



CITY OF SOMERVILLE, MASSACHUSETTS CLERK OF COMMITTEES

November 6, 2019
REPORT OF THE LICENSES AND PERMITS COMMITTEE

Attendee Name	Title	Status	Arrived
Mary Jo Rossetti	Chair	Present	
Wilfred N. Mbah	Vice Chair	Present	
Jefferson Thomas ("J.T.") Scott	Ward Two City Councilor	Present	

The meeting was held in the Council Chamber and was called to order by Chair Rossetti at 6:08pm and adjourned at 9:24pm.

Others present: Annie Connor - Mayor's Office; Hannah Pappenheim - Law; Angela Allen - Purchasing; Joe Lynch - Licensing Commission; Benjamin Traslavina - Greater Boston Legal Services; Christopher Souris - Krakow, Souris & Landry LLC; Penelope Taylor - New England Regional Council of Carpenters; Marcy Goldstein-Gelb - National Council for Occupational Safety and Health; Kimberly Wells - Assistant Clerk of Committees

Approval of the September 11, 2019 Minutes

RESULT:	ACCEPTED
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Approval of the September 25, 2019 Minutes

RESULT:	ACCEPTED
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206864: That the Administration report to this Board, any instances of businesses found guilty of wage theft by the Attorney General's Office, and what action was taken in accordance with our wage theft ordinance.

See #208476.

RESULT:	KEPT IN COMMITTEE
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208476: That this Council's Committee on Licenses and Permits consider the attached amendment to Ordinance 9-31 regarding Wage Theft.

Chair Rossetti thanked the administration for their work on this ordinance and the amendments. Ms. Connor noted that some of the changes were recommendations from Greater Boston Legal Services and

not all from the city staff. Councilor Scott clarified that the draft dated June 21 includes the Committee's amendments and the November 5 draft includes the administration and counsel's changes, as well as incorporating suggestions from community members.

The Committee worked from the draft dated November 5. The language for the members of the Wage Theft Advisory Committee were changed to reflect staggered terms. Councilor Scott suggested that the initial terms may benefit from being more balanced.

Councilor Scott moved to amend Section 2 to read: the initial appointments of the designee from the City Council, the Mayor and Greater Boston Labor Council shall be for one 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 two years and the remaining initial appointments (the designees from the Metro Building Trades Council, Our Revolution Somerville, Somerville Community Corporation, and the Welcome Project) shall be for three years.

The motion was approved.

Section 5 only pertains to licenses issued by the Licensing Commission. Inclusion of the wage theft condition in smaller building permits was a suggestion previously made by the Committee, but Ms. Pappenheim shared that the opinion of the state is that additional requirements outside of the state building code cannot be imposed. Councilor Scott noted that this could be included in the granting of Special Permits. Ms. Pappenheim noted that there is not a sufficient nexus to use of the property, and it is her opinion that a wage theft condition would not be allowable. Councilor Scott noted that many conditions are often included, including working hours, parking, engineering requirements. Those relate to the use of the actual property, and not to the operation of the business as a whole. Mr. Souris added that using the special permit mechanism can be a challenge, but it is his opinion that the municipality can attach these kinds of conditions to building permits, much as they can attach conditions that taxes and bills be paid. Ms. Goldstein-Gelb shared that Boston has an ordinance outside of the building code relative to OSHA violations, and this seems like a parallel. Ms. Pappenheim added that the state building code has a provision that safety is a reason that could be used for suspending or revoking a permit, which is why the OSHA provision could apply. Provisions in other communities do not include building code provisions, likely due to the inability to supersede state building code. Mr. Souris noted that just because there is no precedent does not speak to the merits, which Councilor Mbah echoed and added that this is an opportunity to close any loopholes. Councilors Scott and Mbah expressed interest in moving forward independent of the city's reservations, as those may never be resolved.

Ms. Pappenheim asked that Mr. Lynch weigh in on the portions of Section 5 that impact the Licensing Commission, particularly Section 5 B, to change the language from 30 days to the next Licensing Committee agenda.

The Chair moved to amend the document to reflect the change in Section 5 B from: "The City will conduct a hearing within thirty (30) days from the time it becomes aware of a final determination." to "Upon notice of a violation as described herein, the Wage Theft Advisory Committee shall request that the matter be placed on the next Licensing Committee agenda."

The motion was approved.

Mr. Lynch shared that his Committee is responsible for licenses related to package stores, restaurants etc., but it is a highly regulated industry, with two state agencies overseeing this work, the ABCC and the Cannabis Control Commission. He warned that some of the penalties proposed could be contra to the penalties that already exist from these bodies. He also shared concerns about the unintended

consequence that some of the penalties could have on very small businesses. Councilor Scott emphasized that none of these penalties are mandatory, and one of the tasks of the Advisory Committee will be to research violations and advise on infractions. Further, sub-section D provides that the penalties are waived if the employers enter into a conciliation process. This helps alleviate the burden on small businesses and there are no mandatory punishments. Mr. Lynch wanted to emphasize the potential for smaller businesses to get caught in this arena and note the difference between that and the large cases that are of the sort that are of large and national scale.

Councilor Scott asked about the section regarding Wage Bonds for License Holders, essentially a type of insurance for chronic wage theft violators. He suggested that a note be made in Section 5 to direct readers to the updated Wage Bond language in Section 10. Additionally, the wage bond requirements should be different depending on the industry or business, which is why it may belong in multiple sections and why the minimum amounts were set lower (\$5k) than the suggested change to \$250k. He recommended returning the language to Section 5 for license holders. Mr. Traslavina shared that \$250k was the recommended number from the National Law Project, but Councilor Scott's argument is reasonable.

Councilor Scott moved to strike Section 5 F.

The motion was approved.

Mr. Lynch noted that Section 10 C states that the bonds MUST be maintained for the terms or extensions of any contract and wondered whether extensions includes renewals. There are some licenses that automatically renew if there are no reports within the year-long license term. The new recreational marijuana contracts are five year terms.

Councilor Scott moved to amend Section 5 E to strike the words "or extensions".

The motion was approved.

Councilor Scott moved to amend Section 5 D to change "City of Somerville" to "Licensing Commission", and "shall" to "may" in sentence 1 and adding "or suspension" after "revocation" in sentence 2 and change "If the Employer agrees to a payment plan to pay off any judgment the City will not take any action to revoke or suspend the Employer's license. During the course of any conciliation process, the Employer will follow the posting requirements in Subsection C." to "If the Employer can demonstrate a compliance plan to satisfy any related penalty imposed by the AG office, or a civil judgment, the Licensing Commission shall hold any action pursuant to Subsection B in abeyance."

The motion was approved.

The terms of the conciliation process need to be defined such that there is no option for extended avoidance of the penalties and repeat wage theft offenses.

Mr. Traslavina shared that the suggested change to Section 5 A from 5 years to 3 years was to bring the statute of limitations into compliance with existing law. Councilor Scott noted that this language is not related to bringing a claim, and thus 5 years is still acceptable.

Councilor Scott suggested creation of a section to define permits and licenses or possibly removing the language referencing permits. Ms. Taylor noted that if an industry is covered by a permit rather than a license in the future, the current language would cover any instance of wage violation. Councilor Mbah added that this would only apply to employees, not permits for things like special events. Ms. Goldstein-Gelb suggested "permits, as it pertains to employers" to clarify this difference. Councilor Scott noted that there should be a clarification about what section of the MGL these permits reference, and they should be properly addressed in the ordinance if the references remain.

Councilor Scott moved to accept the change from "Leila" to "term" in Section 5 B.

The motion was approved.

Councilor Scott moved to accept the corrections to capitalization and references to Subsection in Section 5.

The motion was approved.

Ms. Pappenheim recommended combining Sections 4 and 7 to keep the language related to contracts succinct. Mr. Traslavina noted that this could cause confusion and lead to unnecessary disputes.

Councilor Scott moved to add "and provide a copy of" after "duty to report" and to change "issued" to "solicited" in Section 4 A 2.

The motion was approved.

Councilor Scott moved to accept the corrections to capitalization and references to Subsection in Section 4.

Ms. Allen shared that the awarding authority has the leverage to make a responsibility determination based on references; the bar does not need to be as high as debarment (and this is virtually never reached). Further, a municipal body does not have the power to debar, but does bear the responsibility to check references, and this is not limited to those listed on the bid. There is concern that small companies may have a violation due to paperwork, and not actually failing to pay employee wages. There should be discretion to consider whether there was malintent or a pattern of negative behavior. The Advisory Committee could enhance and complement the capacity of the City in this area. Ms. Allen also supported merging Sections 4 and 7 to avoid confusion with the good and service law in MGL 30B.

Councilor Scott moved to changed "issued" to "solicited" and to remove "or any municipal body - including, but not limited to, the City of Somerville" and "or municipal government" in Section 4 A 3 and change the first line of Section 4 A 4 to read " 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."

Ms. Pappenheim noted that a certification of compliance is required in the bid process, and wondered whether it is redundant to include again in the contracting. Councilor Scott clarified that this is an affirmative certification that they have not been subject to a judgment, rather than just a presumption based on a failure to declare such. Section 4 A 1 is related to the Purchasing Agent's requirement to notify bidders of the need to comply, and Section 4 B is related to the act of the

Resident attendee Mr. Clauser pointed out an inconsistency with the definition of Debarment not including a reference to the Federal level in the definition, while referencing the same in its use in Section 4.

Councilor Scott moved to amend Section 1 A 14 to include "or Federal" after State and ", 29 U.S.C. § 201 et seq. and 29 C.F.R. § 578" before the end of the sentence.

The motion was approved.

Councilor Scott moved to strike Section 4 A 5.

The motion was approved.

Councilor Scott moved to amend Section 4 B 2 to append the language "To the extent a judgment, citation, or final administrative order has been issued against a bidder within three (3) years prior to its bid, provide a copy of the same, in addition to documentation demonstrating that all damages, fines, costs, and fees have been paid. In addition, the bidder must post a bond, to be maintained for the life of the contract, as specified by Section Ten." to the end.

The motion was approved.

Prior to adjournment, Chairwoman Rossetti requested City Staff, one member of this Committee, and Attorneys Souris & Traslavina meet to continue discussion of the current draft amended Ordinance. A date of November 19 @ 1:00 was agreed upon by all. This Working Group will report back to Committee December 11th, 6:00 p.m.

RESULT:	KEPT IN COMMITTEE
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HANDOUTS:

- BT Somerville Wage Theft Ordinance - Track Changes Draft 11- 5 HP Comments (with 208476)
- Section 6 Wage Bonds (with 208476)
- Wage Theft clean 6-21-19_Comittee Edits 7.10 and 9.11 (with 208476)
- Enforcement Steps (with 208476)