. Each 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.

9. 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. Such sign-in/out logs shall be provided to the city on a weekly basis with the certified payrolls and shall be a public record.

B. Revocation of Certification.

If any person or entity subject to the foregoing qualifications and conditions fails to comply with any of them with respect to work on the property, the parties agree that such an event materially frustrates the public purpose for which the agreement and any certification by the state was intended to advance. In such an event, the city shall petition the appropriate state agency or body for revocation of the certification and, upon such revocation, the tax relief provided by this agreement shall be terminated and the property owner shall pay to the city an amount equal to the value of the tax relief already received under the agreement.

C. Appeal of Revocation.

In the event the owner of the property challenges the termination of the tax relief provided by the agreement and/or the revocation by the state of any certification, the owner shall set aside in an escrow account an amount equal to the full amount of the tax savings that previously would have accrued under the agreement while any such challenge remains pending. The owner of the property shall have a continuing obligation to contribute to the escrow account amounts equal to the additional tax savings that accrue under the agreement while its challenge remains pending. The owner shall promptly provide to the city with documentation of its compliance with this obligation. The conditions of the escrow account shall provide that, in the event the owner is unsuccessful in its challenge, the funds in the account shall be paid to the city. The owner's obligations under this Subsection shall be judicially enforceable. It will be established that the residents of this municipality shall be considered third party beneficiaries of the agreement for the purposes of enforcing the above provisions in a civil proceeding brought by not less than 10 taxable inhabitants.

SECTION 9-40. Municipal Construction Contracts.

Whenever the city is procuring construction services subject to the provisions of M.G.L. c. 149, c. 149A or c. 30, §39M, the provisions of Section 9-37 of this ordinance shall be in effect. In addition, the following 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. Conditions for Bidders.

All bidders, proposers, contractors, and subcontractors and trade contractors shall, as a condition for bidding, contracting, or subcontracting, verify under oath and in writing at the time of bidding, responding to an RFP, or in any event prior to entering into a contract or subcontract at any tier, that they shall comply with the following conditions:

1. The contractor shall not have been found within the past 5 years by a court or governmental agency 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, earned sick time, wage and hour laws, prompt payment laws, or prevailing wage laws.
2. The contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. c. 152 and provide documentary proof of such coverage included with the contractor's submitted bid to the inspectional services department to be maintained as a public record.
3. The contractor shall properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of prevailing wages and overtime, workers compensation insurance coverage, social security taxes and state and federal income tax withholding. (M.G.L. c. 149, §148B on employee classification).
4. 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.
5. The city 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 and shall be a public record.
6. Each contractor of any tier, prior to performing any work on the project, shall sign under oath and provide to the city contractor 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.
7. The contractor must comply with state and, where applicable, federal prevailing wage laws. Contractor shall submit weekly certified payrolls to the city for all employees working on the contract including subcontracted workers at all tiers. Contractor shall use the current standard Massachusetts weekly certified payroll report form. Each 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.

B. Conditions for Contractors.

All bidders or proposers and all trade contractors and subcontractors under the bidder or proposer 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 each of the obligations set forth in Subsection A above for the entire duration of their work on the project. All contracts and agreements between and among city contractors and their subcontractors at all tiers shall require compliance with each of the obligations set forth in paragraph A above. An officer of the city contractor shall certify under oath and in writing at each payment requisition submission that they are in compliance with such obligations.

C. Sanctions for Violations.

Any proposer, bidder, trade contractor or subcontractor under the bidder or proposer that fails to comply with any one of obligations set forth in Subsection A or any other requirements in bid or

contract documents above for any period of time 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 is obtained; (2) withholding of payment due under any contract or subcontract until compliance 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.

D. Further Sanctions for Violations.

In addition to the sanctions outlined in Subsection C above, a proposer, general bidder or contractor shall be equally liable for the violations of its subcontractor with the exception of violations arising from work performed pursuant to subcontracts that are subject to M.G.L. c.149, §44F. Any contractor or subcontractor that has been determined by the city to the extent permitted by law or by any court or agency to have violated any of the obligations set forth in Subsections A and B above shall not be considered “responsible” with respect to bids for any work on any future projects for 6 months for a first violation, 3 years for a second violation and permanently for a third violation.

SECTION 9-41. Major Building Permits.

A. Conditions.

In addition to any other conditions that may be required in connection with the issuance of building permits under M.G.L. c. 40A each building permit issued in connection with the construction, reconstruction, installation, demolition, maintenance or repair of any commercial building estimated to cost not less than \$10,000,000 or in connection with a residential building with 75 or more units shall be subject to and include the following set of mandatory conditions:

“It shall be a material condition of this permit 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 or entity that is engaged to perform the construction work on the property that is the subject of this permit (hereinafter, collectively and individually, the “contractor”) shall comply with the following qualifications and conditions at all times during their performance of work on the project:

- 1. The contractor has not been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past 5 years;*
- 2. The contractor has not been found within the past 5 years by a court or governmental agency 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, or prevailing wage laws;*
- 3. The contractor must maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. c.152 and provide documentary proof of such coverage to the inspectional services department to be maintained as a public record;*
- 4. The contractor must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of minimum wages and overtime, workers compensation insurance coverage, social security taxes and state and federal income tax withholding. (M.G.L. c.149, §148B on employee classification);*
- 5. The contractor must comply with M.G.L. c. 151, §1A and M.G.L. c. 149, § 148 with respect to the payment of wages; and*

6. 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.

If any person or entity that is subject to the foregoing fails to comply with any of the qualifications and conditions with respect to work on the project, this permit shall be deemed temporarily suspended and all construction work on the entire project shall cease immediately upon issuance of a stop work order by the director of the inspectional services department or his/her designee until further notice by him/her.”

B. Sanctions for Violations.

In the event the permit is granted, the applicant for the permit shall be responsible for ensuring that all contractors performing construction work on the property comply with the minimum mandatory conditions required by Subsection A for the duration of work on the project. If any person or entity that is subject to those minimum mandatory conditions fails to comply with any of the qualifications and conditions with respect to work on the project, and in addition to any other penalties or consequences provided by law, the director of the inspectional services department or his/her designee shall issue a stop work order with respect to all construction work on the entire project until the violation is remedied. Once the director of the inspectional services department or his/her designee determines that the violation has been remedied, he/she shall withdraw the stop work order and construction on the project may proceed.

C. Appeal of Stop Work Orders.

Any person aggrieved by a stop work order issued by the director of the inspectional services department or his/her designee shall have the appeal rights set forth in Article VIII Section 1 of the Somerville City Charter Appendix.

SECTION 9-42. Successors in Interest.

The requirements of this ordinance, including any sanctions imposed herein, that are applicable to any employer shall also be applicable to, and effective against, any successor employer that (i) has at least one of the same principals or officers as the prior employer; and (ii) is engaged in the same or equivalent trade or activity as the prior employer.

SECTION 9-43. Severability.

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 be not affected thereby.

Approved:

President, City Council